

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MOORE POND HOMEOWNERS  
ASSOCIATION, INC.; AND OX BOTTOM  
MANOR COMMUNITY ASSOCIATION,  
INC.,

Petitioners,

vs.

Case No. 17-5082

GOLDEN OAK LAND GROUP, LLC; AND  
LEON COUNTY, FLORIDA,

Respondents.

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RECOMMENDED ORDER

The quasi-judicial hearing in this case was held on November 9, 2017, in Tallahassee, Florida, before Bram D.E. Canter, Administrative Law Judge of the Division of Administrative Hearings ("DOAH"), acting as the Special Master under section 10-7.414 of the Leon County Land Development Code.

APPEARANCES

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STATEMENT OF THE ISSUE

The issue to be determined in this case is whether the Leon County Development Review Committee's preliminary conditional approval of a site and development plan for the Brookside Village Residential Subdivision is consistent with the Tallahassee-Leon County 2030 Comprehensive Plan ("Comp Plan") and the Leon County Land Development Code ("Code").

PRELIMINARY STATEMENT

On August 18, 2017, the Development Review Committee issued a letter which conditionally approved the site and development plan submitted by Golden Oak Land Group, LLC ("Golden Oak") for the Brookside Village Residential Subdivision, a single-family residential subdivision to be located on the north side of Ox Bottom Road in Leon County ("Project"). The Project followed the "Type B" review, which provides for concurrent land use and

environmental permitting approval. On September 15, Moore Pond Homeowners Association, Inc., and Ox Bottom Manor Community Association, Inc. ("Petitioners") filed a joint petition challenging the Development Review Committee's preliminary approval as inconsistent with certain provisions of the Comp Plan and Code.

Pursuant to a contract between DOAH and Leon County, the County sent the matter to DOAH to appoint a Special Master and conduct a quasi-judicial hearing. A notice of the hearing was provided in accordance with section 10-7.414(J)(ii) of the Code.

At the hearing held on November 9, the parties' Joint Exhibits 1 through 35 were admitted into evidence. Petitioners presented the testimony of Jan Norsoph, an expert in comprehensive planning and zoning. Petitioners' Exhibit 1 was admitted into evidence. Respondent Golden Oak presented the testimony of: Sean Marston, an expert in civil engineering; and Wendy Grey, an expert in comprehensive planning and zoning. Respondent Leon County presented the testimony of: Shawna Martin, Principal Planner with the Leon County Department of Development Support and Environmental Management, an expert in land use planning and zoning; and Susan Poplin, Principal Planner with the Tallahassee-Leon County Planning Department, an expert in comprehensive planning. Respondents' Exhibits 1-5, 7-12, and 16 were admitted into evidence.

At the hearing, an opportunity was provided to receive comments from the public. Three persons offered comments in opposition to the Project: Moore Pond residents Alex Nakis and Gene Sherron, and Ox Bottom Manor resident Mark Newman. A copy of this Recommended Order is being sent to these three persons.

The Transcript of the hearing was filed with DOAH. The parties submitted proposed recommended orders that were considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

##### The Parties

1. Petitioner Moore Pond Homeowners Association, Inc. ("Moore Pond"), is a Florida not-for-profit corporation whose members are residents of Moore Pond, a single-family subdivision bordering the Project to the east.

2. Petitioner Ox Bottom Manor Community Association, Inc. ("Ox Bottom Manor"), is a Florida not-for-profit corporation whose members are residents of Ox Bottom Manor, a single-family residential subdivision bordering the Project to the west.

3. Respondent Golden Oak is a Florida limited liability company. Golden Oak is the applicant for the Project and the owner of the property on which the Project will be developed.

4. Respondent Leon County is a political subdivision of the State of Florida, and has adopted a comprehensive plan that

it amends from time to time pursuant to chapter 163, Florida Statutes.

#### Land Use Designations

5. The Project is located on land that is designated as Residential Preservation on the Future Land Use Map of the Comp Plan, and is in the Residential Preservation zoning district established in the Code. Residential Preservation is described in both as "existing homogeneous residential areas" that should be protected from "incompatible land use intensities and density intrusions."

6. Policy 2.2.3 of the Future Land Use Element ("FLUE") of the Comp Plan permits residential densities within Residential Preservation of up to six dwelling units per acre ("du/a") if central water and sewer services are available. Central water and sewer services are available in this area of the County.

7. The Project is located within the Urban Services Area established by the FLUE, which is the area identified by the County as desirable for new development based on the availability of existing infrastructure and services.

#### The Project

8. The Project is a 61-lot, detached single-family residential subdivision on a 35.17-acre parcel. To avoid adverse impacts to approximately 12 acres of environmentally sensitive area in the center of the property, the Project places

the single-family lots on the periphery of the property with access from a horseshoe-shaped street that would be connected to Ox Bottom Road. The environmentally sensitive area would be maintained under a conservation easement.

9. The "clustering" of lots and structures on uplands to avoid environmentally sensitive areas is a common practice in comprehensive planning. The Comp Plan encourages clustering or "compact" development to protect environmentally sensitive features.

10. The Project would include a 25-foot vegetative buffer around most of the perimeter of the property. There is already a vegetative buffer around a majority of the property, but the vegetative buffer will be enhanced to achieve 75 percent opacity at the time of additional planting and 90 percent opacity within five years. The buffers would include a berm and privacy fence. The proposed buffers exceed the requirements in the Code.

11. In the course of the application and review process for the Project, Golden Oak made changes to the site and development plan to address concerns expressed by residents of the neighboring subdivisions. These changes included an increase in lot sizes abutting lots within Moore Pond and Ox Bottom Manor; a reduction in the number of lots from 64 to 61; and an expansion and enhancement of buffers.

12. In addition, Golden Oak revised the proposed covenants and restrictions for the Project to incorporate minimum square footage requirements and to prohibit second-story, rear-facing windows on homes abutting lots in Moore Pond and Ox Bottom Manor.

13. The Development Review Committee approved the Project, subject to the conditions outlined in the staff report and an additional condition regarding buffers.

Compatibility

14. Petitioners contend the Project would be incompatible with adjacent residential uses in Moore Pond and Ox Bottom Manor and, therefore, the Project should be denied because it violates the provisions of the Comp Plan and Code that require compatibility. Petitioners rely mainly on FLUE Policy 2.2.3, entitled "Residential Preservation," which states that "Consistency with surrounding residential type and density shall be a major determinant in granting development approval." Although Moore Pond and Ox Bottom Manor are also designated Residential Preservation, Petitioners claim the Project would be incompatible because of the differences in development type and density.

15. The Project is the same development type (detached, single-family) and density (low density, 0-6 du/a) as the surrounding development type and density.

16. Petitioners assert that the Project is a different development type because it is "cluster housing." Cluster housing is not a development type. Clustering is a design technique. The clustering of detached, single-family houses does not change the development type, which remains detached, single-family.

17. Petitioners object to the density of the Project of 1.73 du/a, but their primary concern is with the Project's "net density" or the density within the development area (outside of the conservation easement). Most of the lots in the Project would be about 1/8 to 1/4 of an acre, with the average lot size being 0.26 acres. In contrast, the lots in Moore Pond range from 1.49 to 12.39 acres, with the average size being 3.08 acres. The lots in Ox Bottom Manor range from .53 acres to 0.96 acres, with the average size being 0.67 acres.

18. There is also a significant difference in lot coverage between the Project and the two adjacent subdivisions.

19. The witnesses for the County and Golden Oak never acknowledged the reasonableness of Petitioners' claim of incompatibility or the notion that owners of large houses on large lots would object to having on their border a row of small houses on small lots. However, the objection of Moore Pond and Ox Bottom Manor residents was foreseeable.



20. The gist of the arguments made by Oak Pond and the County is that the Project is compatible as a matter of law. Respondents demonstrated that the applicable provisions of the Comp Plan and Code, as interpreted by the County, treat a proposed Residential Preservation development as compatible with existing Residential Preservation developments. Put another way: a low density, detached single-family development is deemed compatible with existing low density, detached single-family developments. No deeper analysis is required by the County to demonstrate compatibility.

21. Petitioners' claim of incompatibility relies principally on FLUE Policy 2.2.3(e), which states in part:

At a minimum, the following factors shall be considered to determine whether a proposed development is compatible with existing or proposed low density residential uses and with the intensity, density, and scale of surrounding development within residential preservation areas: proposed use(s); intensity; density; scale; building size, mass, bulk, height and orientation; lot coverage; lot size/configuration; architecture; screening; buffers, including vegetative buffers; setbacks; signage; lighting; traffic circulation patterns; loading area locations; operating hours; noise; and odor.

22. Petitioners attempted to show that the application of these factors to the Project demonstrates it is incompatible with Moore Pond and Ox Bottom Manor.

23. However, Policy 2.2.3 also sets forth guiding principles for protecting existing Residential Preservation areas from other types of development on adjoining lands. No guidelines are included for protecting Residential Preservation areas from proposed low density residential development. The County asserts that this reflects the County's determination that low density residential development is compatible with existing Residential Preservation areas and, therefore, Policy 2.2.3 does not require that the Project be reviewed using the listed compatibility factors.

24. The County showed that its interpretation of FLUE Policy 2.2.3 for this proceeding is consistent with its past practice in applying the policy.

25. Respondents also point to Table 6 in FLUE Policy 2.2.26, which is a Land Use Development Matrix which measures a parcel's development potential based on certain land use principles contained in the FLUE, including the parcel's potential compatibility with surrounding existing land uses. The Matrix shows that a proposed low density residential land use "is compatible/allowable" in the Residential Preservation land use category.

26. Petitioners argue that the Project is incompatible, using the definition of "compatibility" in section 163.3164(9), Florida Statutes:

"Compatibility" means a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition.

27. Petitioners contend the Project would unduly negatively impact Moore Pond and Ox Bottom Manor. Respondents contend it would not. However, as explained in the Conclusions of Law, this definition in chapter 163 is not an extra criterion for approving or denying the Project.

28. Without abandoning their argument that Policy 2.2.3 does not require a compatibility analysis for the Project, both Golden Oak and the County performed compatibility analyses because of the objections raised by adjacent residents.

29. Golden Oak's expert planner analyzed compatibility on a larger scale by looking at subdivisions within a quarter-mile radius of the Project site. She found a range of densities and lot sizes, including one subdivision with a higher density and smaller lot size. However, nothing in Policy 2.2.3 or the other provisions of the Comp Plan suggests that the incompatibility of a proposed development with an existing, adjoining development is permissible if the proposed development is compatible with

another development within a quarter of a mile. Still, her analysis showed the County's past practice in interpreting and applying the relevant provisions of the Comp Plan and Consistency Code is consistent with the County's position in this proceeding.

30. Respondents' compatibility analyses were based in part on legal factors. For example, it was explained that under the Comp Plan, residential density is always applied as gross density rather than net density. This policy is reasonable because it encourages clustering and compact development which helps to achieve important objectives of the Comp Plan, such as the protection of sensitive environmental features. However, it does not follow that because clustering has benefits, it cannot cause incompatibility.

31. Clustering is a well-established growth management technique, despite the fact that clustering can cause some adverse impacts when it increases densities and intensities on the border with adjoining land uses. Such impacts are addressed with buffer requirements. This approach strikes a reasonable balance of the Comp Plan's goals, objectives, and policies. If the buffer requirements are inadequate, as Petitioners claim, that is an issue that cannot be addressed here.

32. Petitioners also contend the Project is inconsistent with sections of the Code that require compatibility. For

example, section 10-6.617 pertains to the Residential Preservation zoning district and states that, "Compatibility with surrounding residential type and density shall be a major factor in the authorization of development approval."

Section 10-7.505(1) provides that each development shall be designed to "be as compatible as practical with nearby development and characteristics of land."

33. These general statements in the Code are implemented through the more specific requirements in the Code for proposed new developments. Petitioners did not demonstrate that the Project is inconsistent with any of the specific requirements of the Code for the reasons already discussed.

34. The County showed that its interpretations of section 10-7.617 and section 10-7.505(1) for this proceeding are consistent with its past practice in applying these provisions.

#### Summary

35. Compatibility for purposes of land use determinations is not in the eye of the beholder, but is determined by law. The County's growth management laws incorporate professional planning principles and use development techniques and density ranges, which provide flexibility in achieving important objectives, such as environmental protection. The focus is not on lot-to-lot differences, but on maintaining stable communities and neighborhoods.

36. The preponderance of the evidence, which includes the County's past interpretation of, and practice in applying, the compatibility provisions of the Comp Plan and Code, demonstrates that the Project is consistent with all requirements for approval.

#### CONCLUSIONS OF LAW

##### Jurisdiction

37. DOAH has jurisdiction over the parties to and the subject matter of this proceeding pursuant to section 10-7.414 of the Code.

38. Petitioners raised no issues regarding the procedures followed by the County for the decision under review, including public notice.

##### Burden and Standard of Proof

39. The burden is on the applicant for site plan approval to demonstrate that the application complies with the procedural requirements of the applicable ordinance and that the use sought is consistent with the applicable provisions of the Comp Plan and Code. See, e.g., Alvey v. City of N. Miami Bch., 206 So. 3d 67, 73 (Fla. 3d DCA 2016) (citing Bd. of Cnty. Commr's of Brevard Cnty. v. Snyder, 27 So. 2d 469, 472 (Fla. 1993)).

40. The standard of proof to establish a finding of fact is preponderance of the evidence. § 120.57(1)(j), Fla. Stat. (2017).

### Consistency with the Comp Plan

41. Under section 10-7.414(J) (vii) of the Code, the standard of review to be applied by the Special Master in determining whether the Project is consistent with the Comp Plan is "strict scrutiny in accordance with Florida law." Strict scrutiny in this context means strict compliance with the Comp Plan, based on the document as a whole. See Snyder, 27 So. 2d, at 475; Arbor Props. v. Lake Jackson Prot. Alliance, 51 So. 3d 502, 505 (Fla. 1st DCA 2010); § 163.3194(4) (a), Fla. Stat.

42. The County's interpretations of the relevant provisions of the Comp Plan are reasonable.

43. Golden Oak proved by a preponderance of the evidence that the proposed development order is consistent with the Comp Plan.

44. The parties discussed the definition of "compatibility" in section 163.3164(9), Florida Statutes, and whether the Project would be compatible under the definition. Leon County has not adopted this definition as part of its Comp Plan. The relevant use of this definition is in section 163.3177, which describes the requirements for a future land use element. One of these requirements is to have criteria that provide for the compatibility of adjacent land uses. § 163.3177(6) (a)3.g., Fla. Stat. (2017).

45. When Leon County adopted its future land use element and the adoption became final, the County's satisfaction of the requirement of section 163.3177(6)(a)3.g. to establish compatibility criteria based on the definition of "compatibility" in chapter 163 was legally established. Now that the County has implemented section 163.3177(6)(a)3.g., with criteria which provide that residential projects of similar type and density are compatible, it is unnecessary to re-use the definition of "compatibility" in chapter 163 as an additional, external criterion for determining whether the Project is compatible. The County must rely on the provisions of its own Comp Plan.

46. Even if the use of the definition of "compatibility" in chapter 163 were appropriate, it would not require a different conclusion regarding the compatibility of the Project.

Consistency with the Code

47. Under section 10-7.414(J)(vii) of the Code, the standard of review to determine whether the Project is consistent with the Code "shall be in accordance with Florida law." Florida law requires that the County's determination that the Project is consistent with relevant provisions of the Code must be based on competent substantial evidence. See Premier Dev. v. City of Fort Lauderdale, 920 So. 2d 852, 853 (Fla. 4th DCA 2006).



48. The County's interpretations of the relevant provisions of the Code are reasonable.

49. The preponderance of competent substantial evidence in the record of this proceeding supports the determination of the Development Review Committee that the Project is consistent with all applicable provisions of the Code.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Leon County Board of County Commissioners enter a final order approving the Project, subject to the conditions outlined by the Development Review Committee in its written preliminary decision dated August 18, 2017.

DONE AND ENTERED this 26th day of December, 2017, in Tallahassee, Leon County, Florida.



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BRAM D. E. CANTER  
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Filed with the Clerk of the  
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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 10 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the clerk of the Board of County Commissioners of Leon County. See § 10.7.414(K), Land Development Code.