STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY

TRAVIS CORTOPASSI,

Petitioner,

vs.

DOAH CASE NO.: 19-6725GM
DEO CASE NO.: 21-016

FRANKLIN COUNTY BOARD OF COUNTY COMMISSIONERS,

Respondent,

and

JAMES WARD,

Intervenor.
_____/

FINAL ORDER

This matter was considered by the Division of Community Development within the Florida Department of Economic Opportunity ("Department") following the receipt of a recommended order ("Recommended Order") issued by an Administrative Law Judge ("ALJ") assigned to the matter by the Division of Administrative Hearings ("DOAH").

Background

This is a proceeding to determine whether a small-scale amendment (the "Plan Amendment") to the Franklin County Comprehensive Plan ("Plan") is "in compliance," as defined in section 163.3184(1)(b), Florida Statutes (2019).[1] On November 19, 2019, Franklin County Board of County Commissioners ("County") adopted Ordinance 2019-10 ("Ordinance"). The

[1] References to the *Florida Statutes* are to the 2019 version, which was in effect on the date the Ordinance was adopted.

Ordinance amends the Plan by changing the future land use map ("FLUM") designation of the subject property located at 1015 U.S. Highway 98, Eastpoint, Florida. The Ordinance changes the designation of the subject property from Residential to Commercial to allow for commercial development of the property.

On December 19, 2019, Travis Cortopassi ("Petitioner"), filed a petition for an administrative hearing, challenging whether the Ordinance is "in compliance," as defined in section 163.3184(1)(b), Florida Statutes, and whether the Ordinance was adopted in conformity with the requirements of 163.3187(3). Petitioner alleges that the Ordinance was not adopted in accordance with the requirements applicable to small-scale development amendments in rural areas of opportunity, that the Ordinance was not based on relevant and appropriate data and analysis, and that the Ordinance was inconsistent with applicable provisions of the County's Comprehensive Plan.

On January 23, 2020, the owner of the subject property, James Ward ("Intervenor"), filed a motion to intervene in the proceeding, which was granted by the ALJ. The case was scheduled and held for final hearing on February 10 and 11, 2020. The ALJ issued the Recommended Order on March 5, 2021, recommending the Department issue a final order determining the Plan Amendment to be found in compliance. A copy of the Recommended Order is attached hereto as Exhibit "A." No exceptions to the Recommended Order were filed with the Department.

Role of the Department

Petitioner's challenge was filed pursuant to sections 120.569, 120.57(1), and 163.3187, Florida Statutes. The ALJ held a hearing and issued the Recommended Order, finding the Plan Amendment in compliance, and submitted the Recommended Order to the Department. The Department may determine that the Plan Amendment is in compliance and enter a final order to

that effect or determine that the Plan Amendment is not in compliance and refer the Recommended Order and the Department's determination to the Administration Commission for final agency action. § 163.3187(5)(b), Fla. Stat.

The Department has received a record consisting of copies of the parties' pleadings and the documentary evidence introduced at the final hearing. The Department has reviewed the record and issues this Final Order in accordance with sections 120.57(1)(k)-(l) and 163.3187, Florida Statutes.

If the Department rejects or modifies a conclusion of law or interpretation of an administrative rule, then the Department must state with particularity its reasons for such rejection or modification. § 120.57(1)(l), Fla. Stat. If the Department rejects or modifies a finding of fact, then the Department must state with particularity that the finding was not based upon competent substantial evidence or that the proceedings on which the finding was based did not comply with essential requirements of law. *Id.*

Standard of Review

Findings of Fact

Section 120.57(1)(l), Florida Statutes, prescribes that in its issuance of a final order, the Department may not reject or modify the findings of fact of the ALJ "unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law." Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc. v. Unemplmt. App. Comm'n*, 671 So. 2d 287, 290 n.3 (Fla. 5th DCA 1996). Evidence is substantial if there is "some (more than a mere iota or scintilla) real, material, pertinent, and

relevant evidence (as distinguished from ethereal, metaphysical, speculative or merely theoretical evidence or hypothetical possibilities) having definite probative value (that is, 'tending to prove') as to each essential element" of the claim. *Id.* The Department is "not authorized to weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." *Heifetz v. Dep't of Bus. Reg.*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985). "If the ALJ's findings of fact are supported by competent, substantial evidence, the agency cannot reject them even to make alternate findings that are also supported by competent, substantial evidence." *Lantz v. Smith*, 106 So. 3d 518, 521 (Fla. 1st DCA 2013). The Department may reject findings of fact if the proceedings on which the findings were based did not comply with the essential requirements of law. *See* § 120.57(1)(l), Fla. Stat., and *Dept. of Corrections v. Bradley*, 510 So. 2d 1122, 1123 (Fla. 1st DCA 1987). In this context, Florida's First District Court of Appeal has characterized a failure "to comply with the essential requirements of the law" as "a procedural irregularity." *Beckett v. Dep't of Fin. Servs.*, 982 So. 2d 94, 102 (Fla. 1st DCA 2008) (ruling that the agency erred by concluding that the ALJ had failed to comply with the essential requirements of the law "[b]ecause there has been no suggestion of a procedural irregularity").

Conclusions of Law

Section 120.57(1)(l), Florida Statutes, authorizes the Department to reject or modify a conclusion of law over which the agency has substantive jurisdiction. § 120.57(1)(l), Fla. Stat.; *Barfield v. Dep't of Health*, 805 So. 2d 1008, 1010 (Fla. 1st DCA 2001). If the Department rejects or modifies any of the ALJ's conclusions of law, then the Department must state with particularity its reasons for rejecting or modifying the conclusion, and must make a finding that its substituted conclusion of law is as or more reasonable than that which was rejected or modified. § 120.57(1)(l), Fla. Stat. The Department is not permitted to reject or modify a finding that is substantially one of

fact simply by treating the finding as a legal conclusion. *See Abrams v. Seminole Cnty. Sch. Bd.*, 73 So. 3d 285, 294 (Fla. 5th DCA 2011). Additionally, a rejection or modification of a conclusion of law may not form a basis for rejection or modification of a finding of fact. § 120.57(1)(l), Fla. Stat.

Adoption of the Recommended Order

The Department has reviewed the Recommended Order and concludes that all findings of fact therein were based upon competent substantial evidence in the record. The Department finds that the proceedings on which the findings of fact were based complied with the essential requirements of law.

The Department has reviewed the ALJ's conclusions of law and finds that all conclusions of law within the Department's substantive jurisdiction are reasonable. The Department does not have any substitute conclusions of law that would be as or more reasonable than the ALJ's conclusions of law.

ORDER

Based on the foregoing, the Department determines that Franklin County Comprehensive Plan Amendment, adopted by Ordinance 2019-10 on November 19, 2019, is "in compliance," as defined in section 163.3184(1)(b), Florida Statutes. The Department adopts and incorporates the Recommended Order in its entirety in this Final Order.

Dated this 1 day of April, 2021.

Mario Rubio, Director
Division of Community Development
Florida Department of Economic Opportunity

NOTICE OF RIGHT TO APPEAL

THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION UNDER CHAPTER 120, FLORIDA STATUTES. A PARTY WHO IS ADVERSELY AFFECTED BY FINAL AGENCY ACTION IS ENTITLED TO JUDICIAL REVIEW IN ACCORDANCE WITH SECTION 120.68, FLORIDA STATUTES, AND FLORIDA RULES OF APPELLATE PROCEDURE 9.030(B)(1)(C) AND 9.110.

TO INITIATE JUDICIAL REVIEW OF THIS FINAL AGENCY ACTION, A NOTICE OF APPEAL MUST BE FILED WITH THE APPROPRIATE DISTRICT COURT OF APPEAL WITHIN THIRTY (30) CALENDAR DAYS AFTER THE DATE THE FINAL AGENCY ACTION WAS FILED BY THE AGENCY CLERK. THE NOTICE OF APPEAL MUST BE ACCOMPANIED BY THE FILING FEE SPECIFIED IN SECTION 35.22, FLORIDA STATUTES. A COPY OF THE NOTICE OF APPEAL MUST ALSO BE FILED WITH THE DEPARTMENT'S AGENCY CLERK, 107 EAST MADISON STREET, CALDWELL BUILDING, MSC 110, TALLAHASSEE, FLORIDA 32399-4128, AGENCY.CLERK@DEO.MYFLORIDA.COM. A DOCUMENT IS FILED WHEN IT IS RECEIVED. THE NOTICE OF APPEAL MUST BE SUBSTANTIALLY IN THE FORM PRESCRIBED BY FLORIDA RULE OF APPELLATE PROCEDURE 9.900(A).

AN ADVERSELY AFFECTED PARTY WAIVES THE RIGHT TO JUDICIAL REVIEW IF THE NOTICE OF APPEAL IS NOT TIMELY FILED WITH BOTH THE DEPARTMENT'S AGENCY CLERK AND THE APPROPRIATE DISTRICT COURT OF APPEAL.

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing Final Order has been filed with the undersigned Agency Clerk, and that true and correct copies have been furnished to the following persons by the methods indicted this 1st day of April, 2021.

Agency Clerk
Florida Department of Economic Opportunity
107 East Madison Street, MSC 110
Tallahassee, FL 32399-4128

By U.S. Mail

The Honorable Francine M. Ffolkes
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

By U.S. Mail:

Sidney C. Bigham, III, Esquire
Berger Singerman LLP
313 North Monroe St., Suite 301
Tallahassee, FL 32301

Thomas M. Shuler, Esquire
The Law Office of Thomas M. Shuler, P.A.
40 4th Street
Apalachicola, FL 32320

S. Brent Spain, Esquire
Theriaque & Spain
433 North Magnolia Drive
Tallahassee, FL 32308-5083

Daniel W. Hartman, Esquire
Harman Law Firm, P.A.
P.O. Box 10910
Tallahassee, FL 32302

David A. Theriaque, Esquire
Therique & Spain
433 North Magnolia Drive
Tallahassee, FL 32308-5083

Benjamin R. Kelley, Esquire
Theriaque & Spain
433 North Magnolia Drive
Tallahassee, FL 32308-5083