STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TRAVIS CORTOPASSI,

Petitioner,

vs. Case No. 19-6725GM

FRANKLIN COUNTY BOARD OF COUNTY COMMISSIONERS,

Respondent,

and

JAMES WARD,

Intervenor.
_____/

RECOMMENDED ORDER

A duly-noticed final hearing was held in this matter on February 10 and 11, 2020, in Apalachicola, Florida, before Francine M. Ffolkes, an Administrative Law Judge with the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner:

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

For Respondent:

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

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

For Intervenor:

Daniel W. Hartman, Esquire
Hartman Law Firm, P.A.
Post Office Box 10910
Tallahassee, Florida 32302

STATEMENT OF THE ISSUES

The issues to be determined in this proceeding are: (1) whether the small scale development amendment to the Franklin County Comprehensive Plan's Future Land Use Map (FLUM), adopted by Ordinance No. 2019-10 on November 19, 2019 (Ordinance), is "in compliance" under section 163.3184(1)(b), Florida Statutes; and (2) whether the Ordinance was adopted in conformity with the requirements of section 163.3187(3).

PRELIMINARY STATEMENT

On November 19, 2019, the Franklin County Board of County Commissioners (County) adopted the Ordinance that changed the FLUM designation from Residential to Commercial, for property located at 1015 U.S. Highway 98, Eastpoint, Florida. The property is owned by Intervenor James Ward (Ward).

On December 19, 2019, Petitioner filed a Petition for Formal Administrative Hearing with DOAH. On February 4, 2020, DOAH accepted Petitioner's Second Amended Petition. The parties filed their Joint Pre-Hearing Stipulation on February 7, 2020.

The final hearing was held on February 10 and 11, 2020. The parties'

Joint Exhibits 2 through 5, 8 through 10, 13 through 15, 17, 18, 20, 22, 24 through 29, 31, 34, and 36 were admitted into evidence. Petitioner introduced the testimony of David Depew (Depew), Ph.D., AICP, accepted as an expert in comprehensive planning, planning policy analysis, land use and zoning, and transportation planning; Jeri Curley, M.S., CFEA, REPA, accepted as an expert in wetland delineation and quality, ecology (vegetation and protected species), wetlands, flora, fauna, and Bald Eagle biology; Allen Stewart, P.E., accepted as an expert in surface and groundwater water resource management, nutrient pollution management, wastewater collection, conveyance, treatment and disposal design, sludge management, stormwater management and flood routing, wetland resource management, and environmental assessments. Travis Cortopassi and Sandy Cortopassi were fact witnesses. Petitioner's Exhibits 2 through 7, 10, 12, 18, 19, 22, 23, 24 (excluding the audio), 25 through 27, 33, 34 through 40, 55, and 56 were received into evidence.

Respondent introduced the testimony of Mark Curenton (Curenton), accepted as a fact witness and as an expert in comprehensive planning, land use, zoning, and development. Mr. Curenton did not claim to be an expert in any other areas. Respondent's Exhibits 1 through 7 were received into evidence.

Intervenor Ward testified on his own behalf, and also relied on the parties' Joint Exhibits and the individual exhibits that Petitioner and Respondent moved into evidence.

The parties did not file a transcript of the final hearing with DOAH.[1]

[1] The County was the agency responsible for preserving the record. The County chose to do so using mechanical audio recording. The recording was made available to the undersigned and was reviewed in the preparation of this Recommended Order.

The parties timely filed their proposed recommended orders on April 17, 2020, which have been carefully considered in the preparation of this Recommended Order.

On February 10, 2021, the County filed a Motion to Dismiss for Lack of Standing or, in the alternative, Motion to Reopen the Evidence (Motion). The Motion is denied for the reasons stated in the Conclusions of Law.

References to the Florida Statutes are to the 2019 version, unless otherwise indicated.

FINDINGS OF FACT

The following Findings of Fact are based on the stipulations of the parties and the evidence adduced at the final hearing.

The Parties and Standing

1. Petitioner owns land within the County that is directly adjacent to the Ward property. Petitioner submitted objections during the period of time beginning with the public notice and hearing on the proposed Ordinance and ending with the adoption of the Ordinance. Petitioner is an affected person under sections 163.3184(1)(a) and 163.3187(5)(a).

2. The County is a local government with the duty and authority to adopt and amend a comprehensive plan under section 163.3167.

3. Intervenor Ward owns the currently vacant property located at 1015 U.S. Highway 98, Eastpoint, Florida, directly adjacent to Petitioner's property.

Background

4. The Ward property is bisected by U.S. Highway 98, bounded on the east by State Road 65, on the north by CC Overland Road, on the south by the waters of St. George Sound, and on the west by Petitioner's property. The

property consists of approximately 7.68 acres with 0.74 acres located south of U.S. Highway 98, and 6.94 acres located north of U.S. Highway 98. At the U.S. Highway 98 and State Road 65 intersection, and across from the Ward property, is a parcel also designated as Commercial on the County's FLUM.

5. The Ward property is located within an approximate one-mile radius of the County's landfill, a County consolidated K-12 public school, a sand mine, the Humane Society Animal Shelter, two commercial RV parks, and a small restaurant, and is across State Road 65 from approximately 13 acres of commercially zoned property.

6. The Ward property is also within 1,000 feet of St. George Sound. The waters of St. George Sound are part of the Apalachicola National Estuarine Research Reserve (Apalachicola NERR) and are designated as Outstanding Florida Waters (OFW).

7. The County planner, Mr. Curenton, testified that some portions of the Ward property south of U.S. Highway 98 could be developed under the Ordinance and concurrent rezoning, the County's Comprehensive Plan, and land development regulations (LDRs). This testimony conflicted with the parties' stipulation that the County would disallow any development on that area. *See* Joint Prehearing Stipulation at page 19, ¶20. This stipulation may not bind the County's future actions, and, as such, the Ordinance must be reviewed without considering that stipulation.

8. On September 4, 2019, Mr. Ward applied for a small scale development amendment to change the future land use (FLU) designation of his property from Residential to Commercial, which was approved on November 19, 2019, by the Ordinance. The application also included a request to rezone the property from Single Family Residential/Single Family Home Industry (R-1/R-4) to Commercial Business (C-2), which was approved on November 19, 2019, by Ordinance No. 2019-11. That rezoning request was not challenged in this administrative proceeding.

9. The Commercial FLU designation is described in the Comprehensive Plan as follows:

> Commercial: This category of land use shall provide suitable location for commercial activities. There is no minimum lot size, width, or depth; however, existing lots may not be subdivided. Commercial land adjacent to waters of Apalachicola Bay shall be developed as a last resort and shall be reserved for water dependent activities. Commercial land may have residential structures so long as the development protects the residential land from any detrimental impact caused by the surrounding commercial land. Protective measures may include additional setbacks, buffers, or open space requirements. The location of these lands is mapped on the Future Land Use Map series.
>
> All commercial structures or accessory structures shall conform to the applicable standards established in the Franklin County Zoning Code, Critical Shoreline District Ordinance, Flood Hazard Ordinance, or the Coastal Construction Code Ordinance.
>
> The intensity standard for commercial land shall be a floor-to area ratio (FAR) of not more than 0.50. On St. George Island the floor-to-area ratio shall not exceed 1.0, except in Block 6 East where the floor-to-area ratio shall not exceed 2.0, as long as the following four criteria are met: (1) at least 33% of the floor area will be strictly commercial space, (2) this 2.0 floor-to-area ratio shall not be applied to waterfront properties, (3) the advanced wastewater treatment plant to serve the development will be constructed above the Category 4 storm surge elevation, and (4) all stormwater must be contained and treated on site.

10. The County's application form is titled "Application For Re-Zoning & Land Use Change." Thus, the County's policy is to review and consider both requests concurrently and to obtain a concept plan showing the property owner's intentions for the site. This is consistent with the purpose of this type

of FLUM amendment, which proposes a land use change "for a site-specific small scale development activity."

11. Mr. Ward also submitted a draft site plan laying out his concept for potential development of the property. The draft site plan was provided in response to a request from the County as part of the application review process. The draft site plan depicted a convenience store, pump islands with 12 gas pumps, 24 fueling stations, a parking lot with 66 parking spaces, dumpster pads and dumpsters, a car wash, possibly with above ground storage tanks, and a number of unspecified retail uses on the property.

12. The area of the County where the Ward property is located was de-designated as an area of critical state concern under the premise that the County's Comprehensive Plan and LDRs are sufficient to protect the area's important state resources. It is, therefore, particularly important for the County to enforce its Comprehensive Plan and LDRs as written, since the state land planning agency found that doing so is necessary to protect critical state resources.

Petitioner's Challenge

13. Petitioner challenged the Ordinance on the grounds that: (1) the Ordinance was not adopted in accordance with the requirements applicable to small scale development amendments in rural areas of opportunity; (2) the Ordinance was not based on relevant and appropriate data and analysis; and (3) the Ordinance was inconsistent with applicable provisions of the County's Comprehensive Plan.[2]

Rural Area of Opportunity

14. Petitioner alleged that the Ordinance was not adopted in accordance with the requirements of section 163.3187(3) regarding property located in a

[2] Petitioner argued that consistency with the County's LDRs was at issue. However, consistency with LDRs is not specific to section 163.3177(2). Further, consistent with the undersigned's ruling during the final hearing, whether the Ordinance constituted spot planning, spot zoning, or strip zoning was not at issue in this plan amendment compliance determination under section 163.3184(1)(b).

designated rural area of opportunity. The statutory requirements include the making of certain certifications by the County to the state land planning agency "that the plan amendment furthers the economic objectives set forth in the executive order issued under s. 288.0656(7)." An additional statutory requirement is that "the property subject to the plan amendment shall undergo public review to ensure that all concurrency requirements and federal, state, and local environmental permit requirements are met." The statutory language does not allow the required "public review" to occur at a later date than the adoption of the small scale development plan amendment.

15. Executive Order 15-133 recognizes that the subject rural communities, which include Franklin County, "are stewards of the vast majority of Florida's land and natural resources, upon which the State's continued growth and prosperity depend[.]" The economic objectives set forth in the executive order include job-creating activities, education, and critical government services, such as infrastructure, transportation, and safety.

16. The executive order recognizes that the rural area of opportunity designation is contingent on the execution of a memorandum of agreement between the state land planning agency, the counties, and municipalities. The uncontroverted evidence established that a memorandum of agreement does not exist between the County and the state land planning agency.

17. During the pendency of this proceeding, and after the adoption date of the Ordinance, the County submitted a written certification to the state land planning agency on January 23, 2020, as amended on February 3, 2020. The undisputed evidence established that the County did not subject the proposed small scale development plan amendment "to public review to ensure that all concurrency requirements and federal, state, and local environmental permit requirements are met."

18. The preponderance of the evidence established that because the contingency of a memorandum of agreement was not accomplished, the rural area of opportunity designation is without legal effect.

19. Petitioner did not prove beyond fair debate that the County is a designated rural area of opportunity and was required to comply with the requirements of section 163.3187(3).

Relevant and Appropriate Data and Analysis

20. "To be based on data means to react to it in an appropriate way and to the extent necessary indicated by the data available on that particular subject at the time of adoption of the plan or plan amendment at issue." § 163.3177(1)(f), Fla. Stat. Specific types of data and analysis are relevant for this small scale development FLUM amendment. *See* § 163.3177(6)(a)2. and 8., Fla. Stat.

The character of undeveloped land.

21. The County considered data from professionally accepted sources and applied an analysis based on the data and the expertise of County staff.

22. The County considered the character of the undeveloped Ward property, the soils, the topography, the natural resources, and the historic resources. The County's planner and expert witness, Mr. Curenton, has worked in the County's planning department for more than 30 years. He testified that he analyzed the small scale development amendment application, gathered relevant data, and prepared the staff recommendations.

23. Mr. Curenton considered the topography of the Ward property and concluded that while the parcel generally slopes to the south, the parcel itself is without any excessive topographic relief.

24. Mr. Curenton consulted the National Wetlands Inventory (NWI) produced by the United States Fish and Wildlife Service. He concluded that there were no natural drainage features on the Ward property, but there may be a wetland along part of the southwest corner of the parcel. Based on his review of the NWI, Mr. Curenton concluded that there would be sufficient uplands to support a future commercial development on the Ward property. However, a formal wetlands delineation and compliance with applicable setbacks from wetlands would be required for any future site plan approval.

25. Mr. Curenton reviewed the Florida Fish and Wildlife Conservation Commission's Bald Eagle Nest Locator and determined that no bald eagle nests were shown on the Ward property. He also considered his local knowledge of the Ward property. The parcel was clear-cut of trees, except for a small buffer strip of trees along its western border. He determined that it was not a habitat suitable for black bear or the red-cockaded woodpecker.

26. The Franklin County Soil Atlas was reviewed by Mr. Curenton. He concluded that the predominant soil conditions were poor, a fact that is true throughout Franklin County. Thus, the soil conditions for the Ward property were equally suited for residential or commercial development.

27. Mr. Curenton testified that the Ward property generally slopes to the south. He also considered that there are existing drainage ditches in the right-of-way of State Road 65 along the eastern boundary of the parcel, as well as a drainage ditch in the right-of-way of U.S. Highway 98 along the southern boundary of the parcel, and a culvert that runs under U.S. Highway 98. Mr. Curenton took into consideration that any future commercial development would be required to treat its stormwater onsite and would be prohibited from directly discharging to St. George Sound.

28. Mr. Curenton considered the Franklin County Flood Hazard Ordinance, as well as the Northwest Florida Water Management District flood maps. He concluded that the Ward property was buildable on grade, though, depending upon an actual future site plan, some parts of the structure may have to be floodproofed.

29. The Franklin County Hazard Mitigation–Wildfire Hazard Level of Concern Map was reviewed by Mr. Curenton. He concluded that the level for the area of the Ward property was very low, which is suitable for future development.

30. Mr. Curenton checked the Florida Master Site File and found that it did not contain any identifiable cultural resources on the Ward property.

The availability of water supplies, public facilities, and services.

31. The availability of public water and sewer to serve a future commercial development upon the Ward property was considered by Mr. Curenton. He had personal knowledge that the Eastpoint Water and Sewer District (EWSD) had both a water and sewer line along the northern boundary of the Ward property. In addition, his review included a letter from EWSD stating that it had existing capacity to provide both water and sewer services to a future commercial development on the subject parcel.

32. Mr. Curenton reviewed the Franklin County level of service adopted in the Comprehensive Plan for State Road 65 and U.S. Highway 98. He also evaluated the 2018 traffic counts shown on the Florida Department of Transportation's (FDOT) website, and the relationship between the level of service and the traffic counts contained in the 2012 FDOT Quality/Level of Service Handbook for State Road 65 and U.S. Highway 98. He concluded that any approved future commercial development on the subject parcel would not adversely impact the traffic level of service for either State Road 65 or U.S. Highway 98.

The need for job creation, capital investment, and economic development.

33. Mr. Curenton considered that the construction of future approved development on the Ward property would provide construction jobs. In addition, future commercial uses would provide stable employment. He also considered that future commercial uses would generate sales tax revenues and increased ad valorem taxes.

The discouragement of urban sprawl.

34. Mr. Curenton testified that he did not have specific experience in evaluating what does and does not constitute urban sprawl development. However, he testified that he did rely on the EWSD letter regarding availability of public water and sewer lines along the northern boundary of the Ward property. Other undisputed facts include that this is a small scale development FLUM amendment involving one parcel of approximately

7.68 acres. The parcel is located in the Eastpoint Urban Service Area (USA). This USA was specifically created for potential commercial uses since it is the only area in unincorporated Franklin County where public water and sewer utilities are provided.

35. Petitioner's planning expert, Dr. Depew, presented an expert report and testimony that the Ordinance failed to discourage urban sprawl. However, Dr. Depew's analysis glossed over the undisputed relevant facts. Those undisputed material facts belie positive findings on the primary indicators of urban sprawl, such as, that the Ordinance designates for development "substantial areas of [Franklin County];" that the Ordinance designates "significant amounts of urban development to occur in rural areas at substantial distances from existing urban areas;" and that the Ordinance allows for land use patterns or timing that increase the costs of providing and maintaining roads, water and sewer, stormwater management, and general government.

36. Dr. Depew and the other experts presented by Petitioner, testified to a level of data collection and analysis that cumulatively outpaced the County's level of data review and analysis. However, the preponderance of the evidence established that the County relied on data from professionally accepted sources; relied on data that was relevant and appropriate to the subject being considered; and reacted to that data in an appropriate way.

37. The extensive data and analyses presented by Petitioner's expert witnesses were more directed to whether the rezoning complied with the Comprehensive Plan, the County's LDRs, and federal, state, and local environmental permitting requirements. These issues are outside the scope of this FLUM amendment compliance challenge.

38. Petitioner did not prove beyond fair debate that the Ordinance was not supported by relevant and appropriate data and analysis. Petitioner did not prove beyond fair debate that the County did not take data from professionally accepted sources.

39. Petitioner did not prove beyond fair debate that the Ordinance did not react appropriately to the data and analysis collected and reviewed by the County.

40. It is fairly debatable that the Ordinance reacts appropriately to the data and analysis collected and reviewed by the County.

Consistency

41. Petitioner challenged the Ordinance as contrary to section 163.3177(2), which requires the several elements of the comprehensive plan to be consistent. Section 163.3177(2) states that "[c]oordination of the several elements of the local comprehensive plan shall be a major objective of the planning process."

42. Petitioner alleged that the Ordinance is inconsistent with several goals, objectives, and policies in the County's Comprehensive Plan. The Ordinance changes the FLU designation of the Ward property but is not a development order. In addition, consistency with the County's LDRs is not at issue in this proceeding.

43. Petitioner alleged that the Ordinance was internally inconsistent with FLU Element Policy 3.1, which reads as follows:

> Development, alteration of native vegetation, and habitable structures within 50 feet landward of wetlands or the waters of the State is prohibited, except as allowed pursuant to Policies 1.2d, 1.6 and 1.7 of this Element and Policies 1.1, 1.2 and 1.5 of the Coastal Conservation Element. The landward extent of a surface water in the State for the purposes of implementing this policy is as defined in Chapter 62-340.600, FAC.

44. The Ordinance is not a development order, and did not authorize any development activities, including any physical development, alteration of native vegetation, or habitable structures within 50 feet landward of wetlands or waters of the State. Thus, FLU Element Policy 3.1 was not applicable to the Ordinance.

45. The Ordinance was not internally inconsistent with FLU Element Policy 3.1.

46. Petitioner alleged that the Ordinance was internally inconsistent with Coastal Conservation Element Policy 5.9, which states that "[t]he County shall limit impervious coverage of lots in the Critical Shoreline District to 20%."

47. The Ordinance is not a development order and did not authorize any development activities. Thus, the Ordinance did not conflict with the County's ability to limit impervious coverage of lots.

48. The Ordinance was not internally inconsistent with Coastal Conservation Element Policy 5.9.

49. Petitioner challenged the Ordinance as internally inconsistent with Coastal Conservation Element Policy 10.3, which provides that "[t]he County shall continue to implement the Critical Shoreline District Ordinance which designates environmentally sensitive lands." The Ordinance did not interfere with the ability of the County to implement its Critical Shoreline District Ordinance. As previously found, the Ordinance is not a development order, and did not authorize any development activities.

50. The Ordinance was not internally inconsistent with Coastal Conservation Element Policy 10.3.

51. Petitioner contended that the Ordinance was internally inconsistent with Intergovernmental Coordination Element Policy 4.3, which states that "Franklin County shall allows [sic] the Apalachicola [NERR] to coordinate with agencies having jurisdictional authority over their prospective land holdings on the location of threatened and endangered species that will be impacted by future development on property contiguous with the portion of the Reserve where the threatened and endangered species naturally exist."

52. The Ordinance did not prohibit the Apalachicola NERR from coordinating with agencies concerning future development contiguous with the Reserve. Again, the Ordinance is not a development order and did not

authorize any development activities. Thus, Intergovernmental Coordination Element Policy 4.3 was not applicable to the Ordinance.

53. The Ordinance was not internally inconsistent with Intergovernmental Coordination Element Policy 4.3.

54. Next, Petitioner claimed that the Ordinance was internally inconsistent with Intergovernmental Coordination Element Policy 7.1(h), which provides that "[t]he County shall provide opportunity for the School District to comment on comprehensive plan amendments, re-zonings, and other land use decisions which may be projected to impact on the public schools facilities plan."

55. Mr. Curenton testified that the Ordinance would not impact the public schools facilities plan because the Ward property was proposed for commercial use with no residential component. Thus, the Ordinance was not internally inconsistent with Intergovernmental Coordination Element Policy 7.1(h).

56. Petitioner challenged the Ordinance as internally inconsistent with Coastal Conservation Element Objective 19, which provides that "[t]he County will continue to support scenic roads designated in Franklin County in order to help preserve the area's natural beauty." Petitioner also alleged that the Ordinance was internally inconsistent with Coastal Conservation Element Policy 19.1, which provides that "U.S. Highway 98 within the County shall be designated a scenic road along the coast."

57. The Ordinance is not a development order and did not authorize any development activities. The Ordinance would not prevent the County from supporting the designation of U.S. Highway 98 as a scenic road.

58. The Ordinance was not internally inconsistent with Coastal Conservation Element Objective 19 or Policy 19.1.

59. Next, Petitioner challenged the Ordinance as internally inconsistent with Coastal Conservation Element Policy 19.2, which states that "[p]roperties between designated scenic roads and wetlands or open water

shall be zoned the lowest density allowed for their respective future land use categories." This policy is related to the zoning classification assigned to specific property. The Ordinance at issue in this proceeding did not rezone the Ward property.

60. Thus, Coastal Conservation Element Policy 19.2 did not apply to the Ordinance. The Ordinance was not internally inconsistent with Coastal Conservation Element Policy 19.2.

61. Petitioner next alleged that the Ordinance was internally inconsistent with Coastal Conservation Element Policy 19.3, which states that "[S]ite Plan requirements for areas between designated scenic roads and wetlands or open water shall require the use of native vegetation in landscaping, separation of buildings by at least 20 feet along the axis of the road, and the avoidance of fencing or landscaping that would obstruct views of wetlands or open water."

62. The Ordinance is not a development order and did not authorize any development activities. The Ordinance did not interfere with the ability of the County to implement the stated site plan requirements for areas between designated scenic roads and wetlands or open waters.

63. Thus, Coastal Conservation Element Policy 19.3 was not applicable to the Ordinance. The Ordinance was not internally inconsistent with Coastal Conservation Element Policy 19.3.

64. Petitioner challenged the Ordinance as internally inconsistent with FLU Element Policy 3.4, which states: "Limit the area of impervious surfaces on developed lots within the Critical Shoreline District to a maximum of 20%." Nothing in the Ordinance prohibited or interfered with the County's ability to limit the area of impervious surfaces within the Critical Shoreline District. Again, the Ordinance is not a development order and did not authorize any development activities.

65. Thus, FLU Element Policy 3.4 was not applicable to the Ordinance. The Ordinance was not internally inconsistent with FLU Element Policy 3.4.

66. Petitioner challenged the Ordinance as internally inconsistent with Coastal Conservation Element Objective 2, which reads: "The County will support the conservation and protection of native vegetation, ecological communities, fish and wildlife habitat to the extent that the County will prohibit development which can be proved to damage the County's natural resources."

67. Once again, the Ordinance is not a development order and did not authorize any development activities. Nothing in the Ordinance prohibited or interfered with the County's ability to "support" the conservation and protection of native vegetation, ecological communities, and fish and wildlife habitat by prohibiting development that is ultimately proven to damage the County's natural resources.

68. Thus, Coastal Conservation Element Objective 2 was not applicable to the Ordinance. The Ordinance was not internally inconsistent with Coastal Conservation Element Objective 2.

69. Petitioner next alleged that the Ordinance was internally inconsistent with Coastal Conservation Element Policy 2.6, which states that "[t]he County's [LDRs] shall prohibit the development and disturbance of nesting areas of endangered species, threatened species, and species of special concern, including the nesting areas of sea turtles."

70. As previously noted, the County's LDRs are not at issue in this proceeding. Further, nothing in the Ordinance prohibited the County's LDRs from including such restrictions.

71. Thus, Coastal Conservation Element Policy 2.6 was not applicable to the Ordinance. The Ordinance was not internally inconsistent with Coastal Conservation Element Policy 2.6.

72. Next, Petitioner challenged the Ordinance as internally inconsistent with Coastal Conservation Element Policy 2.11, which provides that "[t]he County shall protect sea turtles through land development regulations which prohibit disturbance of nesting areas, prohibit inappropriate beachfront

lighting, and require low intensity lights, seasonal and timed lights, reflective tint on beachfront windows, and shading."

73. As noted above, LDRs are not relevant to a plan or plan amendment compliance determination. Further, nothing in the Ordinance prohibited the County from protecting sea turtles through its LDRs.

74. Also, the Ordinance did not authorize development or any development activities. Coastal Conservation Element Policy 2.11 was not applicable to the Ordinance.

75. The Ordinance was not internally inconsistent with Coastal Conservation Element Policy 2.11.

76. Petitioner contended that the Ordinance was internally inconsistent with Housing Element Policy 9.3, which provides: "Continue to implement the provisions of the Critical Shoreline District so that coastal and wetlands habitat can coexist with residential development." The Ordinance did not authorize development or any development activities, let alone residential development.

77. Nothing in the Ordinance impeded the County's ability to continue to implement the provisions of the Critical Shoreline District. Housing Element Policy 9.3 was not applicable to the Ordinance.

78. The Ordinance was not internally inconsistent with Housing Element Policy 9.3.

79. Petitioner next challenged the Ordinance as internally inconsistent with FLU Element Policy 1.1, which states:

> The Future Land Use Maps will be reviewed to be sure that adequate infrastructure is in place before areas are permitted for development.
>
> Adequate infrastructure is defined as the infrastructure necessary to maintain the adopted levels of service in this plan. The County shall not issue development orders that will degrade the existing levels of service below that level adopted as the minimum in this Comprehensive Plan.

80. As previously noted, the Ordinance did not authorize development or any development activities. Nothing in the Ordinance prevented the County from ensuring that adequate infrastructure is in place prior to issuing any development orders.

81. Thus, FLU Element Policy 1.1 was not applicable to the Ordinance. The Ordinance was not internally inconsistent with FLU Element Policy 1.1.

82. Petitioner challenged the Ordinance as internally inconsistent with FLU Element Policy 1.2(a), which provides as follows:

> The Future Land Use Maps will be reviewed to insure that the proposed uses, in the various categories, do not conflict with the prevailing natural conditions including: (a). SOIL CONDITIONS - When the US Soil Conservation Service completes and publishes the maps of their soil survey for Franklin County the County will coordinate the land use maps with the soil survey maps to ensure that areas proposed for development have soils suitable to support the proposed development.

83. The Ordinance did not authorize development activity on the Ward property. Nothing in the Ordinance prevented the County from reviewing its FLUM to ensure that proposed uses do not conflict with prevailing soil conditions. Mr. Curenton also testified that the Franklin County Soil Atlas did not prohibit commercial development based upon the prevalent soil types on the Ward property, and the soil types are suitable to support commercial uses.

84. The Ordinance was not internally inconsistent with FLU Element Policy 1.2(a).

85. The Petitioner next alleged that the Ordinance was internally inconsistent with FLU Element Policy 1.2(b), which states:

> The Future Land Use Maps will be reviewed to insure that the proposed uses, in the various categories, do not conflict with the prevailing

> natural conditions including: . . . (b) TOPOGRAPHY - Areas of excessive topographical relief shall classified for low density development.

86. The Ordinance did not prevent the County from reviewing its FLUM to ensure that proposed uses do not conflict with prevailing topographic conditions. Mr. Curenton also testified that, although, the Ward property slopes from the north to the south, it does not have any excessive topographical relief.

87. The Ordinance itself did not authorize development or any development activities. The Ordinance was not internally inconsistent with FLU Element Policy 1.2(b).

88. Petitioner also challenged the Ordinance as internally inconsistent with FLU Element Policy 1.2(c), which provides, in pertinent part, that "[n]atural drainage features will be protected and preserved to ensure the continuation of their natural function."

89. The Ordinance did not prevent the County from reviewing its FLUM to ensure that proposed uses do not conflict with prevailing drainage conditions. Mr. Curenton testified that the Ward property does not have any natural drainage features.

90. Also, given that the Ordinance did not authorize any development activity, it did not impact any potential natural function of any alleged drainage feature on the Ward property.

91. The Ordinance was not internally inconsistent with FLU Element Policy 1.2(c).

92. Petitioner claimed that the Ordinance was internally inconsistent with FLU Element Policy 1.2(d), which provides, in pertinent part, that "[n]o development will be allowed within 50 feet of wetlands, except as allowed pursuant to Policies 1.6 and 1.7 of this element, Policies 1.1, 1.2, and 1.5 of the Coastal Conservation Element or as provided in paragraphs 1-6 below."

93. The Ordinance itself did not prevent the County from reviewing its

FLUM to ensure that proposed uses do not conflict with prevailing wetland conditions. In addition, Mr. Curenton testified that to the extent a wetland may exist in the southwest corner of the Ward property, the 50-foot setback requirement would be enforced upon the submission of a development application and site plan in the future.

94. The Ordinance itself did not authorize development or any development activities. Thus, the 50-foot setback requirement was not relevant in this context.

95. The Ordinance was not internally inconsistent with FLU Element Policy 1.2(d).

96. Next, Petitioner challenged the Ordinance as internally inconsistent with FLU Element Policy 1.2(e), which provides, in pertinent part, that "[a]ny structural development will have to comply with the County's Flood Hazard Ordinance which regulates construction within flood prone areas."

97. The Ordinance itself did not prevent the County from reviewing its FLUM to ensure that proposed uses do not conflict with prevailing floodplain conditions. Mr. Curenton testified that the County's Flood Hazard Ordinance would be enforced upon the submission of a development application and site plan for the Ward property in the future. The Flood Hazard Ordinance was not relevant because the Ordinance did not authorize any structural development on the Ward property.

98. The Ordinance was not internally inconsistent with FLU Element Policy 1.2(e).

99. Petitioner next challenged the Ordinance as internally inconsistent with FLU Element Policy 1.2(f), which states, in pertinent part:

> The adopted Wildfire Hazard Level of Concern map within the Future Land Use Map series will be used to identify areas of high risk for wildfire (Level of Concern 6 or higher). The potential wildfire risk will be considered when making land use decisions in these areas. Large-scale land use and development plans in areas of high risk for

> wildfires must complete and implement a wildfire mitigation plan, consistent with the Florida Department of Community Affairs Wildfire Mitigation in Florida - Land Use Planning Strategies and Best Development Practices. Land use or development plans for which adequate wildfire mitigation cannot be provided shall not be authorized in severe wildfire hazard areas.

100. The Ordinance itself did not prevent the County from reviewing its FLUM to ensure that proposed uses do not conflict with potential wildfire areas. In addition, Mr. Curenton testified that the portion of the Ward property located north of U.S. Highway 98 is completely clear-cut, except for a thin buffer of trees approximately ten feet wide separating the Ward property from Petitioner's parcel. Thus, there was a low level of concern for wildfires.

101. The Ordinance was not internally inconsistent with FLU Element Policy 1.2(f).

102. Petitioner challenged the Ordinance as internally inconsistent with Capital Improvement Element Policy 5.2(1), which provides that "[p]roposed plan amendments and requests for new development or redevelopment shall be evaluated according to the following guidelines as to whether the proposed action would contribute to a condition of public hazard as it relates to sanitary sewer, solid waste, drainage, potable water, natural groundwater recharge and to the requirements in the Coastal Management Element."

103. Mr. Curenton testified that the Ordinance would not contribute to a condition of public hazard because the Ward property is located in the Eastpoint USA, which is an area served by central water and sewer, and solid waste services. In addition, although the County's LDRs were not relevant to this challenge, Mr. Curenton also testified that the Ward property is of sufficient size such that a future site plan would be able to comply with the County's requirements concerning setbacks from wetlands and water wells,

as well as the County's impervious surface coverage requirements in the LDRs.

104. The Ordinance was not internally inconsistent with Capital Improvement Element Policy 5.2(1).

105. Petitioner next challenged the Ordinance as internally inconsistent with Capital Improvement Element Policy 5.2(2), which provides that "[p]roposed plan amendments and requests for new development or redevelopment shall be evaluated according to the following guidelines as to whether the proposed action would generate public facility demands that may need to be accommodated by capacity increases."

106. Mr. Curenton testified that water and sewer services are available along the northern boundary of the Ward property. The County had received a letter from the EWSD stating it had capacity for a future commercial development on the Ward property without the need for capacity increases. Mr. Curenton further testified that the traffic level of service could accommodate a future commercial development on the Ward property without the need for capacity increases.

107. The Ordinance was not internally inconsistent with Capital Improvement Element Policy 5.2(2).

108. Petitioner also challenged the Ordinance as internally inconsistent with Capital Improvement Element Policy 5.2(3), which provides that "[p]roposed plan amendments and requests for new development or redevelopment shall be evaluated according to the following guidelines as to whether the proposed action would contribute to an unsuitable use of the land because of soil conditions or other environmental limitations listed in the Future Land Use Element."

109. Mr. Curenton testified that the Franklin County Soil Atlas does not prohibit commercial development based on the prevalent soil types on the Ward property, and that the soil types are suitable to support commercial uses.

110. The Ordinance was not internally inconsistent with Capital Improvement Element Policy 5.2(3).

111. Petitioner alleged the Ordinance was internally inconsistent with Capital Improvement Element Policy 5.2(4), which states that "[p]roposed plan amendments and requests for new development or redevelopment shall be evaluated according to the following guidelines as to whether the proposed action would conform with the future land uses as shown on the future land use map of the Future Land Use Element."

112. Mr. Curenton testified that the Ordinance conformed with the future land uses shown on the County's FLUM because the Ward property is at the intersection of two major highways and is across the street from another commercial property with C-2 zoning.

113. The Ordinance was not internally inconsistent with Capital Improvement Element Policy 5.2(4).

114. Petitioner challenged the Ordinance as internally inconsistent with FLU Element Policy 1.6, which provides, in relevant part, that "development, alteration of native vegetation, and habitable structures shall be so allowed in a Development of Regional Impact [DRl] . . ."

115. By its terms, FLU Element Policy 1.6 applies only to a DRI. The Ordinance did not involve a DRI. Also, the Ordinance itself does not authorize development or any development activity, alteration of native habitat, or construction of habitable structures.

116. The Ordinance was not internally inconsistent with FLU Element Policy 1.6.

117. Petitioner claimed the Ordinance was internally inconsistent with FLU Element Policy 2.1(a) through (g), which states:

> Adopt land development regulations which implement the adopted Comprehensive Plan and which as a minimum:
>
> (a) regulate the subdivision of land. Minimum lot

size shall be one acre, with at least 100 feet of road frontage and 100 feet in depth, unless the lot is part of a recorded subdivision approved under Franklin County Ordinance 89-7, the Subdivision Ordinance, as provided by the Franklin County Zoning Ordinance (86-9).

(b) regulate signage. Signs will be allowed in commercial districts. Temporary non-illuminated signs smaller than 9 square feet shall be allowed in any district for a period not to exceed 30 days. Non-illuminated real estate sale and rental signs smaller than 12 square feet shall be allowed in any district as long as the sign is placed on-premises.

(c) regulate areas subject to flooding. The County shall enact an ordinance which shall regulate construction in areas subject to seasonal and periodic flooding. This ordinance, which shall adopt the Federal Insurance Rate Maps for Franklin County dated July 18, 1983 promulgated by the Federal Emergency Management Agency, shall provide for the enforcement of building regulations that will make the County eligible to participate in the Federal Flood Insurance Program.

(d) provide for on site parking and traffic flow. Industrial and commercial developments must provide on site parking according to standards established in the Franklin County Zoning Ordinance.

(e) Provide for drainage and stormwater management. All commercial and industrial development shall be required to submit a stormwater management plan. Subdivisions shall include adequate provisions for drainage.

(f) provide for adequate open space. In residential districts there shall be a setback from any public or private road of 25 feet, and from any other property line of 10 feet.

(g) Protect potable water wellfields and aquifer

> recharge areas. There shall be no underground storage tanks permitted within 200 feet of public or private water system water wells.

118. The County's LDRs are not relevant to a plan amendment compliance determination. Further, nothing in the Ordinance prevented or otherwise prohibited the County from continuing to enforce any requirements in its LDRs regulating the areas identified in FLU Element Policy 2.1(a) through (g).

119. The Ordinance was not internally inconsistent with FLU Element Policy 2.1(a) through (g).

120. Petitioner challenged the Ordinance as internally inconsistent with Coastal Conservation Element Policy 14.7, which provides that "[t]he County shall evaluate any proposed zoning changes in the areas vulnerable to Category 1 and 2 storms on how the change would affect the evacuation capabilities of the zone."

121. The Ordinance is a small scale land use change, not a rezoning. Thus, Coastal Conservation Element Policy 14.7 did not apply to the Ordinance. Nonetheless, Mr. Curenton testified that a future commercial development on the now vacant parcel would not have any meaningful impact on evacuation capabilities because no residential development is allowed in the C-2 commercial zoning district. Mr. Curenton even opined that if a gas station were properly permitted and ultimately constructed on the Ward property in the future, it could enhance evacuation capabilities by providing fuel to aid the evacuation.

122. The Ordinance was not internally inconsistent with Coastal Conservation Element Policy 14.7.

123. Petitioner next alleged the Ordinance was internally inconsistent with Coastal Conservation Element Objective 17, which provides: "Public Access - The amount of public access to coastal resources shall be maintained and not decreased." The Ordinance itself did not authorize any development

activity on the Ward property. Also, Mr. Curenton testified that the Ward property is private property that does not provide any public access to coastal resources.

124. The Ordinance was not internally inconsistent with Coastal Conservation Element Objective 17.

125. Next, Petitioner challenged the Ordinance as internally inconsistent with Coastal Conservation Element Policy 17.1, which reads:

> The County shall ensure that existing access for the public to the County's rivers, bays, beaches, and estuaries is maintained by new development. The County will require new waterfront development to show on map amendments, development orders and site plans any existing dedicated waterfront access ways. The proposed development shall indicate on map amendments, development orders and site plans how the existing dedicated water access will remain open to the public, how it will be relocated with the County's approval, or that it will be donated to the County.

126. The Ordinance itself did not authorize any development activity on the Ward property, and, thus, did not impact any existing access for the public to the County's rivers, bays, beaches, or estuaries. In addition, the evidence established that the Ordinance involved private property that does not provide any public access to coastal resources.

127. The Ordinance was not internally inconsistent with Coastal Conservation Element Policy 17.1.

128. Petitioner challenged the Ordinance as internally inconsistent with Coastal Conservation Element Policy 2.1, which states that "[t]he County will cooperate, whenever possible, with the Apalachicola National Estuarine Research Reserve in its effort to maintain a comprehensive inventory of ecological communities which shall include species, population, habitat conditions, occurrences and alterations."

129. The Ordinance itself did not prohibit or otherwise interfere with the

County's ability to cooperate with the Apalachicola National Estuarine Research Reserve. The Ordinance was not internally inconsistent with Coastal Conservation Element Policy 2.1.

Summary

130. Petitioner did not prove beyond fair debate that the Ordinance did not react appropriately to the data and analysis collected and reviewed by the County.

131. It is fairly debatable that the Ordinance reacts appropriately to the data and analysis collected and reviewed by the County.

132. Petitioner did not prove beyond fair debate that the Ordinance was internally inconsistent with specified provisions in the Comprehensive Plan.

133. It is fairly debatable that the Ordinance was internally inconsistent with specified provisions in the Comprehensive Plan.

CONCLUSIONS OF LAW

Standing and Scope of Review

134. To have standing to challenge a comprehensive plan amendment, a person must be an "affected person" as defined in section 163.3184(1)(a). The provision states:

> "Affected person" includes the affected local government; persons owning property, residing, or owning or operating a business within the boundaries of the local government whose plan is the subject of the review; ***owners of real property abutting real property that is the subject of a proposed change to a future land use map***; and adjoining local governments that can demonstrate that the plan or plan amendment will produce substantial impacts on the increased need for publicly funded infrastructure or substantial impacts on areas designated for protection or special treatment within their jurisdiction. ***Each person, other than an adjoining local government, in order to qualify under this definition, shall also have submitted oral or written comments,***

> ***recommendations, or objections to the local government during the period of time beginning with the transmittal hearing for the plan or plan amendment and ending with the adoption of the plan or plan amendment.***
> (Emphasis added).

The record evidence established that Petitioner is an affected person and has standing to challenge the Ordinance.

135. The County's Motion admitted that sections 163.3184(a) and 163.3187(5)(a) do not expressly address what happens if a person is allegedly no longer the owner of real property abutting real property that is the subject of a proposed future land use change after the close of the evidence and before the final decision. Also, the County could point to no case law example where this issue was raised. Ownership is not the only basis for establishing that a petitioner is an "affected person." The other criterion of submitting oral or written comments while owning the "abutting real property" can only happen during the public hearing process. Where the statutory sections are silent and the criteria were satisfied by the evidence at the final hearing, the undersigned does not find any grounds to reopen the record.

136. An affected person challenging a plan amendment must show that the amendment is not "in compliance" as defined in section 163.3184(1)(b). "In compliance" means consistent with the requirements of sections 163.3177, 163.3178, 163.3180, 163.3191, 163.3245, and 163.3248.

137. Chapter 163, part II, Florida Statutes, and the case law developed pursuant thereto, are the applicable law in this proceeding. *See Amelia Tree Conservancy, Inc. v. City of Fernandina Beach,* Case No. 19-2515GM (Fla. DOAH Sept. 16, 2019; Fla. DEO Oct. 16, 2019). A hearing on a plan amendment is a de novo proceeding. *Id.*

Burden and Standard of Proof

138. As the party challenging the Ordinance, Petitioner had the burden of proof.

139. The County's determination that the Ordinance is "in compliance" is presumed to be correct and must be sustained if the County's determination of compliance is fairly debatable. *See* § 163.3187(5)(a), Fla. Stat.; *Coastal Dev. of N. Fla. Inc., v. City of Jacksonville Beach*, 788 So. 2d 204, 210 (Fla. 2001).

140. The term "fairly debatable" is not defined in chapter 163. In *Martin County v. Yusem*, 690 So. 2d 1288, 1295 (Fla. 1997), the Florida Supreme Court explained, "[t]he fairly debatable standard of review is a highly deferential standard requiring approval of a planning action if reasonable persons could differ as to its propriety." The Court further explained, "[a]n ordinance may be said to be fairly debatable when for any reason it is open to dispute or controversy on grounds that make sense or point to a logical deduction that in no way involves its constitutional validity." *Id.* Put another way, where "there is evidence in support of both sides of a comprehensive plan amendment, it is difficult to determine that the County's decision was anything but 'fairly debatable.'" *Martin Cty. v. Section 28 P'ship, Ltd.*, 772 So. 2d 616, 621 (Fla. 4th DCA 2000).

141. Moreover, "a compliance determination is not a determination of whether a comprehensive plan amendment is the best approach available to the local government for achieving its purpose." *Martin Cty. Land Co. v. Martin Cty.*, Case No. 15-0300GM at ¶ 149 (Fla. DOAH Sept. 1, 2015; Fla. DEO Dec. 30, 2015).

142. The standard of proof for findings of fact is a preponderance of the evidence. *See* § 120.57(1)(j), Fla. Stat.

Rural Area of Opportunity

143. Petitioner alleged that the Ordinance was not adopted in accordance with the requirements of section 163.3187(3) regarding property located in a designated rural area of opportunity. The statutory requirements include the making of certain certifications by the County to the state land planning agency "that the plan amendment furthers the economic objectives set forth in the executive order issued under s. 288.0656(7)." An additional statutory

requirement is that "the property subject to the plan amendment shall undergo public review to ensure that all concurrency requirements and federal, state, and local environmental permit requirements are met." The statutory language does not allow the required "public review" to occur at a later date than the adoption of the small scale development plan amendment.

144. Executive Order 15-133 recognizes that the subject rural communities, which include Franklin County, "are stewards of the vast majority of Florida's land and natural resources, upon which the State's continued growth and prosperity depend[.]" The economic objectives set forth in the executive order include job-creating activities, education, and critical government services, such as infrastructure, transportation, and safety.

145. The executive order recognizes that the rural area of opportunity designation is contingent on the execution of a memorandum of agreement between the state land planning agency, the counties, and municipalities. The uncontroverted evidence established that a memorandum of agreement does not exist between the County and the state land planning agency.

146. During the pendency of this proceeding, and after the adoption date of the Ordinance, the County submitted a written certification to the state land planning agency on January 23, 2020, as amended on February 3, 2020. The undisputed evidence established that the County did not subject the proposed small scale development plan amendment "to public review to ensure that all concurrency requirements and federal, state, and local environmental permit requirements are met."

147. The preponderance of the evidence established that because the contingency of a memorandum of agreement was not accomplished, the rural area of opportunity designation is without legal effect.

148. Petitioner did not prove beyond fair debate that the County is a designated rural area of opportunity and was required to comply with the requirements of section 163.3187(3).

Relevant and Appropriate Data and Analysis

149. Section 163.3177(1)(f) requires that all plan amendments be "based on relevant and appropriate data and an analysis by the local government." § 163.3177(1)(f)2., Fla. Stat. "The statute explains that to be based on data 'means to react to it in an appropriate way and to the extent necessary indicated by the data available on that particular subject at the time of adoption of the . . . plan amendment at issue.'" *222 Lakeview LLC v. City of West Palm Beach,* Case Nos. 18-4743GM and 18-4773GM RO ¶ 84 (Fla. DOAH Dec. 26, 2018), *aff'd per curiam*, 295 So.3d 1185 ((Fla. 4th DCA 2020).

150. All data available to the local government and in existence at the time of adoption of the plan amendment may be presented. *See Zemel v. Lee Cty.*, 1992 WL 880139 (Fla. Dep't of Cmty. Aff. 1993), *aff'd sub. nom.*, *Zemel v. Dep't of Cmty. Aff.*. 642 So. 2d 1367 (Fla. 1st DCA 1994).

151. Relevant analyses of data need not have been in existence at the time of adoption of a plan amendment. Data existing at the time of adoption may be analyzed through the time of the administrative hearing. *See 222 Lakeview LLC*, RO at ¶ 86.

152. Data supporting an amendment must be taken from professionally accepted sources. *See* § 163.3177(1)(f)2., Fla. Stat. However, local governments are not required to collect original data. *Id.*

153. Based upon the foregoing Findings of Fact, Petitioner did not prove that the data on which the County relied to adopt the Ordinance was not "taken from professionally accepted sources and gathered through professionally accepted methodologies." *Amelia Tree Conservancy, Inc.*, RO at ¶ 152.

154. The evidence demonstrated that there was adequate data and analysis, taken from professionally accepted sources, and gathered through professionally accepted methodologies, to support the Ordinance.

155. Based upon the foregoing Findings of Fact, Petitioner did not prove beyond fair debate that the Ordinance was not based on relevant and

appropriate data and an analysis by the County, as required by section 163.3177(1)(f).

Urban Sprawl

156. Petitioner claimed that the Ordinance failed to discourage the proliferation of urban sprawl. Petitioner argued that the Ordinance violated one or more of the 13 primary indicators of urban sprawl in section 163.3177(6)(a)9.a.(I)-(XIII). The 13 primary indicators of urban sprawl are "evaluated as a whole, not as a 'one strike and you're out' list, to determine one aspect of compliance." *Sumter Citizens Against Irresponsible Dev., Inc. v. Dep't of Cmty. Affairs,* Case No. 96-5917GM RO ¶ 25 (Fla. DOAH Feb. 26, 1998; Fla. DCA Apr. 3, 1998); *see also Sierra Club v. Dep't of Cmty. Affairs and Miami-Dade Cty.*, Case No. 03-0150GM RO ¶ 126 (Fla. DOAH June 16, 2006; Fla. DCA Sept. 12, 2006)(recognizing that triggering a single or a few primary indicators is insufficient to support a conclusion that the Plan Amendment fails to discourage urban sprawl).

157. Consideration of the primary indicators and the evidence at the final hearing, including the expert testimony of Mr. Curenton, established that the Ordinance did not encourage the proliferation of urban sprawl. The Ordinance involved a small scale land use change for than less than eight acres of land. This did not trigger indicators (I) and (II), which refer to "substantial areas of the jurisdiction," and "significant amounts of urban development to occur in rural areas." The Ordinance also did not trigger indicator (IV), as the Ordinance did not fail to protect or conserve natural resources.

158. Likewise, the Ordinance did not trigger indicators (V) through (XIII). The evidence at the final hearing established that the Ward property is in the Eastpoint USA, which was specifically created as an area in which to direct commercial development because it is the only area in unincorporated Franklin County where public water and sewer utilities are provided. The evidence showed that existing public water and sewer lines are located along

the northern boundary of the Ward property with capacity to serve commercial development. The property is also located at the intersection of two major highways and is across the street from another commercial property at this same intersection with C-2 zoning. Also, parcels within a one-mile radius of the property include existing residential uses and commercially zoned properties and associated commercial activities. Finally, the Ordinance did not result in the loss of any functional open space. Thus, by definition, the Ordinance does not constitute "urban sprawl."
See § 163.3164(52), Fla. Stat.

Internal Consistency

159. Section 163.3177(2) requires the several elements of the comprehensive plan to be consistent. A plan amendment creates an internal inconsistency when it conflicts with an existing provision of the comprehensive plan.

160. Internal consistency does not require a comprehensive plan amendment to further every goal, objective, and policy in the comprehensive plan. It is enough if a plan provision is "compatible with," i.e., does not conflict with, other goals, objectives, and policies in the plan. If the compared provisions do not conflict, they are coordinated, related, and consistent. *See Melzer, et al. v. Martin Cty*., Case Nos. 02-1014GM and 02-1015GM, RO ¶¶ 194-195 (Fla. DOAH July 1, 2003; Fla. DCA Oct. 24, 2003).

161. Petitioner raised claims regarding zoning classification and rezoning, which were not cognizable in this type of proceeding. *See Horton v. City of Jacksonville,* Case No. 10-5965GM, RO ¶ 23 (Fla. DOAH Jan. 11, 2011; Fla. DCA Feb. 21, 2011)(recognizing that a plan amendment compliance determination does not turn on zoning issues).

162. Contrary to another of Petitioner's claims, the Ordinance was not a development order or development permit. The Ordinance itself did not authorize development or any development activities. *See Strand v. Escambia Cty*., Case No. 03-2980GM, RO ¶ 24 (Fla. DOAH Dec. 23, 2003; Fla. DCA

Jan. 28, 2004)("The Plan Amendment, as a future land use designation on the FLUM is not a development order. The Plan Amendment does not authorize development on or of the parcel, which includes any wetlands on the parcel.").

163. In addition, consistency of the Ordinance with the County's LDRs was not an issue of fact or law to be determined in this proceeding. *See Amelia Tree Conservancy, Inc. v. City of Fernandina Beach,* Case No. 19-2515GM (Fla. DOAH Sept. 16, 2019; Fla. DEO Oct. 16, 2019); *see also Rohan v. City of Panama City*, Case No. 19-4486GM (Fla. DOAH Feb. 4, 2020; Fla. DEO March 5, 2020).

164. Based on the foregoing Findings of Fact, Petitioner did not prove beyond fair debate that the Ordinance was internally inconsistent with specified Comprehensive Plan provisions.

Summary

165. For the reasons stated above, the County's determination that the Ordinance is "in compliance" is fairly debatable.

166. For the reasons stated above, Petitioner did not prove beyond fair debate that the Ordinance is not "in compliance," as that term is defined in section 163.3184(1)(b).

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Economic Opportunity enter a final order finding Ordinance No. 2019-10 adopted on November 19, 2019, "in compliance," as defined by section 163.3184(1)(b).

DONE AND ENTERED this 5th day of March, 2021, in Tallahassee, Leon County, Florida.

FRANCINE M. FFOLKES
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of March, 2021.

COPIES FURNISHED:

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

Daniel W. Hartman, Esquire
Hartman Law Firm, P.A.
Post Office Box 10910
Tallahassee, Florida 32302

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

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

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

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

Janay Lovett, Agency Clerk
Department of Economic Opportunity
107 East Madison Street
Tallahassee, Florida 32399-4128

Tom Thomas, General Counsel
Department of Economic Opportunity
Caldwell Building, Mail Stop 110
107 East Madison Street
Tallahassee, Florida 32399-4128

Dane Eagle, Executive Director
Department of Economic Opportunity
107 East Madison Street, Mail Stop 110
Tallahassee, Florida 32399-4128

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.