STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY

WEST SHORE LEGACY LLC,

Petitioner,

vs.

DOAH CASE NO.: 20-1562GM

ALACHUA COUNTY, FLORIDA,

Respondent,

and

FICKLING AND COMPANY, INC.;
AND NGI ACQUISITIONS, LLC,

Intervenors
_____/

FINAL ORDER

The Division of Community Development within the Florida Department of Economic Opportunity ("Department") considered this matter following the receipt of a recommended order ("Recommended Order").[1] The Administrative Law Judge ("ALJ") assigned to this matter by the Division of Administrative Hearings ("DOAH") issued the Recommended Order on December 1, 2020.

Background

This is a proceeding to determine whether the Alachua County ("County") Comprehensive Plan Amendment No. 20-05 ("Plan Amendment"), adopted on February 5, 2020, is "in compliance," as defined in section 163.3184(1)(b), Florida Statutes (2019).[2] The Plan Amendment

[1] A copy of the Recommended Order is attached hereto as Exhibit "A."
[2] References to the *Florida Statutes* are to the 2019 version, which was in effect on the date the County adopted the Plan Amendment.

changes the Future Land Use Map designation for an approximately 25 acre undeveloped property (Subject Property) located on Fort Clarke Boulevard in Gainesville, Florida. The Plan Amendment changes the designation of the Subject Property on the Future Land Use Map from institutional to medium-high density residential.

On March 25, 2020, Petitioner, West Shore Legacy, LLC ("Petitioner"), filed a petition for an administrative hearing challenging whether the Plan Amendment is "in compliance," as defined in section 163.3184(1)(b), Florida Statutes. Petitioner alleged broadly that the Plan Amendment is (1) not based on relevant and appropriate data and analysis, (2) internally inconsistent with the Alachua County Comprehensive Plan (the "Plan"), (3) inconsistent with the North Central Florida Regional Policy Plan, and (4) adopted in violation of the public participation requirements of the Community Planning Act, chapter 163, part II, Florida Statutes (the "Act").

Fickling and Company, Inc. and NGI Acquisitions, LLC (together "Intervenors"), filed an unopposed Motion to Intervene, which the ALJ granted on April 2, 2020.

On December 1, 2020, the ALJ issued the Recommended Order, recommending the Department issue a final order determining the Plan Amendment in compliance. On December 16, 2020, the Petitioner timely filed exceptions to the Recommended Order. On December 28, 2020, Alachua County and the Intervenors timely filed their Joint Response to Petitioner's Exceptions to the Recommended Order. Pursuant to Section 163.3184(5)(e)3., Florida Statutes, the parties agreed on March 1, 2021, to extend the Department's deadline to act until March 5, 2021.

Role of the Department

Petitioner filed its challenge pursuant to sections 120.569, 120.57(1), and 163.3184(5), Florida Statutes. The ALJ held a hearing and issued the Recommended Order, recommending that

the Department determine the Plan Amendment in compliance.

The Department may determine 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. § 163.3184(5)(e), Fla. Stat.

The Department received a record consisting of copies of the parties' pleadings, the documentary evidence introduced at the final hearing, and a three-volume transcript of the proceedings of the final hearing. The Department reviewed the record and issues this Final Order in accordance with sections 120.57(1)(k)-(l) and 163.3184(5)(e), 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 on competent substantial evidence or that the proceedings on which the finding was based did not comply with essential requirements of law. *Id.*

Pursuant to section 120.57(1)(k), Florida Statutes, the Department must issue an explicit ruling on each exception. The Department is not required to rule on an exception that does not clearly identify the disputed portion of the Recommended Order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record. § 120.57(1)(k), Fla. Stat.

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., Great Am. Div. v. Unemployment. App. Comm'n*, 671 So. 2d 287, 289 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., Div. of Alcoholic Bev. & Tob.*, 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.; *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 may not 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.

Rulings on Petitioner's Exceptions to Recommended Order

(A) – Exception 1: School Capacity (Paragraphs 30-46, 138-146)

In Exception 1, Petitioner takes exception to findings of fact and conclusions of law contained in paragraphs 30-46 and 138-146 of the Recommended Order. Petitioner alleges the Recommended Order "departs from the Comprehensive Plan text and upholds the Plan Amendment not on record facts but on speculation." Petitioner's Exception 1 argues the Plan Amendment is internally inconsistent with the Comprehensive Plan and does not react appropriately to relevant data and analysis.

The Department finds there is competent substantial evidence in the record to support the ALJ's Findings of Fact concerning the School Capacity review. (E.g., trans. pgs. 155-176 Jul. 30, 2020). Additionally, the ALJ's findings of fact that the Plan Amendment is internally consistent with the existing provisions of the Comprehensive Plan is supported by competent substantial

evidence. (E.g., trans. pgs. 155-176 Jul 30, 2020). Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc.,* 671 So. 2d at 290 n.3. Evidence is substantial if there is "some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence . . . having definite probative value (that is, 'tending to prove') as to each essential element" of the claim. *Id.* The County's witnesses testified to the Plan Amendment's consistency with Comprehensive Plan Policy 1.1.2, 1.1.3, and 1.1.5. It is not the place of the Department to "weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." *Heifetz*, 475 So. 2d at 1281. Therefore, so long as competent substantial evidence supports the ALJ's findings of fact, the agency may not reject them to make alternative findings supported by evidence. *Lantz,* 16 So. 3d at 521. The Department finds competent substantial evidence supports the ALJ's findings of fact in paragraphs 30-46.

To the extent the petitioner's exception argues the referenced paragraphs are incorrect legal conclusions, the Department has considered Exception 1 and cannot substitute a legal conclusion as reasonable as or more reasonable than that reached by the ALJ in paragraphs 138-146 of the Recommended Order. The findings of fact in paragraphs 30-46 support the ALJ's conclusions of law that the Petitioner failed to prove beyond fair debate that the Plan Amendment is not in compliance for either (1) internal inconsistency with Comprehensive Plan policies 1.1.2, 1.1.3, and 1.1.5 or (2) failure to react appropriately to data and analysis.

Exception 1 is DENIED.

(B) – Exception 2: Transportation (Paragraphs 47-68 and 147-152)

In Exception 2, Petitioner takes exception to the findings of fact in paragraphs 47-68, and conclusions of law in paragraphs 147-152 of the Recommended Order. Petitioner alleges the Recommended Order misinterprets the Comprehensive Plan requirements that the County demonstrate through a professionally accepted traffic analysis that sufficient vehicular capacity

exists to accommodate the new development the Plan Amendment allows. Petitioner's Exception 2 argues the Plan Amendment is internally inconsistent with the Comprehensive Plan and does not react appropriately to relevant data and analysis.

The Department finds there is competent substantial evidence in the record to support the ALJ's Findings of Fact concerning the transportation review. (E.g., trans. pgs. 538-559 Jul. 31, 2020). Additionally, the ALJ's findings of fact that the Plan Amendment is internally consistent with the existing provisions of the Comprehensive Plan are supported by competent substantial evidence. (E.g., trans. pgs. 538-559 Jul. 31, 2020). Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc.*, 671 So. 2d at 290 n.3. Evidence is substantial if there is "some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence . . . having definite probative value (that is, 'tending to prove') as to each essential element" of the claim. *Id.* The County's witnesses testified to the Plan Amendment's consistency with Comprehensive Plan Policy 1.1.6.11. It is not the place of the Department to "weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." *Heifetz*, 475 So. 2d at 1281. Therefore, so long as competent substantial evidence supports the ALJ's findings of fact, the agency may not reject them to make alternative findings supported by evidence. *Lantz,* 16 So. 3d at 521. The Department finds competent substantial evidence supports the ALJ's findings of fact in paragraphs 47-68.

To the extent the Petitioner's exception argues the referenced paragraphs are incorrect legal conclusions, the Department has considered Exception 2 and cannot substitute a legal conclusion as reasonable as or more reasonable than that reached by the ALJ in paragraphs 147-152 of the Recommended Order. The findings of fact in paragraphs 47-68 support the ALJ's conclusion that the Petitioner failed to prove beyond fair debate the Plan Amendment is not in compliance either

(1) due to inconsistency with Comprehensive Plan Policy 1.1.6.11 or (2) failure to react appropriately to data and analysis.

Exception 2 is DENIED.

(C)– Exception 3: Compatibility (Paragraphs 69-77 and 153)

In Exception 3, Petitioner takes exception to the ALJ's finding that the Plan Amendment would not render the Subject Property incompatible with the surrounding neighborhood. Although difficult to identify the Petitioner's legal basis for Exception 3, it appears the Petitioner argues the alleged incompatibility of the Plan Amendment with the surrounding neighborhood creates an internal inconsistency with Comprehensive Plan Policy 1.3.2.1.

The Department finds there is competent substantial evidence in the record to support the ALJ's Findings of Fact concerning the compatibility of the Subject Property with the surrounding neighborhood. (E.g., trans. pg. 739 Aug. 3, 2020). Additionally, the ALJ's findings of fact that the Plan Amendment is internally consistent with the existing provisions of the Comprehensive Plan is supported by competent substantial evidence. (E.g., trans. pg. 421 Jul. 31, 2020, pgs. 739 and 753 Aug. 3, 2020). Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc.*, 671 So. 2d at 290 n.3. Evidence is substantial if there is "some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence . . . having definite probative value (that is, 'tending to prove') as to each essential element" of the claim. *Id.* The County and Intervenor's witnesses, Dr. David Depew and Jeffrey Hays testified to the Plan Amendment's compatibility with the surrounding area. The ALJ weighed the testimony of the County and Intervenors' witnesses with the Petitioner's witness and determined the more credible evidence supported finding the Plan Amendment is compatible with the surrounding neighborhood. It is not the place of the Department to "weigh the evidence presented, judge

credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." *Heifetz*, 475 So. 2d at 1281. Therefore, so long as competent substantial evidence supports the ALJ's findings of fact, the Department may not reject them to make alternative findings supported by evidence. *Lantz,* 16 So. 3d at 521. The Department finds competent substantial evidence supports the ALJ's findings of fact in paragraphs 69-77.

To the extent the Petitioner's exception argues the referenced paragraphs are incorrect legal conclusions, the Department has considered Exception 3 and cannot substitute a legal conclusion as reasonable as or more reasonable than that reached by the ALJ in paragraph 153. The findings of fact in paragraphs 69-77 support the ALJ's conclusion that the Petitioner did not prove beyond fair debate that the Plan Amendment is not in compliance because of an alleged incompatibility with the surrounding neighborhood.

Exception 3 is DENIED.

(D) – Exception 4: Suitability (Paragraphs 78 – 83 and 153-156)

In Exception 4, Petitioner takes exception to the findings of fact in paragraphs 78-83 of the Recommended Order finding the Plan Amendment is supported by relevant data and analysis concerning the suitability of the Subject Property for the Future Land Use Map designation change.

Petitioner specifically argues that the Subject Property is not suitable for the Plan Amendment because of its location in a high aquifer recharge area. The Department finds there is competent substantial evidence in the record to support the ALJ's Findings of Fact concerning the suitability of the Subject Property for the Future Land Use Map designation change. (E.g., trans. pgs. 474-478 Jul. 31, 2020). Additionally, the ALJ's findings of fact that the Plan Amendment is supported by relevant data and analysis is supported by competent substantial

evidence. (E.g., trans. pgs. 474-478 Jul. 31, 2020). Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc.*, 671 So. 2d at 290 n.3. Evidence is substantial if there is "some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence . . . having definite probative value (that is, 'tending to prove') as to each essential element" of the claim. *Id.* The County and Intervenors' witnesses testified to the suitability of the Subject Property for the Plan Amendment's Future Land Use Map designation change. The ALJ weighed the testimony of the County and Intervenors' witnesses with the Petitioner's witness and determined the more credible evidence supported finding the Subject Property is suitable for the Plan Amendment's Future Land Use Map designation change. It is not the place of the Department to "weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." *Heifetz*, 475 So. 2d at 1281. Therefore, so long as competent substantial evidence supports the ALJ's findings of fact, the Department may not reject them to make alternative findings supported by evidence. *Lantz,* 16 So. 3d at 521. The Department finds competent substantial evidence supports the ALJ's findings of fact in paragraphs 78-83.

To the extent the Petitioner's exception argues the referenced paragraphs are incorrect legal conclusions, the Department has considered Exception 4 and cannot substitute a legal conclusion as reasonable as or more reasonable than that reached by the ALJ in paragraph 153-156. The findings of fact in paragraphs 78-83 support the ALJ's conclusion that the Petitioner did not prove beyond fair debate that the Plan Amendment is not in compliance because of the suitability of the Subject Property for the Plan Amendment's Future Land Use Map designation.

Exception 4 is DENIED.

(E) – Exception 5: Consideration of Alternatives (Paragraphs 84-91 and 157)

In Exception 5, Petitioner takes exception to the ALJ's findings of fact in paragraphs 84-91 concerning the consistency of the Plan Amendment with the Comprehensive Plan Policy 7.1.24 regarding consideration of alternatives.

The Department finds there is competent substantial evidence in the record to support the ALJ's Findings of Fact concerning the consistency of the Plan Amendment with Comprehensive Plan Policy 7.1.24. (E.g., trans. pgs. 745-747 Aug. 3, 2020; Joint Trial Exhibit 12). The ALJ's findings of fact that the Plan Amendment is internally consistent with the existing provisions of the Comprehensive Plan is supported by competent substantial evidence. (E.g., trans. pgs. 745-747 Aug. 3, 2020; Joint Trial Exhibit 12). Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc.*, 671 So. 2d at 290 n.3. Evidence is substantial if there is "some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence . . . having definite probative value (that is, 'tending to prove') as to each essential element" of the claim. *Id.*

The County and Intervenors' witnesses testified to the Plan Amendment's consistency with Comprehensive Plan Policy 7.1.24. The ALJ weighed the testimony of the County and Intervenors' witnesses with the Petitioner's witness and determined the more credible evidence supported finding the Plan Amendment is consistent with Comprehensive Plan Policy 7.1.24. It is not the place of the Department to "weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." *Heifetz*, 475 So. 2d at 1281. Therefore, so long as competent substantial evidence supports the ALJ's findings of fact, the Department may not reject them to make alternative findings supported by evidence. *Lantz,* 16 So. 3d at 521. The Department finds competent substantial evidence supports the ALJ's findings of fact in paragraphs 84-91.

To the extent the Petitioner's exception argues the referenced paragraphs are incorrect legal conclusions, the Department has considered Exception 5 and cannot substitute a legal conclusion as reasonable as or more reasonable than that reached by the ALJ in paragraph 157. The findings of fact in paragraphs 84-91 support the ALJ's conclusion that the Petitioner did not prove beyond fair debate that the Plan Amendment is not in compliance because of an inconsistency with Comprehensive Plan Policy 7.1.24.

Exception 5 is DENIED.

(F) – Exception 6: Other Alleged Inconsistencies (Paragraphs 92-96 and 164)

In Exception 6, Petitioner takes exception to the ALJ's Recommended Order paragraphs 92-96 and allege that the Recommended Order ignores claimed inconsistencies with Comprehensive Plan Policies 1.2.1, 1.4.1.1, and 1.4.1.4. Petitioner alleges the ALJ erred in not ruling on specific inconsistencies it asserts were tried by consent.

The Department has considered the matter and finds that the findings of fact in paragraphs 92-96 are based on competent substantial evidence in the record. (E.g., trans. pgs. 298-303 Jul. 31, 2020). The ALJ issued findings of fact and conclusions of law that the Petitioner did not prove beyond fair debate that Plan Amendment is inconsistent with the Comprehensive Plan provisions raised in its Petition. The Petitioner asks the Department to remand this back to the ALJ for additional findings, however, the issue of consistency between the Plan Amendment and the Comprehensive Plan was a focal point in the original hearing and the ALJ made findings of fact and conclusions of law as to whether the Plan Amendment is consistent with the Comprehensive Plan. Further, the Department determines the proceedings upon which the ALJ made the findings of fact complied with essential requirements of law. The specific provisions were neither addressed in the Petition nor the Joint Pre-Hearing Stipulation. The Department

determines the ALJ made sufficient findings of fact and conclusions of law on the issues identified by the parties concerning whether the Plan Amendment is in compliance.

Exception 6 is DENIED.

(G) – Exception 7: Public Participation (Paragraphs 97-106 and 158-163)

In Exception 7, Petitioner takes exceptions to the findings of fact in Paragraphs 97-106 concerning the public participation permitted at the local Plan Amendment hearings. Petitioner also takes exception to the ALJ's conclusions of law in paragraphs 158-163.

Petitioner asserts in its Exception 7 that the issue of whether the County permitted sufficient public participation is not an issue for resolution at the administrative proceeding. The Petitioner then requests the Department modify the ALJ's Findings of Fact to add more language to the alleged non-substantive issue. The Petitioner appears to want the Department not to strike alleged erroneous findings but to supplement the ALJ's findings with language they believe is more reflective of the record. This is not the Department's role and, accordingly, Petitioner's request is denied. Competent substantial evidence supports the ALJ's findings of fact 97-106. (E.g., Joint Trial Exhibit 12).

To the extent the Petitioner's exception argues the referenced paragraphs are incorrect legal conclusions, the Department has considered Exception 7 and cannot substitute a legal conclusion as reasonable as or more reasonable than that reached by the ALJ in paragraphs 158-163. The findings of fact in paragraphs 97-106 support the ALJ's conclusions of law.

Exception 7 is DENIED.

(H) – Exception 8: Regional Policy Plan (Paragraphs 107-118 and 165-166)

In Exception 8, Petitioner takes exception to Findings of Fact 107-118 and Conclusions of Law 165-166, which concern the Plan Amendment's consistency with Goal 5.1 of the Regional Policy Plan.

The Department determines from the record that Findings of Fact 107-118 are supported by competent substantial evidence and, therefore, upholds the findings. (E.g., Joint Trial Exhibit 18). It is not the place of the Department to "weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." *Heifetz*, 475 So. 2d at 1281. Therefore, so long as competent substantial evidence supports the ALJ's findings of fact, the Department may not reject them to make alternative findings supported by evidence. *Lantz,* 16 So. 3d at 521. The Department finds competent substantial evidence supports the ALJ's findings of fact in paragraphs 107-118.

To the extent the Petitioner's exception argues the referenced paragraphs are incorrect legal conclusions, the Department has considered Exception 8 and cannot substitute a legal conclusion as reasonable as or more reasonable than that reached by the ALJ in paragraphs 165-166. The findings of fact in paragraphs 107-118 support the ALJ's conclusion that the Petitioner did not prove beyond fair debate that the Plan Amendment is not in compliance because of an inconsistency with the Strategic Regional Policy Plan.

Exception 8 is DENIED.

(I) – Exception 9: Standing (Paragraphs 4-15 and 127-137)

In Exception 9, Petitioner takes exception to the Findings of Fact in paragraphs 4-15 and Conclusions of Law in paragraphs 127-137 of the Recommended Order. The assailed provisions relate to the Intervenors' standing to participate in the administrative hearing. A review of the record reflects that the ALJ granted Intervenors' Unopposed Petition to Intervene as Party Respondents by order dated April 2, 2020.

Findings of Fact 4-15 are supported by competent substantial evidence. (E.g., trans. pgs. 659-661 Aug. 3, 2020; Joint Trial Exhibit 12). 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*, 475 So. 2d at 1281. The Department may not reject or make alternative findings if the ALJ's findings are supported by competent and substantial evidence. *Lantz*, 16 So. 3d at 521. Exception 9 is denied to the extent that it requests the Department to modify or reject findings by reweighing the evidence presented to the ALJ.

To the extent the Petitioner's exception argues the referenced paragraphs are incorrect legal conclusions, the Department does not have substantive jurisdiction to determine the legal status of an intervenor in an administrative dispute. Section 120.57(1)(l), F.S. Accordingly, this lack of substantive jurisdiction, and the upheld findings of fact in paragraphs 4-15 support the ALJ's conclusions of law in paragraphs 127-137 determining the Intervenor's standing to participate in the administrative hearing.

Exception 9 is DENIED.

(J) – Exception 10: Conclusion (Paragraphs 168-169)

In Exception 10, Petitioner takes exception to the ALJ's ultimate conclusion that the Plan Amendment is in compliance. As set forth herein, the remainder of the Petitioner's exceptions have been rejected. Accordingly, Exception 10 is also rejected and the ALJ's ultimate conclusion finding the Plan Amendment in compliance is upheld.

Exception 10 is DENIED.

Remainder of the Recommended Order

The Department has reviewed the remainder of the Recommended Order and concludes that all findings of fact therein were based on 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 the Plan Amendment is "in compliance," as defined in section 163.3184(1)(b), Florida Statutes. The Department adopts and incorporates the Recommended Order into the Department's Final Order.

Dated this 4 day of March, 2021.

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

NOTICE OF RIGHT TO JUDICIAL REVIEW

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

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 4th day of March, 2021.

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

By U.S. Mail

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