STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MARY K. WATERS,

Petitioner,

vs. Case No. 20-2857GM

MIAMI-DADE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA; AND KROME AGRONOMICS, LLC,

Respondents.
_____/

RECOMMENDED ORDER

A duly noticed final hearing was held in this case on February 18 and 19, 2021, by Zoom conference before the Honorable Suzanne Van Wyk, an Administrative Law Judge assigned by the Division of Administrative Hearings.

APPEARANCES

For Petitioner: David Winker, Esquire
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Miami, Florida 33145

For Respondent Miami-Dade County:

James Edwin Kirtley, Jr., Esquire
Christopher J. Wahl, Esquire
Miami-Dade County Attorney's Office
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For Respondent Krome Agronomics, LLC:

Mark E. Grafton, Esquire
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STATEMENT OF THE ISSUE

Whether Miami-Dade County's ("the County's") comprehensive plan amendment, adopted by Ordinance No. 20-47 on May 20, 2020, is "in compliance," as that term is defined in section 163.3184, Florida Statutes.[1]

PRELIMINARY STATEMENT

On May 20, 2020, the County adopted Ordinance No. 20-47, amending the County's Comprehensive Development Master Plan ("Comprehensive Plan") to: (1) redesignate a parcel of land from "Agriculture" to "Business and Office"; and (2) add a Declaration of Restrictions for the parcel in the Restrictions Table in Appendix A of the Comprehensive Plan (the "Plan Amendment").

On June 19, 2020, Petitioner, Mary K. Waters, filed a Petition for Formal Administrative Hearing ("Petition") with the Division of Administrative Hearings ("Division"), which was assigned to the undersigned, and the final hearing was scheduled for October 27 through 29, 2020. Following a hearing on the County's Motion to Dismiss, the undersigned dismissed the Petition, with leave to amend. Petitioner filed an Amended Petition on August 21, 2020.

[1] The Notice of Hearing identified the ordinance as "ordinance 192501" based on an error in the Amended Petition, but the parties stipulated, and the record reflects, that the ordinance at issue is Ordinance No. 20-47.

The parties filed a Joint Motion to Continue Final Hearing on October 2, 2020, which was granted, and the final hearing was rescheduled for December 16 through 18, 2020. The final hearing was continued again to February 18 and 19, 2021, following hearing on a discovery dispute.

The final hearing commenced as rescheduled by Zoom conference on February 18 and 19, 2021. At the final hearing, Joint Exhibits 1 through 5, were admitted in evidence.

Petitioner introduced Exhibit 1, County planning staff's initial report and recommendations suggesting denial of the Application (the "Initial Report and Recommendations"). Petitioner presented the testimony of the following County employees as fact witnesses: Jerry Bell, Rosa Davis, Carlos Heredia, Noel Stillings, Charles LaPradd, Lee Hefty, and Kimberly Brown. These witnesses' testimony was subject to the Protective Order entered on February 8, 2021, which provided that no County employees could testify, or be compelled to testify, as expert witnesses in this case.[2]

The County introduced Exhibits 1 through 3, which were admitted in evidence. The County presented the testimony of Alex David, who was accepted as an expert in comprehensive planning and land use planning.

Krome Agronomics, LLC ("Krome"), introduced Exhibits 1 through 3, which were admitted in evidence. Krome presented the testimony of its corporate representative, Mayra Perera; and Kenneth Metcalf, who was accepted as an expert in comprehensive planning and land use planning.

[2] On the basis of the Protective Order, the County also objected to Petitioner's reliance on the expert opinions of County employees set forth in Petitioner's Exhibit 1. Petitioner represented that she was not seeking to elicit expert opinions, but rather historical facts. Based on the Protective Order, the County's objection, and Petitioner's representations, the opinions set forth in Petitioner's Exhibit 1 were admitted into evidence insofar as the opinions contained therein constitute historical facts. The opinions were not admitted as expert testimony, and the undersigned has not relied upon staff's recommendations in the report as expert testimony supportive of Petitioner's case.

The proceedings were recorded and a Transcript was filed with the Division on March 17, 2021. The parties timely filed Proposed Recommended Orders, which have been considered by the undersigned in preparation of this Recommended Order.

Unless otherwise noted, all citations herein to the Florida Statutes are to the 2019 edition, which was in effect when the Plan Amendment was adopted.

FINDINGS OF FACT

The Parties

1. Petitioner resides, and owns property, in the County. Petitioner made oral or written comments and objections to the County regarding the Plan Amendment during the time period between the County's transmittal and adoption of the Plan Amendment.

2. The County is a political subdivision of the State of Florida, with the duty and authority to adopt and amend its Comprehensive Plan. *See* § 163.3167(1), Fla. Stat.

3. Krome is a limited liability company, existing under the laws of the State of Florida, with its principal place of business in the State of Florida. Krome owns the property subject to the Plan Amendment, as well as other property within the area affected by the Plan Amendment, and was the applicant for the Plan Amendment.

The Subject Property and Surrounding Uses

4. The Subject Property is 5.97 gross acres (approximately 4.6 net acres) of vacant land located outside of the Urban Development Boundary on the southwest corner of SW 177 Avenue (Krome Avenue) and SW 136 Street. It is the northeast corner of a larger 48.33-acre parcel owned by Krome (the "Parent Tract").

5. Adjacent to the north of the Parent Tract, across SW 136 Street, is a solar farm operated by Florida Power and Light Company (FPL). To the east, across Krome Avenue, and to the south, including the remaining portion of the Parent Tract, are agricultural lands used for row crops.

6. West and south of the Parent Tract (including the Subject Property), the land is developed predominantly with five-acre rural estates, interspersed with small residential farms and agricultural sites ranging between 10 and 30 acres in size.

7. The Property is located within an approximately 11-mile stretch of Krome Avenue where there are presently no gas service stations. The nearest gas service station to the south of the Property is located approximately three miles away. The nearest gas service station to the north of the Property is located approximately eight miles away.

The Plan Amendment

8. The Plan Amendment changes the Future Land Use ("FLU") designation of the Subject Property from the "Agricultural" to the "Business and Office" land use category.

9. The Business and Office category allows for development of a wide range of sales and services uses, including retail, wholesale, personal and professional services, call centers, commercial and professional offices, hotels, motels, hospitals, medical buildings, nursing homes, entertainment and cultural facilities, amusements, and commercial recreation establishments. The category also allows light industrial development, telecommunication facilities, and residential uses (stand alone or mixed with commercial, light industrial, office, and hotels).

10. Krome sought the Plan Amendment for the ultimate purpose of operating a gas service station and other food and retail uses compatible with, and supportive of, the surrounding agricultural and residential community.

11. In recognition that the "Business and Office" land use designation permits a wide variety of uses, Krome proffered to restrict the permitted uses on the Property by submitting a Declaration of Restrictions to be recorded as a covenant running with the land.

County Consideration of Plan Amendment

12. In October 2019, County planning staff issued its Initial Report and Recommendations, suggesting denial of the proposed Plan Amendment.

13. The County's Community Councils are tasked with providing recommendations on proposed amendments to the Comprehensive Plan.

14. The West Kendall Community Council conducted a public hearing on the proposed Plan Amendment on December 16, 2019, at which members of the public commented on the proposal. A representative of Krome made a presentation at the public hearing and submitted presentation exhibits that included: (1) a proposed Declaration of Restrictions; (2) a County memorandum relating to a separate application to allow the establishment of a gas station at SW 177 Avenue and SW 200 Street in Miami-Dade County; (3) a letter from the Dade County Farm Bureau stating that it had no objection to the Application; and (4) a Petition of Support listing 105 members of the community that elected to express support and recommend approval of the proposal.

15. At the conclusion of the December 16, 2019 hearing, the West Kendall Community Council voted to recommend that the proposed Plan Amendment be adopted with acceptance of the proffered Declaration of Restrictions.

16. After previously deferring the matter at a hearing on October 29, 2019, the Miami-Dade County Board of County Commissioners (the "BCC") voted on December 17, 2019, to adopt the Plan Amendment on first reading.

17. The County's Planning Advisory Board ("PAB") serves as the Local Planning Agency to review any matters referred to it by the BCC, pursuant to section 2-108 of the Miami-Dade County Code.

18. On January 8, 2020, the PAB, acting as the Local Planning Agency, conducted a public hearing to address the proposal.

19. Near the conclusion of the hearing, the chairman of the PAB proposed an amendment to the proffered Declaration of Restrictions such that the maximum gross square feet of enclosed, under-roof construction on the Property, excluding fueling islands, would be reduced from 10,000 square feet to 6,000 square feet. Krome's representative agreed to the proposed amendment.

20. The PAB then voted to recommend that the BCC adopt the Plan Amendment with acceptance of the revised Declaration of Restrictions.

21. After previously deferring second reading of the ordinance on January 23, 2020, the BCC voted nine-to-three to adopt Ordinance No. 20-47 on second reading at a public hearing on May 20, 2020. As part of its adoption of the Plan Amendment, the BCC accepted Krome's proffered Declaration of Restrictions containing the provisions outlined below.

22. The adopted Declaration of Restrictions states that it is a covenant running with the land for a period of 30 years, and thereafter automatically renews for 10-year periods.

23. The Declaration of Restrictions expressly allows for "[a]ll uses permitted under Article XXXIII, Section 33-279, Uses Permitted, AU, Agricultural District, of the Miami-Dade County Code" along with an "Automobile gas station with mini mart/convenience store" with a maximum of 15 vehicle fueling positions.

24. The Declaration of Restrictions further provides that "[m]echanical repairs, oil or transmission changes, tire repair or installation, maintenance, automobile or truck washing" are prohibited uses, and it limits the maximum gross square feet of enclosed, under-roof construction to 6,000 square feet.

Petitioner's Challenges

25. In the Amended Petition, Petitioner alleges the Plan Amendment is not "in compliance," specifically contending that it: (1) creates internal

inconsistencies with certain existing Comprehensive Plan policies, in contravention of section 163.3177(2); (2) fails to discourage the proliferation of urban sprawl, as required by section 163.3177(6)(a)9.; and (3) is not "based upon relevant and appropriate data and analysis," as required by section 163.3177(1)(f).

Internal Consistency

26. The Comprehensive Plan gives the County Commission flexibility to appropriately balance the community's needs with land use, environmental, and other Comprehensive Plan policies. It is inherent in the comprehensive planning process that the Comprehensive Plan contains potentially competing goals, objectives, and policies, and that addressing them entails a balancing act rather than an all-or-nothing choice. The Comprehensive Plan expressly recognizes this balancing act in its Statement of Legislative Intent:

> The Board recognizes that a particular application may bring into conflict, and necessitate a choice between, different goals, priorities, objectives, and provisions of the CDMP. While it is the intent of the Board that the Land Use Element be afforded a high priority, other elements must be taken into consideration in light of the Board's responsibility to provide for the multitude of needs of a large heavily populated and diverse community.
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> * * *
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> Recognizing that County Boards and agencies will be required to balance competing policies and objectives of the CDMP, it is the intention of the County Commission that such boards and agencies consider the overall intention of the CDMP as well as portions particularly applicable to a matter under consideration in order to ensure that the CDMP, as applied, will protect the public health, safety and welfare.

Accordingly, the Comprehensive Plan must be read as a whole, and a plan amendment should not be measured against only certain policies in isolation.

27. Krome's expert, Kenneth Metcalf, opined that the Plan Amendment affirmatively furthers several Comprehensive Plan goals, objectives, and policies, including Land Use Policies ("LU") 1G, 1O, and 8E; Conservation Policy ("CON") 6E; Community Health and Design Policies ("CHMP") 4A and 4C; Coastal Management Policies ("CM") 8A and 8F; and Economic Policy ("ECO") 7A.

28. Petitioner contends that the Plan Amendment is inconsistent with some of those same policies, as well as other policies.

29. Petitioner contends that the Plan Amendment is inconsistent with Policy LU-1G, which states:

> Business developments shall preferably be placed in clusters or nodes in the vicinity of major roadway intersections, and not in continuous strips or as isolated spots, with the exception of small neighborhood nodes. Business developments shall be designed to relate to adjacent development, and large uses should be planned and designed to serve as an anchor for adjoining smaller businesses or the adjacent business district. Granting of commercial or other non-residential zoning by the County is not necessarily warranted on a given property by virtue of nearby or adjacent roadway construction or expansion, or by its location at the intersection of two roadways.

30. Petitioner offered no expert testimony to support this contention. By contrast, Mr. Metcalf opined that the Plan Amendment was consistent with the allowance in Policy LU-1G for small neighborhood nodes based on its relationship to the adjacent rural residential and agricultural community, especially given the evidence that such adjacent community lacks existing options for gas and convenience goods. He further explained that use of the word "preferably" in Policy LU-1G indicated a preference, not a bright-line rule or requirement, and that the Comprehensive Plan does not contain a definition of "small neighborhood nodes" or any interim step for designating such nodes.

31. Further, the County's expert, Alex David, opined that the Plan Amendment is not inconsistent with Policy LU-1G. He first noted that locating business developments in clusters or nodes is preferable, but not compulsory. In addition, he explained that the policy allows for small neighborhood nodes, and that this Plan Amendment fits the concept of a small neighborhood node in terms of its location, scale, and function:

- *Location:* The Plan amendment is limited to a portion of a quadrant of the intersection of two roads adjacent to a rural community, so it will not be linear development along the Krome Avenue corridor;

- *Scale:* The Plan amendment is considered "small-scale" under the Florida Statutes because it involves less than 10 acres in land area. In addition, the Declaration of Restrictions accepted by the County Commission restricts the extent of land uses (other than those permitted under the AU Zoning District) to a convenience retail limited to a maximum of 6,000 square feet and a gas station with 15 fueling positions; and

- *Function:* Neither the Comprehensive Plan nor the County Code define the term "convenience store." However, many other communities define this use as a small retail establishment intended to serve the daily or frequent needs of the surrounding neighborhood population by offering for sale prepackaged food products, household items, over-the-counter medicine, newspapers and magazines, freshly prepared foods, and even access to an ATM. In rural neighborhoods such as those surrounding the location of the Plan Amendment, a convenience store associated with a gas station is often the only place nearby to buy such items. These stores often also serve as a community gathering spot.

Based on these characteristics, Mr. David opined that the Plan Amendment would create a small neighborhood node with a gas and convenience use for the surrounding rural farm community, similar to the nodes to the south along Krome Avenue that serve the surrounding communities there. Mr. David also contradicted Petitioner's contention that the Comprehensive Plan contains a process for designating nodes.

32. Petitioner contends that the Plan Amendment is inconsistent with Policy LU-1O, which states: "Miami-Dade County shall seek to prevent discontinuous, scattered development at the urban fringe in the Agriculture Areas outside the Urban Development Boundary, through its Comprehensive Plan amendment process, regulatory and capital improvements programs and intergovernmental coordination activities."

33. Petitioner offered no expert testimony to support this contention. By contrast, Mr. Metcalf opined that the Plan Amendment was not inconsistent with LU-1O because the development contemplated by the Plan Amendment is designed to serve the adjacent existing rural neighborhoods to the southwest that are in need of gas and convenience goods.

34. Mr. David opined that the Plan Amendment is not inconsistent with Policy LU-1O. He explained that this policy aims to ensure that development does not happen in isolation and occurs, instead, where other development already exists. Because the Plan Amendment site is proximate to a contiguous, and nearly continuous grid of, existing development consisting of rural estate residential and small-scale residential farms, the Plan Amendment does not contravene this policy or its purpose.

35. Petitioner contends that the Plan Amendment is inconsistent with Policy LU-1P, which states:

> While continuing to protect and promote agriculture as a viable economic activity in the County, Miami-Dade County shall explore and may authorize alternative land uses in the South Dade agricultural area which would be compatible with

> agricultural activities and associated rural residential uses, and which would promote ecotourism and agritourism related to the area's agricultural and natural resource base including Everglades and Biscayne National Parks.

36. Petitioner offered no evidence or expert testimony to support the contention that the Plan Amendment is inconsistent with Policy LU-1P. By contrast, Mr. Metcalf opined that the Plan Amendment was not inconsistent with Policy LU-1P because that policy allows for alternative land uses that are compatible with agricultural uses, such as Krome's plans for the store to support local agricultural uses and agri-tourism by selling fresh fruit from local groves and diesel for smaller scale agricultural farmers, as provided in the Declaration of Restrictions.

37. Mr. David opined that the Plan Amendment is not inconsistent with that policy. He explained that the Plan Amendment pertains only to a very small portion (less than six gross acres) of a larger agricultural site, which will continue to be actively used for agriculture, and there is no evidence that the Plan Amendment will impair the viability of the agricultural economy in the County.

38. As Mr. David explained, the County previously determined that the amount of land that is needed to maintain a "viable" agricultural industry is approximately 50,000 acres, and according to the County, the County has about 55,206 acres available. The 5.97 gross acres (approximately 4.6 net acres) of land that the Plan Amendment directly impacts is miniscule in comparison. Mr. David also explained how the uses specified in the Declaration of Restrictions are compatible with agricultural activities and associated rural residential uses, as well as promoting economic development in the County's agricultural area.

39. Petitioner contends that the Plan Amendment is inconsistent with Policy LU-1S, which states:

> The Miami-Dade County Strategic Plan shall be consistent with the Comprehensive Development Master Plan (CDMP). The Miami-Dade County Strategic Plan includes Countywide community goals, strategies and key outcomes for Miami-Dade County government. Key outcomes of the Strategic Plan that are relevant to the Land Use element of the CDMP include increased urban infill development and urban center development, protection of viable agriculture and environmentally-sensitive land, reduced flooding, improved infrastructure and redevelopment to attract businesses, availability of high quality green space throughout the County, and development of mixed-use, multi-modal, well designed, and sustainable communities.

40. Petitioner offered no expert testimony to support this contention. Petitioner's reliance on LU-1S is misplaced because that provision requires the Miami-Dade County Strategic Plan to be consistent with the Comprehensive Plan, not the other way around. As such, this policy is irrelevant to the Plan Amendment, as both Mr. Metcalf and Mr. David testified.

41. Petitioner contends that the Plan Amendment is inconsistent with Policy LU-2B, which states:

> Priority in the provision of services and facilities and the allocation of financial resources for services and facilities in Miami-Dade County shall be given first to serve the area within the Urban Infill Area and Transportation Concurrency Exception Areas. Second priority shall be given to serve the area between the Urban Infill Area and the Urban Development Boundary. And third priority shall support the staged development of the Urban Expansion Area (UEA). Urban services and facilities which support or encourage urban development in Agriculture and Open Land areas shall be avoided, except for those improvements necessary to protect public health and safety and which service the localized needs of these non-

> urban areas. Areas designated Environmental Protection shall be particularly avoided.

42. Petitioner offered no evidence or expert testimony to support this contention. By contrast, Mr. Metcalf opined that the Plan Amendment was not inconsistent with Policy LU-2B because that policy provides a specific exception for improvements that will serve "localized needs of these non-urban areas," such as the proposed gas station and convenience store.

43. Mr. David opined that the Plan Amendment is not inconsistent with Policy LU-2B because it does not request, require, or necessitate the expansion of the Urban Development Boundary ("UDB") or the Urban Expansion Area ("UEA"), nor does it involve or propose the extension of urban services or facilities outside the 2020 UDB or into the Agriculture and Open Land areas. Mr. David explained that gas stations and convenience stores are not "services or facilities," as those terms are used in the Comprehensive Plan, nor would the gas station or convenience store allowed by the Plan Amendment be an "urban" use. Therefore, urban services and facilities that support or encourage urban development in Agriculture or Open Land areas will continue to be avoided.

44. Mr. David further explained, as County planning staff recognized, the Plan Amendment will not impact key infrastructure and Levels of Service ("LOS") that exist within the UDB (including, but not limited to, water and sewer, transportation, solid waste, etc.). Although County staff found that, under the Plan Amendment, fire and rescue services for the Property would not meet national industry standards, Mr. David refuted that concern, explaining that the Comprehensive Plan does not require compliance with national industry standards for fire and rescue, nor does the Plan Amendment violate a County LOS standard for fire and rescue.

45. Petitioner contends that the Plan Amendment is inconsistent with Objective LU-7, which states:

> Miami-Dade County shall require all new development and redevelopment in existing and planned transit corridors and urban centers to be planned and designed to promote transit-oriented development (TOD), and transit use, which mixes residential, retail, office, open space and public uses in a safe, pedestrian and bicycle friendly environment that promotes mobility for people of all ages and abilities through the use of rapid transit services.

46. The Plan Amendment is not located in an existing or planned transit corridor or urban center. Objective LU-7 is not applicable to the Plan Amendment.

47. Petitioner contends that the Plan Amendment is inconsistent with Policy LU-8C, which states: "Through its planning, capital improvements, cooperative extension, economic development, regulatory and intergovernmental coordination activities, Miami-Dade County shall continue to protect and promote agriculture as a viable economic use of land in Miami-Dade County."

48. Petitioner offered no expert testimony to support this contention. By contrast, Mr. Metcalf opined that the Plan Amendment was not inconsistent with Policy LU-8C. He explained that the policy contained a general directive for the County to promote and protect agriculture, but did not prohibit small scale plan amendments that respond to the existing needs of the surrounding agricultural and rural communities, such as the Plan Amendment.

49. Further, Mr. David opined that the Plan Amendment is not inconsistent with Policy LU-8C. Again, he explained that the Plan Amendment pertains only to a small portion of the Parent Tract, which will continue to be actively used for agriculture; that the uses specified in the Declaration of Restrictions are compatible with agricultural activities and associated rural residential uses; and that those uses will promote economic development in the County's agricultural area. He also explained that

removing the Property from agricultural production would not reduce the number of acres in agricultural production below the threshold needed to sustain agriculture as a viable economic activity in Miami-Dade County. Mr. David further explained that there is no provision in the Comprehensive Plan categorically prohibiting the removal of agricultural land from agricultural production.

50. Petitioner argued that the Plan Amendment would further degrade existing agricultural uses in the area because it could tempt ATV riders to trespass and ride their ATVs over nearby agricultural lands. Mr. David found that speculative concern immaterial to the analysis required by the Comprehensive Plan.

51. Petitioner contends that the Plan Amendment is inconsistent with Policy LU-8E, which states:

> Applications requesting amendments to the CDMP Land Use Plan map shall be evaluated for consistency with the Goals, Objectives and Policies of all Elements, other timely issues, and in particular the extent to which the proposal, if approved, would:
>
> i) Satisfy a deficiency in the Plan map to accommodate projected population or economic growth of the County;
>
> ii) Enhance or impede provision of services at or above adopted LOS Standards;
>
> iii) Be compatible with abutting and nearby land uses and protect the character of established neighborhoods;
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> iv) Enhance or degrade environmental or historical resources, features or systems of County significance; and
>
> v) If located in a planned Urban Center, or within 1/4 mile of an existing or planned transit station, exclusive busway stop,

> transit center, or standard or express bus stop served by peak period headways of 20 or fewer minutes, would be a use that promotes transit ridership and pedestrianism as indicated in the policies under Objective LU-7, herein.

52. Petitioner offered no expert testimony to support this contention. By contrast, Mr. Metcalf opined that the Plan Amendment was not inconsistent with Policy LU-8E. As an initial matter, Mr. Metcalf explained that this Policy only requires an evaluation of "the extent to which" the subparts are satisfied, and does not set a threshold or a specific methodology. Regarding subpart (i), Mr. Metcalf explained the Plan Amendment addressed an existing and future need for a gas station, convenience retail products, fresh food, and supporting products for the agricultural industry within the general area, which currently lacks these offerings. In addition, he opined that the gas station would respond to a critical need to reduce fuel shortages during hurricane evacuations.

53. As to subparts (ii-iv), Mr. Metcalf opined that the Plan Amendment would not impede provision of services at LOS standards; would enhance hurricane evacuations; would be compatible with nearby uses because the Parent Tract would continue to be used for agriculture, which would serve as a buffer between the Subject Property and adjacent uses; and that the Subject Property does not contain any environmental or historical resources, features, or systems of County significance.

54. Further, Mr. David opined that the Plan Amendment is not inconsistent with Policy LU-8E. He explained, first, that Krome submitted with its application a Comprehensive Plan Consistency Evaluation study prepared by Mr. Metcalf, establishing that the Plan Amendment will help satisfy an existing deficiency in the Plan map by facilitating a convenience retail opportunity to serve the needs of the local population, who currently must drive on Krome Avenue at least three miles one way south of this

location to SW 184th Street, or more than eight miles north, and then east on Kendall Drive (SW 88th Street), to reach the nearest equivalent services. In addition, there was significant support for the application by area residents, as evidenced by the petition submitted by Krome and the public testimony in favor of the Plan Amendment.

55. Second, he explained that the Plan Amendment will not impede the provision of services at or above adopted LOS standards, as County staff noted in its report. On the contrary, with regards to traffic, the Plan Amendment may facilitate a reduction in trip generation and vehicle-miles traveled ("VMT") on Krome Avenue from the existing residential community to the west and south, by providing a nearby convenience that may be reached without driving several miles north or south on Krome Avenue.

56. Third, he opined that the Plan Amendment is compatible with abutting and nearby land uses and would protect the character of established neighborhoods—the large-scale solar power facility to the north, and the remainder of the 50-acre parcel that will remain in agricultural use to the west and south—will provide an appropriate buffer for the surrounding rural estate residential uses. Krome Avenue at this location is a 4-lane divided arterial with a 40-foot median, which also provides a significant buffer between the Plan Amendment site and the uses across Krome Avenue. In its evaluation, County staff recognizes that the "Business and Office" land use designation and the proposed development could be "generally compatible" with the existing agricultural uses and FPL's Solar Energy Center. Mr. David opined that the assertion that the land use re-designation "would set a precedent for the conversion of additional agricultural land to commercial uses" is speculative and not only unproven, but refuted by the existing commercial development along the Krome Avenue corridor. The existing isolated uses along Krome Avenue, some of which are the same or similar uses that would be allowed by the Plan Amendment, are long-standing and have not led to urban development or infill in the area. Mr. David also

testified that there are "very stringent policies" that restrict further development from occurring along Krome Avenue in this area, including Policies LU-3N and LU-3O.

57. Fourth, Mr. David explained that the Plan Amendment will not degrade historical or archaeological resources, features, or systems of County significance, which is further confirmed by County staff's own analysis. Regarding impacts to environmental resources, before any development proceeds on the Subject Property, the applicant must apply to all relevant state, regional, and local agencies for the applicable and necessary permits and variances, and if the applicant is unable to obtain such approvals due to environmental concerns, the project will not be permitted to proceed. In other words, while there is no evidence of adverse environmental impacts at the plan amendment stage, the applicant will have to satisfy all environmental requirements in subsequent stages of the development process to proceed with the project.

58. Lastly, Mr. David explained that the Plan Amendment site is not located in an Urban Center or within 1/4 mile of an existing or planned transit station, exclusive busway stop, transit center, or standard or express bus stop served by peak period headways of 20 or fewer minutes; thus, the fifth and final consideration of Policy LU-8E is inapplicable to the Plan Amendment.

59. Petitioner contends that the Plan Amendment is inconsistent with Policy LU-8G, which provides criteria for plan amendments that add land to the UDB. Because the Plan Amendment does not add land to the UDB, Policy LU-8G is irrelevant to the Plan Amendment.

60. Petitioner contends that the Plan Amendment is inconsistent with Policy CHD-4A, which states: "Promote increased production and expand the availability of agricultural goods and other food products produced in Miami-Dade County."

61. Petitioner offered no expert testimony to support this contention. By contrast, Mr. Metcalf opined that the Plan Amendment was not inconsistent with Policy CHD-4A because the proposed store would support the local sale and consumption of goods from the community. Similarly, Mr. David opined that the Plan Amendment is not inconsistent with Policy CHD-4A. He explained that there is no metric associated with this aspirational policy, and noted that the approval of the Plan Amendment pertains only to a small portion of a larger agricultural site, the balance of which will continue to be protected and promoted for agricultural use. Moreover, he explained that the uses allowed by the Plan Amendment through the Declaration of Restrictions are limited to those permitted in the AU Zoning District, plus a fueling and convenience retail service use, which could support the sale and consumption of local agricultural goods.

62. Petitioner contends that the Plan Amendment is inconsistent with Policy CON-6D, which states: "Areas in Miami-Dade County having soils with good potential for agricultural use without additional drainage of wetlands shall be protected from premature urban encroachment."

63. Petitioner offered no expert testimony to support this contention. By contrast, Mr. Metcalf opined that the Plan Amendment is not inconsistent with the policy because it affects only a five-acre tract, and because the Plan Amendment was justified by the existing demand.

64. Further, Mr. David opined that the Plan Amendment is not inconsistent with Policy CON-6D. He noted, first, that according to the County, the Plan Amendment site does not contain jurisdictional wetlands. Second, he explained the Plan Amendment will not result in premature urban encroachment–i.e., a poorly planned expansion of low-density development spread out over large amounts of land, putting long distances between homes, stores, and work, and requiring an inefficient extension of urban infrastructure and services. According to Mr. David, the adopted Plan Amendment is the opposite of these characteristics because: a) it pertains to a

very small site, with a range of permitted uses that is specifically limited by the accepted Declaration of Restrictions; b) it will reduce the distance between residents' homes and local-serving convenience services; and c) it does not involve the extension of urban infrastructure and services. In addition, Mr. David opined that the term "premature" does not apply to the Plan Amendment, as evidenced by the public support of area residents for the gas and convenience uses and the applicant's expert analysis of area need. Furthermore, Mr. David established that a gas station with a convenience store is not an "urban" use, and, therefore, the Plan Amendment does not allow "urban encroachment."

65. Petitioner contends that the Plan Amendment is inconsistent with Policy CON-6E, which states: "Miami-Dade County shall continue to pursue programs and mechanisms to support the local agriculture industry, and the preservation of land suitable for agriculture."

66. Petitioner offered no expert testimony to support this contention. By contrast, Mr. Metcalf opined that the Plan Amendment was consistent with Policy CON-6E because it affected less than five net acres, only 10 percent of the Parent Tract, and would provide convenience goods for the community and local farmworkers. He further explained, again, that the policy does not prohibit small-scale plan amendments that respond to a local need.

67. Further, Mr. David opined that the Plan Amendment is not inconsistent with Policy CON-6E. He explained that the Plan Amendment does not prevent Miami-Dade County from continuing to pursue programs and mechanisms to support the local agriculture industry and the preservation of land suitable for agriculture. Moreover, the addition of the permitted uses on a small portion of an otherwise agricultural site, which will continue to be used for agricultural production, is not inconsistent with this policy.

Urban Sprawl

68. Petitioner alleges that the Plan Amendment fails to discourage the proliferation of urban sprawl, contrary to section 163.3177(6)(a)9, Florida Statutes.

69. Petitioner offered no evidence or expert testimony to support this contention. By contrast, Mr. Metcalf opined that the Plan Amendment would not constitute scattered or discontinuous development because, *inter alia*, it would introduce uses designed to serve the existing nearby community. Mr. Metcalf opined that the Plan Amendment would allow for non-vehicular trips due to the proximity of the rural neighborhoods and would internalize vehicular trips without requiring access to Krome Avenue, consistent with strategies to discourage urban sprawl. Finally, Mr. Metcalf opined that at least six of the eight criteria provided in section 163.3177(6)(a)9.B. were satisfied by the Plan Amendment. Specifically, he opined that:

- The Plan Amendment will not have an adverse impact on natural resources or ecosystems;

- The Plan Amendment promotes the efficient and cost-effective provision or extension of public infrastructure and services because the subject property will not be served by public infrastructure and is already served by emergency services, and because it will reduce demand on roads from nearby neighborhoods, thereby reducing operational and maintenance costs;

- The Plan Amendment promotes walkable and connected communities and provides for compact development and a mix of uses at densities and intensities by providing convenience goods and services within walking or biking distance to nearby residential neighborhoods and local farm workers;

- The Plan Amendment promotes the conservation of water and energy by reducing

water demands as compared to the former use of the Property, and by reducing existing trip lengths otherwise required to access goods and services;

- The Plan Amendment indirectly supports the preservation of agricultural areas and activities by providing diesel fuel, selling locally grown produce and other agriculturally supportive products, and by maintaining the agricultural use on the remainder of the Parent Tract;

- The Plan Amendment creates an improved balance of land uses by providing convenience goods and gasoline/diesel fuel in response to the demands of the neighborhood residents and local farm workers;

- The Plan Amendment remediates the existing, single use, urban sprawl development pattern by providing a commercial use in a compact urban form at an intensity to allow residents and local farm workers to obtain goods, gasoline, and diesel fuel without leaving the neighborhood; and

- The Plan Amendment does not impact the criterion for open space, natural lands and public open space.

70. Similarly, Mr. David opined that the Plan Amendment would not result in the proliferation of urban sprawl; he analyzed each of the statutory indicators of urban sprawl in section 163.3177(6)(a)9.A. and found that none are present, meaning that the Plan Amendment does not fail to discourage the proliferation of urban sprawl. In addition, he found that four of the statutory indicators of the Plan Amendment that would discourage the proliferation of urban sprawl, are present. He found that the remainder were not applicable.

71. Specifically, Mr. David opined that the Plan Amendment would meet the following four indicators:

> I. Directs or locates economic growth and associated land development to geographic areas of the community in a manner that does not have an adverse impact on and protects natural resources and ecosystems.

As Mr. David explained, agriculture is a human development activity. Therefore, the Parent Tract is not in a natural state, nor does it contain natural resources and ecosystems.

According to County staff's own report, the Subject Property does not feature native wetland communities, specimen trees, endangered species, or natural forest communities. There are no jurisdictional wetlands, no water courses, and no federally designated critical habitat on the Subject Property or adjacent properties. The Subject Property is not in a wellfield. Other environmental considerations, including water and stormwater management, and flood protection, are directed through the pertinent permitting agencies at the appropriate time to ensure that any future development minimizes adverse impacts on the general environment.

> II. Promotes the efficient and cost-effective provision or extension of public infrastructure and services.

As Mr. David opined, the Plan Amendment does not involve or require the provision or extension of County-owned public infrastructure and services. This, therefore, meets the definition of the terms "efficient" and "cost-effective," since the County will not have to invest time or funding in the extension of such infrastructure and services. The County staff's own report finds, as a fact, that the amendment would not negatively impact existing infrastructure and service within the UDB. Moreover, the contention that fire and rescue services would not meet national industry standards is irrelevant because: (1) the Comprehensive Plan does not adopt the national industry standard as the LOS; and (2) the Plan Amendment would not negatively impact current estimated travel times for fire and rescue services. Further,

as Mr. David testified with respect to the first set of urban sprawl indicators, the Plan Amendment would not disproportionately impact fire and rescue services.

> V. Preserves agricultural areas and activities, including silviculture, and dormant, unique, and prime farmlands and soils.

As Mr. David explained, the Plan Amendment preserves agricultural areas and activities because the balance of the Parent Tract will continue to be preserved as crop land, and because the uses allowed in the proffered Declaration of Restrictions include agricultural uses and a fueling station that could include the sale of diesel, which is in demand for agricultural uses.

> VII. Creates a balance of land uses based upon demands of the residential population for the nonresidential needs of an area.

As Mr. David opined, today the area does not have a balance of land uses, as it is entirely dominated by rural estate residential and agricultural uses. By introducing a gas and convenience use supportive of agriculture, the Plan Amendment will create a better balance of land uses in the area. Today, the local population does not have access to any type of convenience shopping in the vicinity of this location, because it is situated along an 11-mile gap between such uses on Krome Avenue. Contrary to the contention that the applicant failed to demonstrate the use is needed or required by residents, the applicant provided written evidence of support from over 100 neighbors about the need for the proposed nonresidential use and its benefit to their quality of life. Moreover, according to the public hearing record, many residents also attended the public hearings to express their support for the Plan Amendment. Further supporting the finding of need, the corporate representative of Krome testified in detail about the neighborhood's need for a gas station and convenience store.

Data and Analysis

72. Finally, Petitioner alleges that the Plan Amendment "is not based upon the relevant and appropriate data and analysis provided by the County planning staff at the Department of Regulatory and Economic Resources, as required by section 163.3177(1)(f), Florida Statutes." Petitioner also alleges that the Plan Amendment is based on "the convenience of access to fuel for private property owners in the area and not on relevant data and analysis." Petitioner's allegations, both in the Amended Petition and the Joint Pre-Hearing Stipulation, are conclusory and do not supply any discernible rationale for why she contends the Plan Amendment is not based on relevant and appropriate data and analysis.

73. Petitioner offered no evidence or expert testimony to support these contentions. By contrast, Mr. Metcalf opined that the Plan Amendment is based on "relevant and appropriate data and analysis" supporting the Plan Amendment contained in the record. Namely, the following sources constitute such "relevant and appropriate data and analysis": Mr. Metcalf's Comprehensive Plan Consistency Evaluation, which contains 78 pages of comprehensive data and analysis supportive of his consistency findings; a petition of support for the Plan Amendment signed by over 100 members of the surrounding community; testimony from community members at various public hearings indicating a need for the Plan Amendment; and a letter from the Dade County Farm Bureau stating that the organization had no objection to the Plan Amendment

74. Further, Mr. David also opined that the Plan Amendment is based on, and supported by, appropriate data and analysis. He explained that the video recordings and the legislative history of the adoption hearings related to the disposition of the Plan Amendment application clearly show that the County Commission duly considered the analysis provided by County staff before making a decision. Commissioners asked staff members thoughtful questions and discussed various findings of the staff report throughout the public

hearings. Mr. David explained that County staff's input is not the only criterion upon which elected officials may rely. Indeed, relevant data and analysis were also submitted by the applicant as part of the Plan Amendment application, including the Comprehensive Plan Consistency Evaluation study prepared by Mr. Metcalf. The Consistency Evaluation study relies on professionally accepted data sources and Mr. Metcalf's extensive expertise to provide a sound rationale for the requested Plan Amendment.

75. The County Commission considered, and reacted in an appropriate way to, such relevant and appropriate data. The County Commission received and considered community input in the form of public testimony, much of which was in support of the Plan Amendment, as well as the applicant's petition of support from members of the surrounding community expressing need for local gas and convenience uses. Finally, Mr. David's expert report itself supplies further data and analysis supporting the Plan Amendment.

Other Allegations

76. Petitioner alleges that the Plan Amendment "depletes the Urban Development Boundary and Urban Expansion Areas."

77. The Comprehensive Plan includes the UDB to distinguish the area where urban development may occur from areas where it should not occur.

78. The Comprehensive Plan defines the UEA as "the area where current projections indicate that further urban development beyond the 2020 UDB is likely to be warranted sometime between the year 2020 and 2030."

79. Petitioner fails to identify any inconsistency between the Plan Amendment and any UDB or UEA policies based on her assertion that depletion will occur. Moreover, there are no goals, objectives, or policies in the Comprehensive Plan that address the concept of "depleting" the UDB or UEAs.

80. Petitioner also alleges that the County adopted the Plan Amendment "to benefit[] other private property owners and special interests."

81. Petitioner introduced no evidence to support this allegation, and the allegation is also irrelevant to whether the Plan Amendment is "in compliance."

CONCLUSIONS OF LAW

82. The Division has jurisdiction over the subject matter of this proceeding, and the parties thereto, pursuant to sections 163.3184(5), 120.569, and 120.57(1), Florida Statutes (2020).

83. Petitioner is an affected person and therefore has standing to bring the instant challenge, pursuant to section 163.3184(5).

84. The ultimate legal issue in this proceeding is whether the Plan Amendment is "in compliance," as that term is defined in section 163.3184(1)(b), and specifically with regard to the requirements set forth in section 163.3177(1)(f), (2), and (6)(a)9.

85. Petitioner, as the party challenging the Plan Amendment, has the burden of proof. *See Young v. Dep't of Cmty. Affairs*, 625 So. 2d 831, 835 (Fla. 1993).

86. The standard of proof to establish a finding of fact is a preponderance of the evidence, and findings of fact shall be based exclusively on the evidence in the record and on matters officially recognized. *See* § 120.57(1)(j), Fla. Stat.; *see also Pacetta, LLC v. Town of Ponce Inlet*, Case No. 09-1231GM, (Fla. DOAH Mar. 20, 2012; Fla. DEO June 19, 2012).

87. Petitioner is bound by the allegations in the Amended Petition as to the alleged deficiencies in the Plan Amendment and further limited by the issues presented in the Pre-hearing Stipulation. *See* §§ 120.569 and 120.57(1), Fla. Stat.

88. The County's determination that the Plan Amendment is "in compliance" is presumed to be correct, and the "plan amendment shall be determined to be 'in compliance' if the local government's determination of compliance is fairly debatable." § 163.3184(5)(c)1., Fla. Stat.

89. In *Martin County v. Yusem*, 690 So. 2d 1288 (Fla. 1997), the Court said, "The 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." *Id*. at 1295. Quoting from *City of Miami Beach v. Lachman*, 71 So. 2d 148, 152 (Fla. 1953), the Court stated further that "[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." Put more simply, in the context of a challenge to a comprehensive plan amendment, the amendment is fairly debatable if its validity can be defended with a sensible argument.

90. The mere existence of contravening evidence is not sufficient to establish that a land planning decision is "fairly debatable." It is firmly established that:

> [E]ven though there was expert testimony adduced in support of the City's case, that in and of itself does not mean the issue is fairly debatable. If it did, every zoning case would be fairly debatable and the City would prevail simply by submitting an expert who testified favorably to the City's position. Of course that is not the case. The trial judge still must determine the weight and credibility factors to be attributed to the experts. Here the final judgment shows that the judge did not assign much weight or credibility to the City's witnesses.

Boca Raton v. Boca Villas Corp., 371 So. 2d 154, 159 (Fla. 4th DCA 1979). (citations omitted).

91. In considering the reasonableness of the local government's interpretations, all pertinent provisions of a comprehensive plan must be considered *in pari materia*. *See Katherine's Bay, LLC v. Fagan*, 52 So. 3d 19, 28-30 (Fla. 1st DCA 2010) ("[U]nder the Plan, the entire Coastal Area is considered environmentally sensitive, and yet '[f]uture development' of this environmentally sensitive area is expected. Thus, when all the pertinent provisions of the Plan are considered *in pari materia*, the mere fact that an

area has environmental limitations is not a basis to prohibit development as long as the development is carried out in accordance with the limitations provided by the Plan and the [land development code].").

92. A plan amendment may be found in compliance where it furthers ***some*** goals of a comprehensive plan, even at the expense of other goals in the same plan. With particular regard to Policy LU-8E, the various factors in that policy are weighed and balanced when considering a land use plan map change. *Flagler Retail Assocs., Ltd. v. Miami-Dade Cty.*, Case No. ACC-10-006, at 8-9 (Fla. Admin. Comm'n Mar. 10, 2011). LU-8E does not identify any particular factor or portion as more important than any other. *Id.* A showing that a plan amendment furthers goals, objectives, or policies of the Comprehensive Plan taken as a whole, and is consistent with the overall planning strategies that are reflected therein, is sufficient to show consistency with LU-8E. *Id.* Thus, amendments relating to one goal need not also further different, and often competing, goals:

> There is no reason to insist that all objectives and policies of a plan "take action in the direction of realizing" the other objectives and policies of the same plan. . . . [A]n objective in the conservation element of a plan should not be required to take action in the direction of realizing an objective in the public facilities element of the same plan. Without furthering each other, the conservation objective or public facility objective may each pursue its respective goal.

Kelly v. City of Cocoa Beach, Case No. 90-3580GM, 1990 WL 749217, at *21 (Fla. DOAH Mar. 4, 1991); *accord Zemel v. Lee Cty.*, Case No. 90-7793GM, (Fla. DOAH Dec. 16, 1992; Fla. DCA June 23, 1993), *aff'd*, 642 So. 2d 1367 (Fla. 1st DCA 1994).

93. This Plan Amendment affirmatively furthers several Comprehensive Plan goals, objectives, and policies, including Policies LU-1G, LU-1O, LU-8E, CON-6E, CHD-4A, CHD-4C, CM-8A, CM-8F, and ECO-7A.

94. Further, Petitioner introduced no credible evidence that the Plan Amendment is internally inconsistent with Objective LU-7 and Policies LU-1P, LU-1S, LU-2B, LU-8C, and LU-8G, as alleged in the Amended Petition.

95. Accordingly, Petitioner has failed to meet her burden of proving beyond fair debate that the Plan Amendment is internally inconsistent with the Comprehensive Plan.

96. Petitioner has also failed to meet her burden of proving beyond fair debate that the Plan Amendment fails to discourage the proliferation of urban sprawl. The evidence in the record establishes that the Plan Amendment satisfies the statutory criteria relating to urban sprawl.

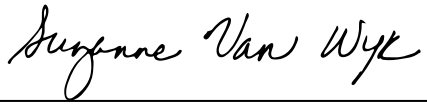
97. Finally, Petitioner has failed to meet her burden of proving beyond fair debate that the Plan Amendment is not supported by adequate data and analysis. The evidence in the record establishes that the Plan Amendment is supported by relevant and appropriate data and an analysis thereof.

98. In summary, based on the foregoing, Petitioner has wholly failed to prove to the exclusion of all fair debate that the Plan Amendment is not "in compliance," as that term is defined in section 163.3184(1)(b).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Economic Opportunity enter a final order determining that the Plan Amendment adopted by Miami-Dade County Ordinance No. 20-47, on May 20, 2020, is "in compliance," as that term is defined by section 163.3184(1)(b), Florida Statutes.

DONE AND ENTERED this 16th day of April, 2021, in Tallahassee, Leon County, Florida.



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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.