

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

WP STATION TOWER, LLC; WINTERPARK
STATION, LLC; WINTERGATE, LLC; AND
PALMETTO BUILDING 2019, LLC,

Petitioners,

vs.

Case No. 22-0073GM

CITY OF WINTER PARK, FLORIDA,

Respondent.

_____ /

RECOMMENDED ORDER

The final hearing in this matter was conducted before Administrative Law Judge Jodi-Ann V. Livingstone, of the Division of Administrative Hearings ("DOAH"), on April 6 and 7, 2022, in Winter Park, Florida.

APPEARANCES

For Petitioners: James Edward Cheek, III, Esquire
Winderweedle, Haines, Ward & Woodman, P.A.
329 Park Avenue North, Second Floor
Winter Park, Florida 32789

For Respondent: Daniel William Langley, Esquire
Eric B. Jontz, Esquire
Fishback Dominick
1947 Lee Road
Winter Park, Florida 32789

STATEMENT OF THE ISSUE

Whether the comprehensive plan amendment (the "Amendment"), adopted by the City of Winter Park, Florida ("Respondent"), by Ordinance 3227-21 on December 8, 2021, is "in compliance," as the term is defined by section 163.3184(1)(b), Florida Statutes.

PRELIMINARY STATEMENT

On December 8, 2021, Respondent adopted the Amendment to amend the City of Winter Park Comprehensive Plan to create the Orange Avenue Overlay District ("OAO District").

On January 7, 2022, WP Station Tower, LLC; WinterPark Station, LLC; Wintergate, LLC; and Palmetto Building 2019, LLC ("Petitioners"), filed a Petition for Formal Administrative Hearing ("Petition"), challenging the Amendment.

In response to the Petition, Respondent filed a Motion for Summary Recommended Order, dated February 15, 2022, and four separate Motions for Partial Summary Recommended Order. The undersigned held a telephonic motion hearing on March 4, 2022, to address the pending motions. On March 9, 2022, the undersigned entered an Order on Pending Motions, which (1) granted the February 15, 2022 Motion for Summary Recommended Order, in part; (2) granted Petitioners leave to amend the Petition; and (3) denied the four remaining Motions for Partial Summary Recommended Order. On March 18, 2022, Petitioners filed an Amended Petition for Formal Administrative Hearing ("Amended Petition").

On February 22, 2022, Petitioners filed Petitioners' Unopposed Request for Judicial Notice, requesting the undersigned take judicial notice of Respondent's Comprehensive Plan, which is accessible online at <https://cityofwinterpark.org/departments/planning-transportation/planning-zoning/comprehensive-plan/>. The undersigned issued an Order Granting Petitioners' Unopposed Request for Judicial Notice, taking official recognition of the Comprehensive Plan.

On March 24, 2022, Respondent filed a Motion in Limine to Preclude Presentation of Evidence Pertaining to Paragraph 26 of the Amended Petition ("Motion in Limine"). At the final hearing, the Motion in Limine was denied. On April 4, 2022, the parties filed a Joint Stipulation Regarding Certain Items in the Amended Petition, stipulating that: (1) the allegations of paragraphs 10, 12, and 13 of the Amended Petition are not bases for challenging the Amendment and will not be issues for the final hearing; and (2) Petitioners will not proceed with the allegations in paragraph 23.e. at the final hearing, and no evidence concerning such matter will be presented.¹

The parties filed a Joint Pre-hearing Stipulation that contained stipulated facts for which no further proof would be necessary. Those stipulated facts have been incorporated into the Findings of Fact below.

The final hearing commenced as scheduled on April 6, 2022. The parties' Joint Exhibits 1 through 10 were admitted into evidence. Respondent's Exhibits 2 through 43 were also admitted into evidence. Respondent presented the expert testimony of Ellen Hardgrove ("Ms. Hardgrove"). Petitioners presented the expert testimony of Jim Hall ("Mr. Hall"). The parties were reminded that even though their exhibits were admitted into evidence, hearsay evidence contained in the exhibits would not be relied on as the sole basis for findings of fact unless the hearsay evidence would be admissible over objection in a civil action in Florida. *See* § 120.57(1)(c), Fla. Stat.; Fla. Admin. Code R. 28-106.213(3).

A one-volume Transcript of the final hearing was filed with DOAH on May 24, 2022. The parties timely filed Proposed Recommended Orders ("PRO"), which were duly considered in preparing this Recommended Order.

¹ The final hearing proceeded on what, in essence, was a second amended petition.

References to the Florida Statutes are to the 2021 version, unless otherwise indicated.

FINDINGS OF FACT

Stipulated Facts

1. Petitioners each own property within the jurisdictional boundaries of the city of Winter Park, Florida.
2. Petitioners own property within and abutting the OAO District created by the Amendment.
3. Respondent is the City of Winter Park, Florida, a municipal corporation organized and existing under the laws of the State of Florida, which is governed by its duly elected Mayor and City Commission (the "City Commission").
4. On April 24, 2017, Respondent adopted its current Comprehensive Plan by way of Ordinance Number 3076-17.
5. The Comprehensive Plan is accessible online at:
<https://cityofwinterpark.org/departments/planning-transportation/planning-zoning/comprehensive-plan/>.
6. On December 8, 2021, Respondent adopted the Amendment.
7. The State of Florida Department of Economic Opportunity ("DEO") and other reviewing agencies had no comments on the Amendment.
8. On January 19, 2022, DEO issued a letter to Respondent stating that DEO found no basis to challenge the Amendment.

The Amendment

9. The Amendment created the OAO District and sets forth goals, objectives, and policies governing the development of properties within the newly created OAO District. The Amendment essentially creates an overlay district over existing future land use map and zoning map designations of the properties within the OAO District.

10. Currently, properties within the OAO District are mostly developed with one- or two-story buildings.

11. The creation of the OAO District is contemplated and directed by the existing goals, objectives, and policies within the Comprehensive Plan, as can be seen in Policy 1-2.4.14: Mixed Use Designation, which provides as follows:

Within one year from the adoption of this Comprehensive Plan, the City will create a mixed use overlay or district for commercially designated parcels that would be intended to facilitate design and use flexibility to achieve pedestrian scale, innovative transit connectivity and maximizing open space within a commercially viable and architecturally desirable design. Complementary uses may include, but are not limited to retail, entertainment, office, civic and residential uses. The City shall also prepare companion land development code regulations that implement the proposed mixed use overlay or district simultaneously with any policy amendments related to this overlay or district. All policies related to this overlay or district will be subject to a Comprehensive Plan amendment.

12. The Amendment explicitly sets forth the goal of the creation of the OAO District, which is as follows:

GOAL 1-9: Establishment of the [OAO District]. It is the intent of the [OAO District] to provide enhanced standards to protect and promote the unique characteristics of the Orange Avenue area and create a distinct gateway into Winter Park. This [OAO District] is used to create a sense of place established through specific architectural styles, streetscape design, open space areas, setbacks, site design, block structure, landscaping and other regulatory controls.

Petitioners' Challenges to the Amendment

13. In the Amended Petition (as limited by the Joint Stipulation Regarding Certain Items in the Amended Petition), Petitioners allege that

the Amendment is not "in compliance" because it: (1) is not internally consistent with the Comprehensive Plan, as required by section 163.3177(2); (2) does not guide "future decisions in a consistent manner," establish "meaningful and predictable standards for the use and development of land," or provide "meaningful guidelines for the content of more detailed land development and use regulations," as required by section 163.3177(1); and (3) is not based upon sufficient relevant and appropriate data and analysis, as required by section 163.3177(1)(f).

Building Heights

14. Petitioners' expert, Mr. Hall, testified that the Amendment is inconsistent with the Comprehensive Plan with respect to the number of stories permitted for buildings within the OAO District. Under the Comprehensive Plan, Petitioners' existing properties were permitted up to a four-story limit. By contrast, the Amendment limits all properties falling within "Subarea A," abutting Orange and Minnesota Avenues, which includes Petitioners' properties, to a maximum height of two stories. This reduces the maximum allowed building height for Petitioners' properties from four stories to two stories.

15. The Comprehensive Plan provides the following policy in regards to building heights:

Policy 1-2.2.5: Maximum Building Height Defined
"Map FLUM-1-03: Comprehensive Plan Maximum Building Heights" designates graphically the maximum threshold for such building heights by stories. The Maximum Height Map is intended to be used together with the Future Land Use Map and applicable land use designations to determine the maximum density and intensity permitted to be developed within the City of Winter Park. *The combination is detailed in the Maximum Future Land Use Map Designation Density/Intensity Table.* The height thresholds do not include ancillary structures regulated by the land development code, including respective floor to floor

heights, parapets, mechanical and elevator/stair components, and architectural appendages. (emphasis added).

16. The language included below in Table 1-3, the Maximum Future Land Use Map Designation Density/Intensity Table, referenced in the above policy, makes two inescapable "Notes." It provides as follows:

NOTE All categories count private parking garage floor space toward FAR limits. *Maximum number of stories is determined by the Maximum Height Map and may be further restricted by other policies of this Comprehensive Plan.*

* * *

NOTE This table reflects the maximum intensities that may be permitted in the underlying zoning district. The maximum intensity that will be approved on any specific site will be based on the applicable development regulations and the ability of the project to further promote the goals of the City, *but is not an entitlement.* (emphasis added).

17. It is clear that the Comprehensive Plan contemplates and allows for two things: (1) the maximum number of stories permitted for a building may be "further restricted" by other policies of the Comprehensive Plan, which includes the policies adopted by the Amendment; and (2) the maximum height map in the Comprehensive Plan creates a maximum limit for building heights, but not an entitlement to the amount shown.

18. The Amendment is not inconsistent with the Comprehensive Plan as it relates to building heights. Rather, the Amendment does what the plain language of the Comprehensive Plan allows it to do—that is, further limit the maximum height allowances of buildings.

Parking Garages and Floor Area Ratios ("FAR")

19. Mr. Hall testified that the FAR allowance in the Amendment, as it relates the parking garages, is inconsistent with the FAR allowance in the

Comprehensive Plan. This alleged inconsistency rests on his interpretation of the distinction between what is "above grade" and "below grade."

20. The Comprehensive Plan addresses FARs for parking garages in the following policy:

Policy 1-2.2.4: Application of Floor Area Ratio
Basement areas or other below grade floor areas are excluded from the floor area when more than one-half of that basement or floor height is below the established curb level. The area of stairways, elevators, and multi-story rooms or atriums shall be counted on each floor level. *The floor area of private parking garages (above grade) or parking levels shall be counted toward the floor area ratio when such parking is provided to meet the parking requirements of the Land Development Code except for the top open parking level if it is open and uncovered. The public parking component of any parking garage may be excluded from the floor area ratio calculation by the City Commission.* (emphasis added).

21. The Amendment addresses FARs for parking garages in its own policy, which is set forth below:

Policy 1-XXX: Floor Area Ratio for Parking Structures. *Parking structures shall count towards the Floor Area Ratio (FAR) for any project/property within the Orange Avenue Overlay District, except for any underground levels, parking dedicated for public parking in perpetuity, and the open top level.* Additionally, the required 10% of parking spaces provided above and beyond minimum code requirements (which is required to be leased to small businesses in the OAO) shall not count towards the FAR of a project. For any units qualifying for the workforce housing exemption, not to exceed 20% of the total project, the required parking spaces shall be exempt. (emphasis added).

22. Mr. Hall asserts that, based upon his interpretation of the words "above grade," as included in the Comprehensive Plan Policy 1-2.2.4, the first

level of a parking structure is not counted in the FAR calculation. Mr. Hall believes that the removal of the term "above grade," in the Amendment policy quoted above, allows first floors of parking structures to be included in FAR calculations under the Amendment. Mr. Hall testified that by taking out the reference to "above grade," the Amendment changes the definition of how FARs are calculated for parking structures, thereby reducing the resulting building size of properties in the OAO District.

23. Respondent's expert, Ms. Hardgrove, testified that the first level of a parking garage is included in the calculation of a property's FAR in both the Comprehensive Plan and the Amendment. This testimony is supported by a note on the Comprehensive Plan Maximum Height Map, which states: "Parking garage levels shall be counted as stories for each level except [sic] the basement or open roof level."

24. Even without considering the note, it is a completely reasonable interpretation of the language in Policy 1-2.2.4, which provides that the "floor area of private parking garages (above grade) or parking levels shall be counted toward the floor area ratio," that the FAR calculation includes the first level (that is, every level of a parking garage not underground).

Meaningful Open Space and Block Structures

25. The Amendment sets forth requirements for the redevelopment of certain properties in the OAO District, including provision of "meaningful open space" and specific block structure requirements. The policies are set forth in full as follows:

Policy 1-XXX: Meaningful Open Space Requirements. At a minimum, each property 1.5 acres in size and above, or any project covering 1.5 acres, that is redeveloped shall provide a minimum of 25% meaningful open space, which is open to and available to the public. At least 50% of required meaningful open-space areas provided shall be greenspace and at least 50% of hardscape areas shall be pervious or semi-pervious. At least 90% of the open space shall be provided at ground level.

* * *

Policy 1-XXX: Block Structure. Any additional development or redevelopment of parcels in excess of 1.5 acres within the OAO shall be required to create a block structure and pedestrian corridors conducive to pedestrian safety, comfort, or vehicular circulation.

26. Petitioners challenge the meaningful open space requirement of the Amendment for several reasons. First, Mr. Hall testified that internal inconsistencies exist because the Comprehensive Plan does not include any reference to the term "meaningful" open space and has no requirement that properties over 1.5 acres designate any portion of their land to "open space." Petitioners allege that, because of this, the Amendment increases open space requirements in ways not contemplated by the Comprehensive Plan. Mr. Hall also suggested that no meaningful open space requirement was necessary as the Comprehensive Plan provides that until the population of the city of Winter Park reaches 36,000, or the year 2026, no more open space is needed.

27. Although there is no mention of "meaningful" open space in the Comprehensive Plan,² there is nothing therein, identified by Petitioners through testimony or documentary evidence, that prohibits or makes inconsistent the requirement in the Amendment. Rather, Policy 1-2.4.14 requires that development in the newly created OAO District "maximiz[e] open space within a commercially viable and architecturally desirable design."

28. Second, Petitioners allege that the Amendment fails to establish meaningful and predictable standards in that there is no definition of what makes an open space "meaningful," nor is there any information on how the

² On the other hand, references to "open space" are plentiful.

1.5-acre condition is calculated. As such, a property owner would need to undergo a review of their development by the City Commission to determine if Respondent believed the open space it created was "meaningful."

29. Ms. Hardgrove testified that an evaluation of the Amendment to determine if it has meaningful and predictable standards requires an evaluation of the entire Comprehensive Plan as amended by the Amendment. The Comprehensive Plan, in its entirety, provides meaningful and predictable standards as to who is required to create a meaningful open space and what that space should include.

30. Third, Petitioners allege that no data or analysis exists to support the 1.5-acre trigger that is provided for in the Amendment in regards to meaningful open spaces and block structures. Specifically, Petitioners allege Respondent has not provided, and does not have, a study or other rational basis for "treating 1.5 acre and larger parcels differently, or for requiring them to contribute meaningful open space in order to obtain certain development rights."

31. Although Mr. Hall testified that he did not see any data and analysis supporting the meaningful open space requirements and block structure policies adopted by the Amendment, he also testified that he did not review all the data and analysis that was considered by Respondent in the adoption of the Amendment.

32. Ms. Hardgrove testified that the Amendment was based upon substantial data and analysis collected by Respondent, which included surveys, studies, community goals and vision, and other data available at the time of adoption of the Amendment. She went on to provide testimony listing and explaining multiple documents used by Respondent as data and analysis in support of the Amendment.

33. Ms. Hardgrove testified that discussions surrounding the idea to require meaningful open spaces for 1.5-acre and greater sized properties were documented in Respondent's Steering Committee final report. The Steering

Committee indicated the intent of the OAO District is to "ensure that the development and enhancement of properties includes the creation of meaningful, useable, accessible, green and beautiful open space that invites the public to relax, interact, recreate, unwind and stimulate social connection." It goes on to discuss that "[m]any of the existing properties do not have much opportunity for the creation of open space due to smaller size[.]" With that in mind, the Steering Committee proposed that "where properties are planned for redevelopment, meaningful open space and the design of structures around these open spaces is the most important consideration. At a minimum, each property 1.5 acres in size and above that is redeveloped shall provide at least 25% meaningful open space, which is open to and available to the public." The rationale behind the need for meaningful open spaces and why larger parcel properties would be better suited to accomplish this is documented in Respondent's reports.

34. Both the meaningful open space requirement and the block structure policy are supported by existing Comprehensive Plan policies, as Ms. Hardgrove explained.

35. As Ms. Hardgrove testified, the block structure policy in the Amendment was also supported by data and analysis, including the report of the Steering Committee, transportation and technical studies that were prepared by consultants, and Respondent's community goals and vision. The block structure policy was put in place to effectuate Respondent's overarching goal—that is, to maintain the traditional scale of the OAO District and making the area welcoming to pedestrian traffic.

36. Finally, Petitioners allege that the restrictions and requirements as to meaningful open spaces and block structures result in a decreased ability for redevelopment. Petitioners allege that there is no legitimate need for Respondent to require as much meaningful open space as is required by the Amendment. Petitioners, however, neither proved this was the case nor

showed how that creates an internal consistency or fails to establish meaningful and predictable standards.

General Impact of Amendment

37. Petitioners made several general and conclusory arguments that development under the Amendment's restrictions will lead to lower quality and less dense development and that such development is economically unfeasible. Here, as above, Petitioners failed to provide competent, substantial evidence to support this assertion or prove how such makes the Amendment not "in compliance."

Ultimate Findings of Fact

38. Petitioners did not prove beyond fair debate that the Amendment is not in compliance.

39. Respondent's determination that the Amendment is "in compliance" is fairly debatable.

CONCLUSIONS OF LAW

40. DOAH has jurisdiction over the parties and subject matter of this proceeding pursuant to sections 120.569, 120.57(1), 163.3184, and 163.3187, Florida Statutes.

41. 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 parties have stipulated that Petitioners qualify as an "affected person" and have standing to challenge the Amendment.

42. As the parties challenging the Amendment to the Comprehensive Plan, Petitioners have the burden of proof and must show the Amendment is not "in compliance," as defined in section 163.3184(1)(b).

43. The Amendment is "in compliance" if it is consistent with the requirements of sections 163.3177, 163.3178, 163.3180, 163.3191, 163.3245, and 163.3248.

44. The standard of proof for findings of fact in this proceeding is the preponderance of the evidence standard. *See* § 120.57(1)(j), Fla. Stat.

45. Petitioners are limited to the allegations in the Amended Petition, as further limited by the parties' stipulations, as to the alleged deficiencies in the Amendment. *See* §§ 120.569 and 120.57(1), Fla. Stat.

46. Respondent's determination that the Amendment is "in compliance" is presumed to be correct and must be sustained if Respondent's determination of compliance is fairly debatable. *See* §§ 163.3187(5)(a) and 163.3184(5)(c)1., Fla. Stat.

47. 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." Quoting from *City of Miami Beach v. Lachman*, 71 So. 2d 148, 152 (Fla. 1953), 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.* Where there is "evidence in support of both sides of a comprehensive plan amendment, it is difficult to determine that the [Respondent's] decision was anything but 'fairly debatable.'" *Martin Cnty. v. Section 28 P'ship, Ltd.*, 772 So. 2d 616, 621 (Fla. 4th DCA 2000).

Internal Consistency

48. Section 163.3177(2) requires the elements of a comprehensive plan to be internally consistent. It provides in full as follows:

(2) Coordination of the several elements of the local comprehensive plan shall be a major objective of the planning process. The several elements of the comprehensive plan shall be consistent. Where data is relevant to several elements, consistent data shall be used, including population estimates and projections unless alternative data can be justified for a plan amendment through new

supporting data and analysis. Each map depicting future conditions must reflect the principles, guidelines, and standards within all elements, and each such map must be contained within the comprehensive plan.

49. A plan amendment creates an internal inconsistency when it conflicts with an existing provision of the plan.

50. Petitioners argue that the Amendment is inconsistent with the Comprehensive Plan in regards to allowable maximum building heights, the treatment of parking garages in calculations of FARs, the requirements for meaningful open space, and the general impact of the Amendment on the redevelopment of the OAO District.

51. Mr. Hall's testimony on the alleged internal inconsistency caused by the Amendment was not persuasive. Petitioners failed to produce competent, substantial evidence that the requirements of the Amendment are inconsistent with those set forth in the Comprehensive Plan. Where the Amendment expands requirements (as with open spaces) or reduces maximum allocations (as with building heights), the Comprehensive Plan allows for such.

52. The Comprehensive Plan specifically provides that other policies within the Comprehensive Plan may further restrict building heights from the maximum heights allowed for in the Maximum Height Map.

53. Mr. Hall's testimony that there are differences between parking garage FAR calculations in the Amendment and Comprehensive Plan is not supported by the plain language of the notes in the policies. When read as a whole, it is clear that the Comprehensive Plan provides that every level of a parking garage, except basement levels or open roof levels, shall be counted as stories.

54. Mr. Hall presented no competent substantial evidence on any other issue involving internal inconsistency alleged in the Amended Petition.

55. Petitioners did not prove beyond fair debate that the Amendment is inconsistent with any of the provisions of the Comprehensive Plan.

56. Petitioners' general complaint that the impact of the requirements of the Amendment will be low-quality redevelopment of the OAO District that will not be economically feasible is not supported by evidence. Even so, "[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." *See Martin Cnty. Land Co. v. Martin Cnty.*, Case No. 15-0300GM (Fla. DOAH Sept. 1, 2015; Fla. DEO Dec. 30, 2015).

Predictable Standards and Meaningful Guidelines

57. Section 163.3177(1) provides as follows:

(1) The comprehensive plan shall provide the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements. These principles and strategies shall guide future decisions in a consistent manner and shall contain programs and activities to ensure comprehensive plans are implemented. The sections of the comprehensive plan containing the principles and strategies, generally provided as goals, objectives, and policies, shall describe how the local government's programs, activities, and land development regulations will be initiated, modified, or continued to implement the comprehensive plan in a consistent manner. It is not the intent of this part to require the inclusion of implementing regulations in the comprehensive plan but rather to require identification of those programs, activities, and land development regulations that will be part of the strategy for implementing the comprehensive plan and the principles that describe how the programs, activities, and land development regulations will be carried out. The plan shall establish meaningful and predictable standards for the use and development of land and provide

meaningful guidelines for the content of more detailed land development and use regulations.

58. In their PRO, Petitioners argue that the Amendment: (1) fails to guide future decisions in a consistent manner; (2) fails to establish meaningful and predictable standards for the use and development of land; and (3) fails to provide meaningful guidelines for the content of more detailed land development and use regulations. To the contrary, Respondent persuasively argues that the entire Comprehensive Plan, along with the Amendment, is clear—it creates the OAO District by implementing and advancing the existing policies within the Comprehensive Plan.

59. The Comprehensive Plan, along with the Amendment, sets out specific guidance as to how the redevelopment of the OAO District is to occur. Specifically, the Amendment sets forth firm requirements for the creation of meaningful open spaces and to which parcels the requirements apply. Parcels being redeveloped that are 1.5 acres or greater shall have 25 percent meaningful open space, of which certain portions must be greenspace and others pervious or semi-pervious surfaces. The guidelines are clear, meaningful, and predictable. Similarly, the block structure requirements are clear, meaningful, and predictable.

60. Mr. Hall's testimony that the meaningful open space and block structure requirements did not provide meaningful and predictable standards was not persuasive or supported by the evidence.

61. Respondent presented competent and substantial evidence that the Comprehensive Plan, as amended by the Amendment, meets the requirements of section 163.3177(1).

Relevant and Appropriate Data and Analysis

62. Section 163.3177(1)(f) states:

(f) All mandatory and optional elements of the comprehensive plan and plan amendments shall be based upon relevant and appropriate data and an analysis by the local government that may include,

but not be limited to, surveys, studies, community goals and vision, and other data available at the time of adoption of the comprehensive plan or plan amendment. 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.

63. Ms. Hardgrove presented persuasive, substantial, and competent testimony about all the research, compilation of data, and analysis of such, that Respondent engaged in when preparing the Amendment.

64. Mr. Hall's testimony indicating that the meaningful open space and block structure policies adopted by the Amendment were not supported by data and analysis was not persuasive.

65. Petitioners did not prove beyond fair debate that the Amendment is not supported by data and analysis as required by section 163.3177(1)(f).

Conclusion

66. Petitioners failed to prove any bases for challenging the Amendment that have been raised in this proceeding.

67. In summary, Petitioners have failed to demonstrate beyond fair debate that the Amendment is not in compliance.

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 finding that the Amendment adopted by Ordinance 3227-21, on December 8, 2021, is "in compliance," as defined by section 163.3184(1)(b).

DONE AND ENTERED this 23rd day of June, 2022, in Tallahassee, Leon County, Florida.



JODI-ANN V. LIVINGSTONE
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 23rd day of June, 2022.

COPIES FURNISHED:

James Edward Cheek, III, Esquire
Winderweedle, Haines, Ward & Woodman, P.A.
329 Park Avenue North, Second Floor
Winter Park, Florida 32789

Phil Anderson
City of Winter Park, Florida
401 South Park Avenue
Winter Park, Florida 32789

Daniel William Langley, Esquire
Eric B. Jontz, Esquire
Fishback Dominick
1947 Lee Road
Winter Park, Florida 32789

Dane Eagle, Executive Director
Department of Economic Opportunity
Caldwell Building
107 East Madison Street
Tallahassee, Florida 32399-4128

Karen Gates, General Counsel
Department of Economic Opportunity
Caldwell Building, MSC 110
107 East Madison Street
Tallahassee, Florida 32399-4128

Jaiden Foss, Agency Clerk
Department of Economic Opportunity
Caldwell Building
107 East Madison Street
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.