

**STATE OF FLORIDA
DIVISION OF ADMINSTRATIVE HEARINGS**

ROBIN CARTWRIGHT,
An Individual,

CASE NO.: 21-2718GM

Petitioner,

v.

CITY OF STUART, Florida,

Respondent.

**CITY OF STUART'S
PROPOSED RECOMMENDED ORDER**

RECOMMENDED ORDER

A duly-noticed final hearing was held in this matter on November 15, and 16, 2021 via Zoom videoconference, before Francine M. Ffolkes, an Administrative Law Judge with the Division of Administrative Hearings (DOAH).

APPEARANCES

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For Respondent City of Stuart:

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STATEMENT OF THE ISSUES

The issues to be determined in this proceeding are: (1) whether the Amendment to the City of Stuart’s Comprehensive Plan’s Future Land Use Map (FLUM), adopted by Ordinance No. 2466-2021 (the “FLUM Amendment”) on August 9, 2021 respectively, is in “in compliance” as that term is defined in §163.3184(1)(b), Florida Statutes.

PRELIMINARY STATEMENT

In 2016 and 2017, an approximately 49-acre property located at 3172 S. Kanner Highway (the “Property”) was annexed into the City of Stuart (“City”). Therefore, the City was charged with assigning an existing future land use set forth in the City’s Comprehensive Plan to the Property. Prior to the annexation, it had been designated by Martin County as Low Density Residential. The City analyzed the data and evaluated the proposed Special Neighborhood District future land use designation at its first reading on May 24, 2021 (the transmittal hearing) and, after review and comment by the Department of Economic Opportunity (DEO), the FLUM Amendment was approved at its second reading on August 9, 2021 (the adoption hearing). Together, the two public hearings consisted of over 14 hours of discussion, input from the public and deliberation based upon the data presented before final adoption. In addition to the professionally accepted data presented by the City Development Staff and the Applicant, there were also two intervenors that presented extensive evidence during both public hearings.

On September 10, 2021, Petitioner Robin Cartwright (Petitioner) filed a Petition for Administrative Hearing the State of Florida Division of Administrative Hearings (DOAH) challenging the FLUM Amendment. Petitioner alleged that (1) the City’s adoption of the FLUM Amendment was not supported by professionally accepted data

and analysis as required by §163.3177, Florida Statutes; and (2) that the FLUM Amendment is internally inconsistent with Policy 5.A5.5 and Policy 5.A5.6 of the City's Comprehensive Plan. The parties filed their Amended Joint Prehearing Stipulation on November 12, 2021.

A Final Hearing was held on November 15, 2021 and November 16, 2021. During the hearing, Joint Exhibits 1 through 6 were admitted into evidence. Petitioner presented the testimony of Charles Gauthier and Greg Braun. Petitioner also testified on her own behalf. Petitioner's exhibits 1, 2, 5, 6 and 7 were admitted into evidence. Petitioner's exhibit 3 was proffered and objections were preserved. Exhibit 3 was never admitted into evidence. Petitioner's exhibit 4 was marked for identification but was not offered nor admitted into evidence.

The City presented the expert testimony of its Development Director, Kevin Freeman as an expert in the field of Urban Planning. The City's Exhibits 9, 16, 17, 21, 30, 36, 37(a) and 37(b) were admitted into evidence. The City's Exhibits 11, 12(a) and 12(b) were proffered and the objections were preserved. The City's exhibits 7, 8, 19, 13, 14, 15, 18, 19, 20, 22, 23, 24, 25(a), 26(b), 27(a), 28(b), 29(c), 31, 32, 33, 35 and 37(b) were marked for identification but were not offered nor admitted into evidence.

The four-volume Transcript of the hearing was filed with DOAH on January 3, 2022. The parties submitted proposed recommended orders on or before January 18, 2022, which were considered in the preparation of this Recommended Order.

FINDINGS OF FACT

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

The Parties

1) Petitioner owns property and resides within the boundaries of the City.

Petitioner submitted oral or written comments, recommendations, or objections to the City, including providing oral comments and objections at the May 24, 2021 and August 9, 2021 public hearings during which the City approved the FLUM Amendment. Stipulated.

2) The City is a political subdivision of the State of Florida that is subject to the requirements of Chapter 163, Part II, Florida Statutes. Stipulated.

Background

3) The Property is bordered on the west by SR-76 Kanner Highway, a six-lane arterial corridor which connects U.S. One in downtown Stuart to I-95 (T302), and on the east by Willoughby Blvd., a four-lane divided roadway. To the east of the Property is commercial office space, a regional water park, a County jail, and other public office uses; to the west, a mobile home park, commercial uses, residential homes and a four story multi-family development (Bridgeview); to the south, a multi-family residential development (The Crossings) (T 305), and a four-story commercial medical facility (T 307) operated by Cleveland Clinic; and to the north is Lychee Tree Farms (a mixed use parcel consisting of retail nursery and residential) as well as Martin County High School (T 301).

4) The Property was originally within the jurisdiction of unincorporated Martin County, Florida ("County"). At the time of annexation, the Property had a Martin County future land use designation of Low Density Residential pursuant to the County's Comprehensive Plan (T 195).

5) On August 22, 2016 and January 9, 2017, the Property was annexed into the City through Ordinance No. 2337-2016 and Ordinance No. 2337-2017, respectively. At the time of annexation, the Property was not assigned a City of Stuart Future Land Use (T. 164). Although the County Future Land Use was still attached to the property, it served a very limited purpose because the City Comprehensive Plan does not have the same future land uses as the County.

6) Until such time as the City assigned a Future Land Use to the Property, it was impossible for the land-owner to exercise any property rights including the ability to obtain a building permit for any vertical construction. Pursuant to the Future Land Use Element of City Comprehensive Plan, Policy A7.5, "properties that are annexed into the City shall be given a City land use designation as soon as possible after the annexation is finalized. To comply with the Comprehensive Plan, it was mandatory for the City to amend the Future Land Use Map and assign a future land use to the Property. *See Policy A7.5*

7) Given the Property's location at the boundary between the City and the County, the variety of surrounding land uses (based on both the County and City Comprehensive Plans), and the requirement to assign one of the existing Future Land Uses authorized by the City's Comprehensive Plan, the City analyzed and reviewed the Property pursuant to data that supported the City's planning goals and needs based upon its existing comprehensive plan to determine an appropriate future land use designation from the list of future uses delineated in Element I, Policy A7.1 of the City Comprehensive Plan.

8) Pursuant to Objective F1 of the Future Land Use Element in the City Comprehensive Plan, “the City shall allow mixed-use and traditional neighborhood development, pedestrian accessibility, and innovative planning and land use techniques that strengthen the small-town character of the Stuart through the application of the Neighborhood/Special District land use category (T. 416).

9) On May 24, 2021, the City held a public hearing to consider the first reading of the FLUM Amendment to designate the Property as Special Neighborhood District. At that hearing, expert reports, data, analysis, and testimony were presented to the City Commission for consideration (T. 352). The Commissioners deliberated and weighed the evidence presented. In addition, the City also considered the public comments provided (T. 449), the testimony and evidence presented by the intervenors and their experts as well as future goals and policies adopted during prior workshops (T. 314). At the conclusion of the first public hearing, The City voted to transmit the FLUM Amendment to the Department of Economic Opportunity (DEO), the reviewing agency pursuant to Section 163.3184, Florida Statutes (See Amended Joint Pretrial Statement).

10) On June 25, 2021, the DEO sent a letter to the City’s Mayor stating that it had reviewed the FLUM Amendment and “identified no comment related to adverse impacts to important state resources and facilities within the Department’s authorized scope of review.” The DEO did provide two technical assistance comments relating to the maximum allowable densities and intensities within the Special Neighborhood District land use. The technical assistance comments were

specifically determined to not form the basis of a challenge. *See Joint Exhibit 3.*

11) In response to the DEO's technical assistance comments, City Development Director Kev Freeman prepared a Maximum Buildout Analysis of Neighborhood Special District FLU to analyze the potential impact allowed based on the proposed land use designation. This analysis considered three different scenarios of densities and intensities on the Property and was submitted to the City during the review process. *See City Exhibit 21*

12) On August 9, 2021, the City held another public hearing to continue its analysis and deliberation necessary to determine the appropriate land use for the Property. During the second reading of the FLUM Amendment, the City again heard expert testimony and considered expert reports and analysis. In total, the City heard more than 14 hours of testimony in public hearings for the FLUM Amendment. Ultimately, the FLUM Amendment was unanimously adopted in Ordinance 2466-202 (T. 403).

13) A Petition for Administrative Review was filed by the Petitioner challenging the Future Land Use Map Amendment. Paragraphs 24 and 25 alleged that the future land use map amendment assigning the existing land use of Special Neighborhood District *is not in compliance*, as that term is defined in Florida Statute 163.3184(1)(b); and the designation of Special Neighborhood District failed to preserve the internal consistency of the Plan as set forth in Florida Statute, Section 163.3187(4). *See Petition for Administrative Review.*

14) On October 12, 2021, the DEO completed its review of the Comprehensive Plan Land Use Map amendment and stated “We have reviewed the amendment in accordance with the expedited state review process set forth in section 163.3184(2) and (3), Florida Statutes, and identified no provision that necessitates a challenge of the Ordinance adopting the amendment. *See Joint Exhibit 4.*

Relevant and Appropriate Data and Analysis

15) Section 163.3177(1)(f), Florida Statutes, requires that comprehensive plan amendments “be based upon relevant and appropriate data and analysis by the local government that may include, but not limited to, surveys, studies, community goals and vision, and other data available at the time of adoption of the comprehensive plan amendment.” §163.3177(1)(f), *Florida Statutes.*

16) “To be based on data means to react to it in an appropriate way and to the extent necessary indicated by the data available on that particular subject at the time of adoption of the plan or plan amendment at issue.” §163.3177(1)(f), *Florida Statutes.*

17) Petitioner alleged that the FLUM Amendment violates §163.3177, Florida Statutes, because the City’s decision was not based on professionally accepted data and analysis (T. 170). The relevant determination at issue in this proceeding is whether the data and analysis were taken from professionally accepted sources and methodology, not whether one accepted methodology is *better* than another. *See Section 163.3177(1)(f)2, Florida Statutes; Environmental Coalition of Florida, Inc. v. Broward County, 586 So.2d 1212, 1216 (Fla. 1st DCA 1991).*

18) At the final hearing, Development Director Kevin Freeman testified for the City as an expert in urban planning. Mr. Freeman testified to the City's extensive review of the Property after it was annexed to determine an appropriate future land use designation (T. 312).

19) Mr. Freeman testified that he began his analysis by identifying a quarter-mile radius around the Property, which indicated a professionally accepted walking distance. (T. 298-299). The review of future land use designations within this radius determined that the Property is located in a diverse area consisting of 11 different land use designations within 2500 feet of the Property (T. 311), including commercial, multi-family residential, and institutional land uses (T. 308). *See Exhibit 30.*

20) City workshops revealed a shortage of residential units in the City and additional housing was needed to alleviate the traffic generated by people commuting to work but unable to live close to employment within the City (T. 314). A report provided by the DEO to the City stated that the demand for housing in the City far exceeding the supply (T.314). There is a net influx of people traveling into the City every day of approximately 17,000 people because the jobs existed but there was no housing for the workforce. (T. 312). Consequently, the City developed a planning strategy to avoid the negative impacts of sprawl that would engage jobs, residences, facilities, and services in the same location and reduce the demand on the roadway system (T. 314).

21) Mr. Freeman testified that a mixed-use development allows people to both

live and work within the same vicinity and enjoy leisure activities and services without the need to commute (T. 375). Promoting mixed-use development would allow the City to capture people driving on the roads and creating traffic that would be traveling to the City for work and entertainment if the Special Neighborhood District Land Use did not exist. A mixed-use land use also reflects the variety and mix of different land use designations surrounding the Property. (T297)

22) Policy A8.2 of the City Comprehensive Plan states that the Future Land Use Map and land use policies will continue to provide for mixed-use opportunities. The Comprehensive Plan directs the Commission to promote mixed use development in order to capture people that would otherwise be driving to the area for employment and entertainment (T. 314 L11 – 318 L2; T320 L8).

23) The policy in the City is to avoid the future land use of low density residential because it creates an isolated subdivision which attracts primarily commuters and it does not encourage the capture of vehicle movements or pedestrian movements (T322 L3).

24) Mr. Freeman presented testimony and evidence to the City Regarding his consideration of whether a low density residential future land use would accomplish the City's goals. However, low density residential land uses generally result in urban sprawl and isolated subdivisions that attract commuters rather than encouraging the capture of vehicular and pedestrian movements (T. 322).

25) In addition to identifying planning goals and surrounding land uses for this

area, Mr. Freeman testified that the City engaged in extensive review and analysis of the Property itself. This included collection and analysis of topographical data, aerial photography, the Soil Inventory Map, the National Wetlands Inventory Map, the National Wetlands Inventory GIS site, Martin County's Future Land Use Map, and the City's Future Land Use Map (T. 327-331). An Environmental Assessment Report prepared by expert consultants, EW Consultants Inc. ("EW"), assessed the Property's soils, wetlands, wildlife, preserve areas, and upland buffers (T. 332) *See Exhibit 16*. The City also hired a third-party consultant (Kimley-Horne) to review and assess EW's Report to determine if the environmental report submitted by the applicant supplies the relevant and complete documentation to be accepted (T. 344). *See Exhibit 17*. Expert engineers also submitted drainage and utility statements that were reviewed and relied on by the City during the FLUM Amendment review process (T. 364).

26) After identifying the City's planning goals for this area and reviewing the Property's characteristics, the City looked to its Comprehensive Plan to determine which future land use designation could accomplish its goals for this Property. The City identified the Neighborhood Special District land use, which is described as a mixed-use category allowing residential, commercial, and recreation land uses such that a functional vertical or horizontal mix of uses is achieved (T. 358).

27) Mr. Freeman prepared a Special/Neighborhood District Analysis that examined the different uses and densities allowed in the Neighborhood Special

District, which was submitted to the City during the review process (T. 322).

28) During the review process the City also analyzed the environmental report prepared by Petitioner's expert, Greg Braun. The report was originally submitted to the City during the FLUM review process. The same report detailing his assessment and criticisms of EW's Environmental Assessment Report that was offered into evidence as Petitioner's exhibit 1 during the DOAH hearing was provided to the City and analyzed prior to the adoption of the FLUM.

29) Mr. Braun testified before the City Commission at the May 24, 2021 adoption hearing, and his testimony and report were addressed and responded to during the City's consideration of the FLUM Amendment.

30) At the DOAH final hearing, Petitioner presented Mr. Braun as an expert in environmental habitat assessments. Mr. Braun testified that he had identified certain protected species located on the Property that the EW Environmental Assessment Report failed to identify, and that areas with environmental value should be set aside and preserved (T. 85-86). Mr. Braun testified, "I believe that the appropriate type of thing to have been done was to designate those areas of highest quality for environmental protection, conservation, and to allow development in those other portions [of the Property] of significantly diminished habitat value." (T. 89). Mr. Braun added, "I believe that development could move forward on this property that would have some intensive components and some environmental preserve areas." (T. 91).

31) Mr. Braun testified that the City Commission did hear the “best available date that was available at the time” (T. 106 L17 – L 23).

32) Mr. Braun acknowledged that it was not until new developments moved forward that there is a requirement to go through the analysis of the environmental attributes of a property and develop a site plan that preserves environmentally valuable portions (T49 L9).

33) Mr. Braun’s testimony and opinion did not relate to the adoption of the FLUM Amendment’s Neighborhood Special District use, but instead to the actual site plan for the development of the Property, which is outside the scope of review in this administrative proceeding (T. 102).

34) Mr. Braun actually testified, *“I’m not really qualified to speak on the future land use designation.* I’m here to provide testimony on the ecological value and essentially regardless of what the land use designation is, if it were to include the conservation of those environmentally valuable portions of the property then I would find that it would not be objectionable.” (T. 102)

35) Mr. Braun further admitted that he did not think that a future land use designation that included a commercial or retail component was a problem. He was more concerned with the site plan and the development approval, not with the future land use approval (T. 103).

36) Mr. Braun admitted that the Environmental Assessment Report submitted by

the applicant and considered by the City Commission during the public hearing process accurately identified that there was an abundance of invasive non-native plant species that was typical in many areas of Florida (T 86 L8).

37) Mr. Braun also admitted that the corridor was indicative of the increasingly urbanized area with the city of Stuart and the actual property was “indeed degraded to one extent or another by various things that have gone on.” (T83 L5-9).

38) Mr. Braun does not believe that a proposed future land use that includes a commercial or retail component is a problem (T100 L5).

39) Mr. Braun agreed that regardless of which future land use was chosen for the property, there would still be a requirement in the Comprehensive Plan to protect the environmental aspect of the property (T103 L1).

40) Mr. Braun testified that his concern for the property was that the City approved a *site plan* (development activity unrelated to future land use adoption) that allowed for compliance with a portion of the comprehensive plan that requires a set-aside of the natural habitat areas (T.101 L20). His testimony was not related to the Future Land Use designation but was solely related to the site plan approval.

41) While discussing “professionally acceptable opinions”, Mr. Braun acknowledged that he reviewed the environmental assessment submitted by the applicant when formulating his opinion (T107 L 15). He further testified that it included professionally acceptable data about wetlands and other things (T108 L1).

42) The City heard Mr. Braun's assessment of the conditions of the Property and reviewed his data when he testified at the Future Land Use adoption hearing (T39 L21). Mr. Braun presented an "Application Review of the Proposed Costco PUD, Stuart, Florida" as data for the City Commission to analyze during the future land use adoption proceeding (T.64 L9). He testified that his report was transmitted to the City following the initial public hearing which occurred on May 24, 2021 (T 105 L 11). He also testified live during the second public hearing (T105 L 13).

43) Mr. Braun was aware that the City Commission accepted and analyzed the available data which included his report which he considered to be professionally acceptable. Further, the City Commission actually included part of Mr. Bruan's testimony in the Ordinance (T106 L13). It is undisputed that his report and testimony was received and evaluated by the City when designating the future land use.

44) He also admitted that the wildlife observed was actually the result of multiple hidden game cameras remaining on the property for more than five weeks (T.138). Even with constant surveillance for the extended period of time, his report included all of the wild-life that was observed and did not demonstrate any evidence of nesting (T. 137)

45) Petitioner's second witness at the final hearing was Mr. Gauthier, who testified that the City's Maximum Buildout Analysis prepared in response to DEO's comment was improper because it did not take into account the maximum buildout potential of the FLUM Amendment (T. 209) Although Mr. Gauthier criticized the methodology

underlying the City's analysis of the Property's maximum buildout potential, he admitted that "there are different ways to look at these numbers. Calculating maximum potential is not a precise exercise" (T. 206).

46) Mr. Gauthier admitted that he failed to take into account certain considerations in his own maximum buildout analysis, such as parking calculations (T. 250). Mr. Gauthier then testified, however, that his report should still be considered professionally acceptable because this type of analysis is "*not a precise exercise*" (T. 211, 252). Mr. Gauthier admits that there are "different ways" to look at the maximum buildout analysis numbers (T 211 L 4).

47) Mr. Gauthier acknowledged that the City did prepare a maximum buildout analysis which was analyzed and reacted to by the Commission prior to the adoption of the Future Land Use Amendment (T206 L 13). In fact, Mr. Gauthier used the City Maximum build out to assist in the preparation of his own report.

48) Mr. Freeman testified that the City's maximum buildout analysis considered separate scenarios of the maximum buildout of all developable land, including permitted residential and non-residential ratios, and considering site constraints such as stormwater, landscaping, parking, open space, and traffic (T.365). Mr. Freeman testified that Mr. Gauthier's analysis based its maximum buildout analysis on Floor Area Ratios, which does not take into account certain site constraints and requirements (T. 368).

49) Mr. Gauthier testified that “the professionally acceptable methodology is to prepare a reasoned projection of the maximum development potential and base the analysis on that (T207 L7). Based on his testimony, the question to be determined is if the City was presented with reasoned projections of the maximum build out analysis and the evidence demonstrates multiple projections were presented.

50) Consistent with the City position that the Future Land Use was intended to stand alone and remain separate and distinct from any development activity, Mr. Gauthier testified that the zoning approval could change later without the need for a Future Land Use Amendment (T. 199 L24). Mr. Gauthier agreed that the future land use of Special Neighborhood District is a tool the City could use to avoid sprawl (T. 256). He also acknowledged that the designation of Special Neighborhood District met the Community Goals and Vision of the City Commission (T. 260 L9).

51) Mr. Gauthier also acknowledged that the City provided a large number of documents with the adopting ordinance that demonstrated the extent of the data and analysis that took place during the review process (T. 188-189).

52) Mr. Gauthier then acknowledged that the City of Stuart Development Director presented three different scenarios of a maximum build out analysis for the City Commission to review and react to during the future land use map adoption hearing (T246 L13). One of them was based upon a 10 percent commercial build out because the future land use of Special Neighborhood District allowed for up to

90% residential (T246 L24). Another analysis was based upon 70 percent commercial (T247 L2). Mr. Gauthier stated that he too performed two different analysis based upon 10 percent and 70 percent commercial (T247 L10).

53) According to Mr. Gauthier, the matter at issue for the administrative hearing is not what the City thinks will happen on the property according to any site plans approved a site plan. Site Plans may not be built (T. 199). The issue is about what can happen on the property based upon the Future Land Use Designation (T. 200).

54) The unrefuted evidence during the hearing was that the City was presented with multiple scenarios for a maximum build out and there was extensive discussion regarding the potential maximum outcomes that could be derived by assigning the Future Land Use of Special Neighborhood District to the Property.

55) Mr. Gauthier, the only "Planning Expert" presented by the Petitioner testified that while he was working for the State of Florida at the Department of Community Affairs (T240 L3) he was involved in a legal dispute in the City of Stuart in the past when there was a future land use amendment proposed by the City on property that had been recently annexed into the City – which is the identical circumstance of this administrative hearing (T223 L6). Mr. Gauthier stated that it was his opinion that the data and analysis indicated that the 1998 Ordinance was the appropriate approach that the City should follow (T. 227 L2). He also testified that the future land use determination in the 1998 future land use amendment was based upon professionally accepted data and analysis (T240 L8).

56) Mr. Gauthier testified that he was not testifying on behalf of the Petitioner for the purposes of objecting to the compatibility of the Future Land Use Amendment with the adjacent properties (T244 L8). It is Mr. Gauthier's unrefuted testimony that it is a compatible for property designated as Special Neighborhood District to be directly next to property designated a single-family residential zoning or future land use (T243 L15).

Internally Inconsistent

57) Section 163.3177(2) requires the elements of a comprehensive plan to be internally consistent. A plan amendment creates an internal inconsistency when it conflicts with an existing provision of the plan. "If the objectives do not conflict, they are coordinated, related, and consistent." *Melzer, et. al. v. Martin Cty.*, Case No. 02-1014GM and 02-1015GM, at RO ¶ 194 (Fla. DOAH July 1, 2003; Fla. DCA Oct. 24, 2003).

58) Petitioner alleged that the FLUM Amendment is inconsistent with two provisions of the Conservation Element of the City's Comprehensive Plan—Policy 5.5A.5 and Policy 5.5A.6. Policy 5.5A.5 provides that wetlands shall be protected and conserved by restricting direct and indirect development impacts (T. 220). Policy 5.5A.6 provides exceptions thereto and allows for wetland mitigation during the development phase.

59) The Petitioner failed to provide any evidence that the actual Future Land Use of Special Neighborhood District failed to protect the wetlands or authorized any

environmental impacts that would be different or more extensive than any other Future Land Use found in the City Comprehensive Plan. The experts even admitted that Special Neighborhood District did not impact the environment differently than other future land uses (T. 320).

60) Mr. Freeman testified that these Comprehensive Plan policies are implemented through the City's land development regulations and compliance is reviewed when considering the ultimate development to be constructed on the Property and its associated impacts (T. 346) Mr. Freeman further testified that these conservation elements, such as wetlands mitigation, are fully investigated during the development activities after the future land use designation has been assigned to the Property (T. 349).

61) As discussed above, Petitioner's expert, Mr. Braun, testified that his concerns regarding wetland mitigation and preservation relate to the site plan itself, not the FLUM Amendment (T. 123).

62) The Future Land Use designation of Special Neighborhood District incorporates all of the requirements for the protections for native or listed plant species, endangered species, wetlands and any other protections afforded by the City Comprehensive Plan (T319 L6).

63) With the exception of designating the entire parcel as conservation and removing all property rights from the land-owner, there are no other future land uses in the Comprehensive plan that provide more protections than Special

Neighborhood District (T319 L – T320 L11).

64) Compliance with Comprehensive Plan as it pertains to the conservation element such as wetlands and mitigation of wetlands is fully investigated during the development activities after the future land use designation has been assigned (T. 349 L7).

65) The designation of Special Neighborhood District on the subject property does not conflict in any way with the conservation element in the Comprehensive Plan (T349 L14) and remains internally consistent with the existing Comprehensive Plan because the conservation element pertaining to the evaluation of wetlands and native species continues to be required at the time of development approval.

66) Because a Future Land Use Designation does not authorize any development activities, including any direct or indirect impacts to wetlands, Policies 5.5A.5 and 5.5A.6 are not applicable to the FLUM Amendment nor does the adoption of a FLUM create an internal conflict with the Policies.

67) Accordingly, the FLUM Amendment is not internally inconsistent with the City's Comprehensive Plan.

CONCLUSIONS OF LAW

68) The Petitioner failed to meet the burden of proving beyond a fair debate that the City of Stuart Future Land Use designation placed on the annexed Property adopted by Ordinance 2466-2021, on August 9, 2021 is not in compliance as

defined in Florida Statute, §163.3184(1)(b).

69) The Petitioner failed to meet the burden of proving that that Future Land Use Map Amendment was internally inconsistent.

Jurisdiction

70) DOAH has jurisdiction over the subject matter and the parties to this proceeding under sections 120.569, 120.57(1), and 163.3184, Florida Statutes.

Standing

71) To have standing to challenge a comprehensive plan amendment, a person must be an “affected person” as defined in section 163.3184(1)(a), Florida Statutes.

72) The parties stipulated that Petitioner is an “affected person” within the meaning of the statute.

Burden and Standard of Proof

73) An affected person challenging a plan amendment must show that the amendment is not “in compliance” as defined in Section 163.3184(1)(b), Florida Statutes. “In compliance” means, in pertinent part, “consistent with the requirements of sections 163.3177, 163.3178, 163.3180, 163.3191, 163.3245, and 163.3248.” See § 163.3184(1)(b), Fla. Stat.

74) Petitioner bears the burden of proving beyond fair debate that the challenged FLUM Amendment is not in compliance. This means that “if reasonable persons could differ as to its propriety,” a plan amendment must be upheld. See *Martin*

County v. Yusem, 690 So.2d 1288, 1295 (Fla. 1997). Where there is evidence in support of both sides of a comprehensive plan amendment, it is difficult to determine that the decision is anything but ‘fairly debatable.’ *Martin Cty. V. Section 28 P’ship, Ltd.*, 772 So.2d 616, 621 (Fla. 4th DCA 2000).

75) 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 Cty. Land Co. v. Martin Cty.*, Case No. 15-0300GM at RO ¶ 149 (Fla. DOAH Sept. 1, 2015; Fla. DEO Dec. 30, 2015).

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

Relevant and Appropriate Data and Analysis

77) Based upon the foregoing Findings of Fact, Petitioner did not prove that the data on which the City relied to adopt the FLUM Amendment was not taken from professionally accepted sources and gathered through professionally accepted methodologies.

78) The evidence demonstrated that there was adequate data and analysis, taken from professionally accepted sources, and gathered through professionally accepted methodologies, to support the FLUM Amendment.

Internally Inconsistent

79) Based upon the foregoing Findings of Fact, Petitioner did not prove that the

FLUM Amendment is internally inconsistent with the conservation policies set forth in Policy 5.5A.5 and Policy 5.5A.6.

80) Because the FLUM Amendment itself did not authorize any development activities, including any direct or indirect impacts to wetlands, Policies 5.5A.5 and 5.5A.6 are not applicable to the FLUM Amendment.

Scope of Review

81) Throughout this administrative proceeding, Petitioner attempted to argue that the ultimate development to be constructed on the Property should be considered in determining whether the FLUM Amendment is “in compliance” pursuant to Section 163.3184(1)(b), Florida Statutes.

82) While the City considered the FLUM Amendment at the same time as a parallel request to rezone the Property and approve a site plan for development, those are quasi-judicial decisions that are not subject to review within this proceeding. See *Board of County Com'rs of Clay County v. Quails*, 772 So.2d 544, 546 (Fla. 1st DCA 2000) (finding that amendments to Comprehensive Plans are legislative decisions subject to the ‘fairly debatable’ standard of review, and this conclusion is not affected by the fact that the amendment is being sought as part of a rezoning application with respect to only one piece of property”).

83) The Petitioner’s filed this administrative proceeding to challenge the FLUM Amendment pursuant to Section 163.3184(5), Florida Statutes—*Administrative challenges to plan and plan amendments*. If Petitioner desired to challenge the

ultimate site plan approved for the Property, including whether it complies with the City's wetland preservation and environmental regulations, Petitioner could have done so in two different ways. First, Petitioner could have initiated a petition for writ of certiorari to challenge whether the site plan complied with the City's land development regulations. See *Broward County v. G.B.V. Intern., Ltd.*, 787 So.2d 838, 842 (Fla. 2001) (a local government decision granting or denying a site plan application is a quasi-judicial decision subject to review by petition for writ of certiorari"). Second, Petitioner could have initiated a de novo proceeding in circuit court to challenge whether the site plan was consistent with the City's Comprehensive Plan. See Section 163.3215(3), Florida Statutes ("an aggrieved or adversely affected party may maintain a de novo action for declaratory, injunctive, or other relief against any local government to challenge any decision of such local government granting or denying an application for, or to prevent such local government from taking any action on, a development order as defined in s. 163.3164, which materially alters the use or density or intensity of use on a particular piece of property which is not consistent with the comprehensive plan adopted under this part"). Petitioner is not permitted to pursue either avenue of relief in this proceeding.

84) During the final hearing, the parties offered their respective arguments as to whether the Third District Court of Appeal's decision in *Payne v. City of Miami*, 52 So.3d 707 (Fla. 3d DCA 2010) had any application to the facts of this case. In *Payne*, an applicant submitted a concurrent request to adopt a future land use map

amendment, rezoning, and site plan for the subject property. In *Payne*, the Administrative Law Judge refused to consider evidence that the City failed to consider a relevant and controlling element of the Comprehensive Plan when adopting the new land use known as the Port of Miami Sub-Element. The Port of Miami Sub-Element prohibited non-water related uses on the subject property, while the proposed land use amendment would permit residential uses (a non-water related use), resulting in a violation of the Comprehensive Plan on its face. The Court determined that, based on the record, the City did not engage in a legislative reformulation of its policy and overall vision for the subject property.

85) The unique facts in *Payne* are not present here, where the record reflects the City's extensive consideration, examination, and reexamination of its Comprehensive Plan policies and the best approach to achieving its planning strategies and goals. The proposed Neighborhood Special District future land use designation does not violate any relevant Comprehensive Plan policies.

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 City of Stuart Comprehensive Plan Future Land Use Map Amendment adopted by Ordinance No. 2466-2021 on August 9, 2021 is "in compliance" as that term is defined in Section 163.3184(1)(b), Florida Statutes.

DONE AND ENTERED this _____ day of _____, 2021, in Tallahassee, Leon County, Florida.

Francine M. Ffolkes
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
www.doah.state.fl.us

Filed with the Clerk of the Division of Administrative Hearings
this _____ day of _____, 2022.

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.