

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA DEPARTMENT OF ECONOMIC
OPPORTUNITY,

Petitioner,

DOAH Case No.
DEO File No. 15-1SP-NOI-3501-(A)-(N)

LAKE COUNTY, FLORIDA,

Respondent.

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DEPARTMENT OF ECONOMIC OPPORTUNITY'S
PETITION FOR FORMAL ADMINISTRATIVE HEARING

Petitioner, Department of Economic Opportunity ("DEO"), hereby files this Petition for Formal Administrative Hearing and in support thereof, states as follows:

I. BACKGROUND

1. DEO is the state land planning agency and has authority to administer and enforce the Community Planning Act, Chapter 163, Part II, Florida Statutes (the "Act").

2. DEO's responsibilities under the Act include the duty to review comprehensive plan amendments submitted by local governments and to determine if the plan amendments are "in compliance" with the Act.

3. "In compliance" means consistent with the requirements of sections 163.3177, 163.3178, 163.3180, 163.3191, 163.3245, and 163.3248, Florida Statutes, consistent with the appropriate strategic regional policy plan, consistent with the principles for guiding development in designated areas of critical state concern, and with part III of chapter 369, Florida Statutes, where applicable. *See* Fla. Stat. §163.3184(1)(b) (2014).

4. Lake County (“County”) is a local government which has the duty to adopt comprehensive plan amendments that comply with the Act pursuant to sections 163.3167(2), 163.3177, and 163.3184, Florida Statutes.

5. On or about July 21, 2015, the County adopted the Wellness Way Sector Plan (“WWSP”) via Ordinance No. 2015-27, a comprehensive plan amendment that underwent the state-coordinated review process under section 163.3184, Florida Statutes. The WWSP is a substantial and substantive comprehensive plan amendment that creates a sector plan governing development of over 15,000 acres of property pursuant to section 163.3245, Florida Statutes. Functionally, a sector plan is composed of a long-term master plan coupled with later required detailed specific area plans (DSAPs).

6. The County rendered the WWSP to DEO and it was deemed complete by DEO on August 6, 2015. Under section 163.3184(4)(e)4., Florida Statutes, DEO has 45 days from the date the WWSP was deemed complete to determine if it is in compliance.

II. FINDING OF NOT IN COMPLIANCE

7. Portions of the WWSP are inconsistent with the requirements of sections 163.3177 and 163.3245, Florida Statutes, rendering the WWSP not “in compliance.”

8. DEO complied with, and completed all, general and specific statutory prerequisites and conditions required by section 163.3184, Florida Statutes, and found the WWSP not “in compliance” as set for in its Statement of Intent dated September 18, 2015.

9. A copy of the Statement of Intent issued by DEO is attached hereto as Exhibit A, and the accompanying Notice of Intent is attached hereto as Exhibit B, both of which are incorporated by reference.

10. DEO's finding that the WWSP is not "in compliance" is based on the County's failure to address objections raised in the Objections, Comments, and Recommendations Report (ORC Report) issued on February 6, 2015. Each finding is more specifically set forth below.

A. Failure to Identify Additional Water Supply

11. Policy 1-8.5.1 provides that all new development shall connect to non-potable water sources, when available, and availability will be determined at the DSAP process. It also provides that to ensure that the WWSP's water suppliers account for and meet the water needs of the WWSP, the County will monitor and participate in those supplier's planning processes.

12. Policy 1-8.7.3.C provides that DSAPs shall contain "[a] detailed public facilities plan identifying public facilities" which shall address potable water, reuse water, non-potable water demand to utilize alternative water supplies, when available.

13. However, the data and analysis provided by the County to support the WWSP indicates that there will be insufficient water from conventional sources to meet the projected demand of the WWSP. The County failed to identify any other water supply options or development projects to meet the WWSP's projected potable water needs.

14. Although the WWSP alludes to certain conventional sources for potable and nonpotable water sources, the supporting data and analysis fails to identify either the amount of water or the timing of any of the sources to meet the projected potable and nonpotable demand.

15. DEO raised this matter previously in the ORC Report as Objection No. 16.

16. The WWSP is inconsistent with section 163.3245(3)(a)2., Florida Statutes, which specifically requires a "general identification of the water supplies needed and available sources of water, including water resource development and water supply development projects, and water conservation measures *needed to meet the projected demand of the future land uses in the long-*

term master plan.” (Emphasis added). The data and analysis shows that current water supplies will not meet the projected demand and the WWSP does not identify the statutorily required water resource development, water supply development projects, and water conservation measures needed to meet the projected water demand.

17. The WWSP is inconsistent with section 163.3245(3)(a)6., Florida Statutes, which requires general principles and guidelines advancing efficient use of land and other resources. It fails to adequately address water resource issues by showing that projected demand will exceed available supplies without providing the requisite identification of alternative sources as required by statute.

18. The WWSP is inconsistent with section 163.3177(6)(a)2.d., Florida Statutes, because all comprehensive plan amendments must be based on requisite data and analysis regarding the availability of water supplies. The WWSP identifies that water supplies will be exceeded by demand but does not provide or identify any alternatives to meet the projected demand.

19. The WWSP is inconsistent with section 163.3177(6)(a)3.f., Florida Statutes, in that the WWSP does not include required criteria to ensure the protection of natural resources. It projects water demand to exceed availability and does not provide or identify any alternative sources or options to meet the projected demand.

20. The WWSP is inconsistent with section 163.3177(6)(c), Florida Statutes, because the WWSP does not indicate any way to provide for future potable water to meet its projected demand as required by statute.

21. The WWSP is also inconsistent with section 163.3245(3)(b)3., Florida Statutes, because DSAPs must include a detailed identification of water resource development and water

supply development projects, their related infrastructure, as well as water conservation measures to address water needs of the future DSAP development, all of which must be in compliance with the long-term master plan. The long-term master plan is inconsistent as stated above, rendering any future proposed DSAPs inconsistent as well with regards to water supply.

B. The WWSP Allows Development to Occur Inconsistent With the Long-Term Master Plan and Allows Development to Proceed Without the Approval of a Required DSAP

22. Policy 1-8.7.9 of the WWSP specifically provides:

Avalon Groves PUD...may develop and continue until adoption of a DSAP, which includes a portion of the PUD's legal description....Avalon Groves PUD shall be allowed to redistribute approved density and open space within the existing boundary of the PUD and such redistribution shall not require an amendment to the Comprehensive Growth Management Plan or be deemed to be a substantial amendment to the existing PUD; however, the approved minimum/maximum limitations of the PUD shall not be altered.

23. This policy allows the Avalon Groves PUD to proceed with development without the approval of a DSAP.

24. Furthermore, it allows the Avalon Groves PUD to proceed with development, whether or not it is consistent with the WWSP.

25. DEO objected to this Policy in its ORC Report as Objection No. 4.

26. Policy 1-8.7.9 fails to establish “meaningful and predictable standards for the use and development of land” or provide “orderly and balanced” guidelines for future development of the area, as required by section 163.3177(1), Florida Statutes, because it allows development within the WWSP inconsistent with its own provisions and inconsistent with the Future Land Use Map for the WWSP.

27. Policy 1-8.7.9 does not encourage “long-term planning” on a landscape scale as required by section 163.3245(1), Florida Statutes, because it allows development within the

WWSP inconsistent with its own provisions and inconsistent with the Future Land Use Map for the WWSP.

28. Policy 1-8.7.9 is inconsistent with section 163.3245(3), Florida Statutes, because it allows development to proceed without the approval of a DSAP. The implementation of the long-term master plan can only be accomplished through a DSAP and all development within sector plans, including the WWSP, must be in conjunction with an approved DSAP.

29. Policy 1-8.7.9 is inconsistent with section 163.3245(5)(a), Florida Statutes, because it allows development to proceed inconsistent with a DSAP. Section 163.3245(5)(a), Florida Statutes, specifically prohibits local governments from issuing permits, approvals, or extensions of any services for development that is not consistent with a DSAP. This Policy allows development outside the parameters of a DSAP and inconsistent with the long-term master plan itself, rendering it inconsistent on its face.

30. Policy 1-8.7.9 is also internally inconsistent with other Policies in the WWSP, including portions of Policy 1-8.7.1, which correctly states in part, “[c]onsistent with the state statute, development within the WWSP area shall be contingent upon the adoption of Detailed Specific Area Plans (DSAPs).”

C. The WWSP Allows Development Approvals to Proceed after Adoption of the Long-Term Master Plan but Prior to Approval of Any DSAP

31. Policy 1-8.7.1 provides,

All applications for development approvals (i.e. lot splits, conditional use permits, variances, etc.) on any property within the WWSP area shall be reviewed on a case-by-case basis for the effect of such development approval on adopted or potential DSAPs and compliance with the general principles of the Sector Plan.

32. This Policy allows development approvals prior to the adoption of a DSAP, which is inconsistent with section 163.3245, Florida Statutes, and is internally inconsistent with itself and other policies within the WWSP.

33. DEO objected to this policy in its ORC Report as Objection No. 14.

34. More particularly, Policy 1-8.7.1 is inconsistent with section 163.3245(5)(a), Florida Statutes, because it allows development to proceed inconsistent with a DSAP. Section 163.3245(5)(a), Florida Statutes, specifically prohibits local governments from issuing permits, approvals, or extensions of any services for development that is not consistent with a DSAP. This Policy allows development outside the parameters of a DSAP and inconsistent with the long-term master plan itself, rendering it inconsistent on its face

35. Policy 1-8.7.1 is internally inconsistent with itself, in that it states in the very first sentence: “[c]onsistent with the state statute, development within the WWSP area shall be contingent upon the adoption of Detailed Specific Area Plans (DSAPs).”

36. Policy 1-8.7.1 is also internally inconsistent with Policies 1-8.7.8, 1-8.7.9, and 1-8.7.10, which appear to allow development to continue without the adoption of DSAPs as required by section 163.3245(5)(a), Florida Statutes.

D. The WWSP Lacks Required Minimum Densities and Intensities

37. Policies 1-8.2.1.1 and 1-8.2.1.2 provide for minimum and maximum average densities, and minimum and maximum average floor area ratios (intensities).

38. DEO objected to these policies in its ORC Report as Objection No. 7.

39. These Policies are inconsistent with section 163.3245(3)(a)1., Florida Statutes, which requires a long-term master plan to include maps and text that “specifies maximum and minimum densities and intensities of use.” These Policies only provide for average minimums

and maximums, enabling development to occur below and above the average densities and intensities provided.

40. The Policies are inconsistent with section 163.3245(3)(a)6., Florida Statutes, because these average intensities and densities do not provide guidelines to address urban form and the interrelationship of future land uses. Through its use of averages, the WWSP enables development to occur without any true minimum or maximum guidelines for development and without establishing any plan for the interrelationship of future land uses because development can occur at any level.

41. The Policies are inconsistent with section 163.3245(1), Florida Statutes, because the average minimum/maximum densities and intensities do not encourage long-term planning on a landscape scale as required by statute. As stated previously, the averages allow for development to occur at any level and without guidance.

42. The Policies are inconsistent with section 163.3177(1), Florida Statutes, because the average minimum/maximum densities and intensities do not establish meaningful and predictable standards for the use and development of land nor do they provide orderly and balanced guidelines for future development for the previously stated reasons.

43. The Policies are inconsistent with section 163.3177(6)(a)1., Florida Statutes, because average minimum/maximum densities and intensities are not adequate standards to follow for control and distribution of population densities and building/structure intensities throughout the entirety of a 15,000 plus acre long-term plan of development.

E. The WWSP Does Not Contain an Adopted Framework Map and Does Not Address Issues Regarding a Hierarchy of Place

44. At adoption, the County included a Framework Map in its adoption package. However, the Framework Map was not a part of the actual adoption ordinance.

45. At adoption, the County also included a single graphical representation of a “hierarchy of place” which was intended to depict the planned placement of uses, open space, and other development ideals for the WWSP. However, the depiction of the “hierarchy of place” lacks any definitions or linkages to any Policies within the WWSP or to the Framework Map itself.

46. Furthermore, to the extent the Framework Map was adopted, it is internally inconsistent with the adopted Future Land Use Map. The Future Land Use Map shows intense urban uses in portions where the Framework Map depicts rural and conservation uses.

47. DEO raised these objections in its ORC Report as Objection No. 5.

48. The WWSP is inconsistent with section 163.3245(1), Florida Statutes, because it does not encourage long-term planning for development on a landscape scale. The “hierarchy of place” fails to explain how it is integrated into the Framework Map or to the WWSP Policies, how it establishes uses or their placement within the WWSP, or how it plans for transportation, open space, and other development considerations.

49. The WWSP is inconsistent with section 163.3245(3)(a)1., Florida Statutes, because it is a statutory requirement to adopt a Framework Map, which the County failed to do.

50. To the extent the Framework Map was adopted, the WWSP is still inconsistent with sections 163.3245(1) and 163.3245(3)(a)1., Florida Statutes, because it does not provide the general framework for the development pattern in developed areas based on a “hierarchy of place and function place-making components.” The depiction of the “hierarchy of place” fails to depict in any way how it is to be used in conjunction with Framework Map, where the functional place-making components are within the WWSP or the Framework Map itself, or how it is to be utilized within the WWSP Policies, all of which are failures to encourage long-term planning for development on a landscape scale.

51. The WWSP is inconsistent with section 163.3177(1), Florida Statutes, because it fails to establish meaningful and predictable standards for the use and development of land and does not provide orderly and balanced guidelines for future development of the area. The Framework Map and the “hierarchy of place,” when examined within the parameters of the WWSP, does not provide any guidelines or standards for development within the WWSP.

52. To the extent that the Framework Map was adopted, the WWSP is also internally inconsistent, because the Framework Map and the Future Land Use Map depict different uses for the same portions of property.

F. Lack of Predictable Guidelines for Open Space

53. Policy 1-8.2.5 relates to Open Space within the WWSP. It provides that, “[t]he WWSP will preserve a significant amount of land area in the form of open space and natural protected areas.”

54. Furthermore, the Framework Map, to the extent it was adopted, identified Wellness Corridor networks as a representation of a future major road network. However, Wellness Corridors are defined in Policy 1-8.2.4 as a series of integrated trail and pedestrian facilities that may contain certain elements such as community farms and gardens, water bodies, trails, pedestrian ways and bikeways, and passive use recreation facilities.

55. Policy 1-8.7.12 was added on adoption and concerns property owned by Orange County and the City of Orlando known as Conserv II. Conserv II is a regional treated wastewater reuse and groundwater infiltration facility. Policy 1-8.7.12 states that to the extent that parts of the Conserv II property is later deemed unnecessary for reuse and infiltration purposes, the City of Orlando and Orange County may request inclusion into a DSAP and that such “land uses within

DSAPs may be blended for residential, nonresidential or open space uses throughout DSAP regardless of designation.”

56. The Framework Map, to the extent it was adopted into the WWSP, conflicts with the Future Land Use Map with respect to portions of the Conserv II property where land uses appear as Rural on the Framework Map and Urban on the Future Land Use Map.

57. DEO objected to these policies (with the exception of Policy 1-8.7.12 which was added to the WWSP after issuance of the ORC Report) in the ORC Report Objection as No 10.

58. The Policies and the Framework Map are inconsistent with section 163.3177(1), Florida Statutes, because the WWSP does not establish meaningful and predictable standards for open space in that there is no way to determine what a “significant amount of land area” is nor does it provide a method to identify lands that are to be utilized for open space. Furthermore, by allowing land uses within DSAPs to be blended for residential, nonresidential, or open space uses throughout a DSAP regardless of designation, the WWSP fails to create meaningful and predictable standards and guidelines as it relates to the location or amount of open space within any DSAP.

59. The Policies and the Framework Map are inconsistent with section 163.3177(6)(a)2., Florida Statutes, because the WWSP does not include Policies with respect to open space that are based on requisite studies and data on the character of undeveloped land.

60. The Policies and Framework Map are inconsistent with section 163.3177(6)(e), Florida Statutes, because the WWSP does not include Policies for an open space system or a comprehensive system of public and private sites for recreation, including but not limited to natural reservations, parks and playgrounds, parkways, open spaces, waterways, and other recreational

facilities. The Framework Map, despite the definition of Wellness Corridors in its Policies, instead identifies Wellness Corridors as a major roadway transportation network.

61. Furthermore, the WWSP is inconsistent with section 163.3177(6)(e), Florida Statutes, because the Policies regarding open space do not provide a definite way to determine the placement or amount of open space within any particular portion of the WWSP, including within DSAPs.

62. Policy 1-8.7.12 is also inconsistent with section 163.3177(6)(e), Florida Statutes, because it allows land uses to be blended for residential, nonresidential, or open space throughout a DSAP that encompasses the Conserv II property, regardless of the underlying land use designation. This does not provide for a definite way to determine the placement or amount of open space within that, or any, portion of the WWSP.

63. The identified Policies and Framework Map are inconsistent with section 163.3245(1), Florida Statutes, because they do not encourage “long-term planning” for development on a landscape scale based on the inability to determine the amount or placement of open space within the WWSP, the inconsistencies between the Framework Map, the Future Land Use Map, and the other identified Policies.

64. The Policies and Framework Map are further internally inconsistent in that: a) the Framework Map identifies Wellness Corridors as a future major road network despite the definition of Wellness Corridors in the WWSP Policies, and b) the Framework Map depicts the Conserv II property as Rural in character while portions of the Future Land Use Map depict Conserv II as Urban in character.

G. Lack of Mobility and Transportation Requirements

65. Policies 1-8.3.2, 1-8.3.3, 1-8.3.6, and 1-8.3.8 all relate to transit and other forms of mobility and transportation. They attempt to address a multi-modal approach to each factor within the WWSP. However, the policies defer any provision of transit to eventual “Job Hubs” at an indeterminate later date.

66. Policies 1-8.2.1.1 and 1-8.2.1.2 provide for average minimum/maximum densities and intensities. The minimum average densities and intensities are insufficient to support multi-modal transportation as required by Florida Statutes.

67. Furthermore, the proposed average minimum/maximum densities and intensities are not directed toward any pattern of development, do not optimize mobility, nor propose quality communities of a design that promotes travel by multiple transportation modes as required by Florida Statutes.

68. DEO objected to these Policies in its ORC Report as Objection No. 11.

69. The above referenced Policies are inconsistent with section 163.3245(1), Florida Statutes, because they do not encourage long-term planning on a landscape scale and they do not direct growth or multi-modal transportation in a predictable manner.

70. The Policies are inconsistent with section 163.3245(3)(a)3., Florida Statutes, because they do not generally identify transportation facilities to serve the future land uses in the long-term master plan, nor do they include guidelines to mitigate the impacts of future land uses on public facilities. In fact, the policies fail to identify any transportation facilities beyond road networks and give no guidelines to mitigate impacts on transportation.

71. The Policies are inconsistent with section 163.3245(3)(a)6., Florida Statutes, because they do not contain principles and guidelines that address urban form, limit urban sprawl,

or create quality communities of a design that promotes travel by multiple transportation modes. The average minimum densities and intensities allowed within the WWSP are not sufficient to support multi-modal transportation.

72. The Policies are inconsistent with section 163.3177(6)(b)1.d., Florida Statutes, because they fail to provide a plan for a multi-modal transportation system that places emphasis on public transportation systems, where feasible, and do not project a transportation level of service consistent with the Future Land Use Map or any projected integrated transportation system. The current minimum average densities and intensities, and the Policies governing transportation, are not an integrated system and do not emphasize any feasible public transportation system. Furthermore, they do not provide for densities and intensities that would support pedestrian or bicycle transportation, or any other service that would support the required multi-modal system.

73. The Policies are further inconsistent with section 163.3177(6)(b)2.a., Florida Statutes, because they do not address all alternative modes of travel, such as public transportation, pedestrian, and bicycle travel. The current average minimum densities and intensities projected do not support a multi-modal transportation system.

H. Mix of Uses and Urban Form

74. Policy 1-8.2.2 states that the “WWSP is envisioned as a mixed-use area.”

75. Policy 1-8.7.3.B indicates that “multiple job hubs within a DSAP are permitted.”

76. However, each Policy lacks the requisite standards and guidelines required to guide mixed-use development.

77. Furthermore, the “hierarchy of place” diagram, the Framework Map, and the Future Land Use Map fail to adequately address the function, placement, and standards for development within a DSAP, as further raised elsewhere in this Petition.

78. DEO objected to these issues in its ORC Report in Objections Nos. 9 and 13.

79. The WWSP is inconsistent with section 163.3245(3)(a)6., Florida Statutes, because it fails to adequately provide for general principles and guidelines addressing the urban form and the interrelationships of future land uses. The “hierarchy of places,” the Framework Map, the Future Land Use Map, and Policies 1-8.2.2 and 1-8.7.3.B fail to explain the interplay between residential, open space, commercial, and other land uses either generally within the WWSP or within specific DSAPs. Furthermore, the lack of minimum/maximum densities and intensities, as previously raised, further fails to provide any guidance with respect to the mix of uses or urban form required for the WWSP.

80. The WWSP is inconsistent with section 163.3245(3)(a)1., Florida Statutes, because it fails to provide a framework for any development pattern based on the lack of adequate graphic illustrations showing a hierarchy of places along with functional place-making components. The ability to develop at any density or intensity without any hierarchical guidance for development priorities, the lack of standards for open space, the lack of guidance relating to the interplay of uses, and the lack of guidance to implement and integrate the “hierarchy of place” into the WWSP all fail to provide any the statutorily required framework.

81. The WWSP is inconsistent with section 163.3177(1), Florida Statutes, because it fails to provide for meaningful and predictable standards for uses. The inconsistencies between the Framework Map and the Future Land Use Map, the lack of required minimum and maximum densities and intensities, the lack of specific standards for the placement or amount of open space, the failure to adequately integrate the “hierarchy of places” within the Framework Map or the WWSP, the failure to provide for any relevant definitions or standards to guide the mix of uses within the WWSP, the internal inconsistencies between the definition of Wellness Corridors and

the demarcated Wellness Corridors on the Framework Map, and the failure of the Framework Map to set forth any relevant development patterns under the relevant Future Land Use categories all show the lack of meaningful and predictable standards inherent within the WWSP.

82. The WWSP is inconsistent with section 163.3177(6)(a)3.h., Florida Statutes, because it fails to provide adequate guidelines for the implementation of mixed-use development, including the types of uses allowed, the percentage distribution among the mix of uses, or other standards, including the density and intensity of each use. Each of the examples raised above indicates the failure to provide such guidelines.

III. CONCLUSION

82. DEO has determined that the Sector Plan may be brought into compliance by accomplishing the “recommended remedial actions” described in the Statement of Intent or by completing other remedial actions that eliminate the inconsistencies.

WHEREFORE, the Department of Economic Opportunity respectfully requests:

(a) that an Administrative Law Judge be assigned to this matter and assume jurisdiction pursuant to section 163.3184(5), Florida Statutes;

(b) that a formal hearing be conducted pursuant to sections 120.569, 120.57, and 163.3184, Florida Statutes;

(c) that the Administrative Law Judge issue a Recommended Order to the Administration Commission finding the WWSP to be not “in compliance;”

(d) that the Administration Commission enter a Final Order finding the WWSP to be not “in compliance” and specifying remedial actions that would bring the WWSP into compliance;

(e) that the Administration Commission specify those sanctions which may be imposed as a result of the finding of not “in compliance” if the local government fails to undertake appropriate remedial actions; and

(f) that such other relief consistent with this Petition be granted as may be fair and just.

Respectfully submitted this 18th day of September, 2015.

/S/ Aaron C. Dunlap

Aaron C. Dunlap

Assistant General Counsel

Florida Bar No. 40946

Department of Economic Opportunity

107 East Madison Street, MSC 110

Tallahassee, FL 32399-4128

Telephone: 850-245-7150

Email: Aaron.Dunlap@deo.myflorida.com

DEO.Eservice@deo.myflorida.com

CERTIFICATE OF SERVICE

I certify that I have served a true and correct copy of this filing to the individuals in the manner indicated below, this 18th day of September, 2015.

/S/ Aaron C. Dunlap
Aaron C. Dunlap
Assistant General Counsel

By Certified US Mail and EMail

Sanford A Minkoff, County Attorney Erin Hartigan, Assistant County Attorney SMinkoff@lakecountyfl.gov ehartigan@lakecountyfl.gov Lake County 315 West Main St. Tavares, FL 32778	