STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BEVERLY STEELE AND DAVID M. CARUTHERS,

Petitioners,

vs. Case No. 22-3416GM

SUMTER COUNTY, FLORIDA,

Respondent.
_____/

RECOMMENDED ORDER

A duly noticed final hearing was held in this case on March 30, 2023, in Wildwood, Florida, before the Honorable Suzanne Van Wyk, an Administrative Law Judge assigned by the Division of Administrative Hearings ("Division").

APPEARANCES

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STATEMENT OF THE ISSUE

Whether Sumter County ("the County") comprehensive plan amendment 22-04ESR ("Plan Amendment") is "in compliance," as that term is defined in section 163.3184, Florida Statutes.[1]

PRELIMINARY STATEMENT

On October 11, 2022, the County adopted the Plan Amendment to the Sumter County Comprehensive Plan ("Comprehensive Plan") to redesignate 157 acres from "Agriculture" to "Urban Residential" on the Future Land Use Map ("FLUM").

On November 7, 2022, Petitioners, Beverly Steele and David Caruthers, filed a Petition for Formal Administrative Hearing ("Petition") with the Division, which was assigned to the undersigned, and the final hearing was scheduled for March 30 and 31, 2023, in Wildwood, Florida.

On November 28, 2023, the County moved to dismiss the Petition, alleging that neither Petitioner had standing to bring the instant challenge.

The final hearing began as scheduled on March 30, 2023, and concluded the same day. The undersigned took up the Motion to Dismiss, which was denied. However, the undersigned directed the parties to address the standing arguments in the proposed recommended orders because standing is an issue subject to proof at the final hearing.

The parties' Joint Exhibits 1 through 12 were admitted in evidence. Petitioners testified on their own behalf and offered the testimony of Ennis Davis, who was accepted as an expert in historical and cultural resources and

[1] All references to the Florida Statutes herein are to the 2022 version, which was in effect when the Plan Amendment was adopted.

community planning; and Daryl Max Forgey, who was accepted as an expert in community and land use planning. Petitioners' Exhibits 1, 2, 4, 5, and excerpts from 6 were admitted in evidence. Petitioners also introduced Joint Exhibits 2.a. and 11.a., which were admitted in evidence.

The County offered the testimony of the property owner, Sammie Albritton; Planning Consultant Ryan Solstice; County Administrator Bradley Arnold; and County Planners Sue Farnsworth and Patricia Burgos, who were accepted as experts in urban and regional planning, and land use planning, respectively. The County's Exhibit 4 was admitted in evidence. The County also introduced Joint Exhibit 11.b., which was admitted in evidence.

The proceedings were recorded. On April 7, 2023, the parties requested an extension to file proposed recommended orders 15 days after the transcript was filed, which was granted. The Transcript was filed with the Division on May 4, 2023. The County timely filed a Proposed Recommended Order, which has been considered by the undersigned in preparation of this Recommended Order. Petitioners filed a Proposed Recommended Order on May 22, 2023, which has not been considered by the undersigned because it was filed past the extended deadline.

FINDINGS OF FACT

The Parties

1. Petitioner, David Caruthers, is a resident of the County who objected to the Plan Amendment in writing and in person at the adoption hearing held on October 11, 2022.

2. Petitioner, Beverly Steele, is a resident of the County who objected to the Plan Amendment in writing and in person at the adoption hearing on October 11, 2022, on her own behalf and as a representative of the historic Royal Community.

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

The Subject Property and Surrounding Uses

4. The property subject to the Plan Amendment ("Subject Property") is 157 acres located around one-half mile east of Interstate 75 ("I-75") interchange with Florida's Turnpike, accessed via County Road 229 ("CR 229").

5. The Subject Property contains two parcels, the smaller of which, around 40 acres, is owned by Sammie Albritton, who acquired it around 20 years ago. The largest parcel, around 117 acres, is owned by Gattis, Inc., of which Mr. Albritton is a shareholder. The Gattis property was acquired from Henry Gattis in 1917.

6. The Subject Property is designated "Agriculture" and is used for agricultural production of perennial peanut hay as cattle feed.

7. The Subject Property is surrounded by property designated Agriculture on all sides, except for Rural Residential at the northwest corner, and a Commercial parcel on the southwest developed as a recreational vehicle ("RV") park.

8. The Subject Property is bounded by CR 229 on the west and Northeast 90th Avenue on the north.

9. CR 229 is a collector roadway, currently described as a "substandard two-lane," which the County is improving to a "standard two-lane" road. Improvements to CR 229 include right-of-way acquisition to expand the road between its intersection with State Road 44, an arterial roadway south of the Subject Property, to County Road 462, a major collector well north of the Subject Property. Improvements also include installation of traffic signals at the intersection of CR 229 with State Road 44 south of the Subject Property.

10. The Subject Property is located within the County's Urban Development Area ("UDA"), which, according to the Comprehensive Plan,

"encompasses those lands that are or expected to become urban through 2045 … and those lands appropriate for urbanization and are able to be served or planned to be served by appropriate public infrastructure."[2]

11. The Urban Residential land use category may be located only in the UDA.

12. The Comprehensive Plan limits the designation of land within the UDA for Agriculture where it:

> i. serves as a holding area in anticipation of future annexation consistent with the MSAs approved between the County and the cities of Bushnell, Center Hill, Coleman, Webster, and Wildwood;
>
> ii. if it [sic] is within the jurisdiction of the cities; or
>
> iii. is held under a perpetual conservation easement, or similar legal instrument, dedicated to a public agency for resource conservation purposes while allowing for continued agricultural use.

13. The Subject Property is appropriate for an Agriculture designation in the UDA because it is located within the designated City of Wildwood ("City") Municipal Service Area ("MSA").

14. The Property is also located within a County-designated Primary Economic Activity Center ("PEAC"), which, according the Comprehensive Plan, is an area where "future commercial and industrial growth will be promoted and supported." The Comprehensive Plan further describes these centers as "located near major transportation facilities" and "close to relative [sic] large population base." The plan provides that the centers are "focused on large scale employment concentrations" to serve "regional and larger area needs."

15. County Administrator Bradly Scott Arnold testified that the property in this area has been targeted for industrial, commercial, and residential

[2] Sumter County Comprehensive Plan, Future Land Use Element Policy 1.3.4.

development "for many years" due to its location in the PEAC. Mr. Arnold testified that the County recently recruited a new agribusiness—a commercial greenhouse—north of the Subject Property.

16. There was some debate at the final hearing about whether the Subject Property is served, or planned to be served, by public infrastructure, specifically water and sewer.

17. The County does not provide water and sewer services. Instead, it contracts with the municipalities in the County, through interlocal agreements, to provide those services within the County UDA by designation of MSAs.

18. The City MSA extends from I-75 west to the municipal boundary of the City.

19. Although no map of the City MSA was introduced in evidence, competent, substantial evidence supports a finding that the Subject Property is located within the City MSA, which means the City is responsible for providing municipal services, including water and sewer, to properties within that area.

20. The location of the nearest City water and sewer service lines are at the intersection of I-75 and CR 229, with pump stations located all the way to the City boundary along SR 44. Additionally, during the County's CR 229 right-of-way acquisition project, the City upsized the water and sewer lines to increase its capacity to serve properties west of I-75, including the Subject Property, and property north of the Subject Property currently being developed for a commercial nursery operation.

Historic Community of Royal

21. An organization known as Digital Heritage Interactive, LLC, has applied to the U.S. Department of the Interior to have the Royal Rural Historic District ("the District" or "Royal"), comprised of some 2,732 acres in the County, designated as an historic resource and listed on the National

Register of Historic Places. The Subject Property is included in the area sought for designation.

22. Petitioner, Beverly Steele, runs a nonprofit program known as "Young Performing Artists" in the County, which has been central in her quest to document the history of Royal. Her efforts paid off in April 2022 when the Florida Department of State ("DOS"), Division of Historical Resources, found that the Community of Royal Historic District was eligible for listing in the National Register for Historic Places.

23. The boundaries of the District designated by DOS do not include the Subject Property.

24. Henry Gattis, an African American man, received a land grant of 160 acres from the United States government in 1885. Mr. Albritton's family acquired the Subject Property from the Gattis family.

25. The U.S. Department of the Interior has not yet recognized the District or included it on the National Register of Historic Places.

26. The Royal cemetery is located directly across CR 229 from the Subject Property at the northwest corner. The cemetery is included on the National Register of Historic Resources and is recognized as a contributing resource to the District.

27. The County submitted the Plan Amendment to DOS for review during the plan amendment review process, under section 163.3184(3). On August 23, 2022, DOS provided these comments to the County:

> We would like to note that, according to the Florida Master Site File (FMSF), the proposed amendment area is located adjacent to the Community of Royal Historic District (8SM1343), which in April 2022, the Division of Historical Resources found to be eligible for listing in the National Register for Historic Places (NRHP). In particular, we note that the project area is adjacent to a historic cemetery, Royal Cemetery (8SM84), which is a contributing resource to 8SM1343. It is the recommendation of this office that any future development plans

> should be sensitive to avoiding potential or direct or indirect adverse impacts to any resources.

28. Ennis Davis, Petitioners' expert in historical and cultural resource and community planning, testified that to protect the historic resource, the County should evaluate development that could be accomplished under the existing Agriculture designation consistent with the agricultural homesteading history of the area. He agreed that designation of property as a historic resource does not preclude all development of the property.

29. In Mr. Davis's opinion, tripling the allowable density of development on the Subject Property does not protect the historic resource.

30. If the Subject Property remained in Agriculture, it could be developed, under the Comprehensive Plan, for various uses including borrow pits, private airports, and mining.[3]

The Plan Amendment

31. The Plan Amendment changes the FLUM classification on the Subject Property from Agriculture to Urban Residential. The density of development allowed under Agriculture is one dwelling unit per five acres ("1du/5 acres"). The density allowable under Urban Residential is 6du/acre.[4] Under the new designation, 942 residential units could be developed on the Subject Property.[5]

Petitioners' Challenges

32. Petitioners allege the Plan Amendment is not "in compliance," specifically contending that it: (1) fails to discourage the proliferation of urban sprawl, as required by section 163.3177(6)(a)9.; (2) is not based on

[3] Future Land Use Policy 1.2.4, Sumter County Comprehensive Plan (July 2022).

[4] In a concurrent rezoning application, the applicant is seeking a density of 3du/acre, rather than the maximum. However, the Plan Amendment must be evaluated based on the highest density allowed unless the Plan Amendment itself incorporates a lower density.

[5] Provided all applicable zoning, subdivision, and development order regulations could be met.

relevant and appropriate data, as required by section 163.3177(1)(f); and (3) creates internal inconsistencies with certain existing Comprehensive Plan goals, objectives, and policies, in contravention of section 163.3177(2).

(1) Urban Sprawl

33. Petitioners allege that the Plan Amendment fails to discourage the proliferation of urban sprawl, contrary to section 163.3177(6)(a)9.

34. The statute lists 13 "primary indicators" that a plan amendment does not discourage the proliferation of urban sprawl:

> (I) Promotes, allows, or designates for development substantial areas of the jurisdiction to develop as low-intensity, low-density, or single-use development or uses.
>
> (II) Promotes, allows, or designates significant amounts of urban development to occur in rural areas at substantial distances from existing urban areas while not using undeveloped lands that are available and suitable for development.
>
> (III) Promotes, allows, or designates urban development in radial, strip, isolated, or ribbon patterns generally emanating from existing urban developments.
>
> (IV) Fails to adequately protect and conserve natural resources, such as wetlands, floodplains, native vegetation, environmentally sensitive areas, natural groundwater aquifer recharge areas, lakes, rivers, shorelines, beaches, bays, estuarine systems, and other significant natural systems.
>
> (V) Fails to adequately protect adjacent agricultural areas and activities, including silviculture, active agricultural and silvicultural activities, passive agricultural activities, and dormant, unique, and prime farmlands and soils.
>
> (VI) Fails to maximize use of existing public facilities and services.

> (VII) Fails to maximize use of future public facilities and services.
>
> (VIII) Allows for land use patterns or timing which disproportionately increase the cost in time, money, and energy of providing and maintaining facilities and services, including roads, potable water, sanitary sewer, stormwater management, law enforcement, education, health care, fire and emergency response, and general government.
>
> (IX) Fails to provide a clear separation between rural and urban uses.
>
> (X) Discourages or inhibits infill development or the redevelopment of existing neighborhoods and communities.
>
> (XI) Fails to encourage a functional mix of uses.
>
> (XII) Results in poor accessibility among linked or related land uses.
>
> (XIII) Results in the loss of significant amounts of functional open space.

35. Indicator I is not met. Although the Plan Amendment authorizes a single-use development on the Subject Property, it is not a "substantial area" of the County.

36. Indicator II is not met. Petitioners' planning expert testified that the Subject Property is located "a substantial distance" from existing urban areas, but did not identify said existing urban areas or indicate the actual distance from them. The Subject Property is in the UDA, is designated a PEAC, and is within a half-mile of the interchange of I-75 and the Florida Turnpike. Although the Subject Property is next to other property designated Agriculture on the north and east, it is also next to property designated for Commercial on the south and Rural Residential to the northwest. Furthermore, properties along CR 229 from its intersection with SR 44 are

developed, and developing, with more urban and suburban uses, such as a Holiday Inn, a Dunkin' Donuts, and the RV park immediately next to the Subject Property on the south.

37. Indicator III does not apply because the Plan Amendment is not part of a radial, strip, isolated, or ribbon development pattern. The proposed residential use is not isolated because it is next to rural residential development on the northwest corner and an RV park development to the south.

38. Petitioners contend that indicator IV is met because two areas on site are located within the 100-year floodplain, and the development plan submitted with the concurrent rezoning application does not cluster proposed development outside the floodplain. However, only the Plan Amendment, not the rezoning application, is the subject of this challenge. The ultimate development plan is not at issue in this proceeding. Clustering and other development regulations may be applied at the time of site plan approval. If Petitioners wish to challenge the site plan, they may do so in an appropriate forum. Indicator IV is not met.

39. Indicator V is not met. The Plan Amendment does not prohibit continued agricultural use of adjacent properties. Petitioners' planning expert faults the County for not analyzing the soil of the Subject Property or whether it constitutes "prime farmland." Even if the County failed to do so, that fact does not prove that the Plan Amendment "fails to adequately protect … dormant, unique, and prime farmlands and soils." Petitioners have the burden to prove that the farmland or soils were dormant, unique, or prime, and that the Plan Amendment fails to adequately protect them.

40. Petitioners contend that indicators VI and VII are met because (1) there are no public facilities either on site or on surrounding properties to serve the proposed development; and (2) the staff report mentions the City as a service provider, but does not identify when those services will be available to serve the Subject Property. To the contrary, the evidence established that

the City has recently increased the size of the water and sewer lines on CR 229 next to the property, and both intends, and has capacity, to serve the Subject Property. Indicators VI and VII are not met.

41. Petitioners' expert testified that the Plan Amendment meets criteria VIII because the County does not have urban levels of service to support the development proposed for the Subject Property. The County's expert planner, Patricia Burgos, testified that fire service is located within a mile of the Subject Property. The staff analysis shows that the County schools have capacity to serve the estimated 175 new students generated by the proposed development. Indicator VIII is not met.

42. Indicator IX is not met. The Plan Amendment is proposed within the UDA, an area planned for urban and suburban development, and the Subject Property is proximate to both suburban residential and rural residential developments, as well as suburban uses, such as a hotel, a fast-food restaurant, and an RV park. The UDA itself functions as a separation between urban and rural uses, and the Plan Amendment proposes urban residential within the UDA.

43. The Plan Amendment does not discourage or inhibit infill development or the redevelopment of existing neighborhoods. Indicator X is not met.

44. Petitioners' expert contends the Plan Amendment fails to encourage a functional mix of uses (indicator XI) because it will be a single use residential development. Yet he admitted there is a mix of uses near the subject property, including commercial and industrial. Further, a residential development may provide housing for employees of newer agribusinesses in the area, which promotes a functional mix of uses. Indicator XI is not met.

45. Likewise, Petitioners contend that the Plan Amendment results in poor accessibility among linked or related land uses. Petitioners' arguments here are inconsistent: to support their argument that indicator XI is met, they claim that residential in not functionally-related to the agricultural, industrial, and commercial uses in the area; then, in support of indicator XII,

they claim the Plan Amendment results in poor accessibility among linked or related land uses. Petitioners cannot have it both ways. Mr. Forgey's testimony focused on the anticipated traffic impacts from the Plan Amendment on the nearby low-density rural development of Royal. He did not identify which land uses were related or linked. His argument does not support a finding that the Plan Amendment would detrimentally affect accessibility among linked or related land uses. Indicator XII is not met.

46. Finally, Petitioners contend the Plan Amendment results in a loss of significant amounts of functional open space, meeting indicator XIII. Expert witnesses for both sides provided limited, conclusory testimony on this issue. Mr. Forgey testified that the Plan Amendment will result in the complete loss of 157 acres of open space. Ms. Burgos testified that it is not a loss of significant open space, because open space, in the form of ponds and walking trails, are incorporated into the site plan for the residential development. Neither testimony was particularly persuasive. The evidence did not establish that indicator XIII was met.

47. The evidence supports a finding that the Plan Amendment does not meet any of the indicators that it fails to discourage the proliferation of urban sprawl.

(2) Data and Analysis

48. Petitioners contend the Plan Amendment is not supported by an analysis of the suitability of the site for residential use, including the character of the undeveloped land, soils, and natural and historic resources; and does not react appropriately to relevant, appropriate data and analysis.

49. The application for the Plan Amendment provides a transportation impact analysis, an analysis of potable water and sanitary sewer, a wastewater analysis, a school impact analysis, an analysis of the surrounding uses and densities, a residential needs analysis, and an environmental impact analysis.

50. The staff report prepared by County Planners Patricia Burgos and Sue Farnsworth analyzes the surrounding land uses, an analysis of consistency with specific policies of the Comprehensive Plan, as well as an urban sprawl analysis. Ms. Burgos also reviewed the County's Geographic Information System (GIS) interactive map of the Subject Property and visited the Subject Property.

51. Ms. Burgos considered the location of the Subject Property within the UDA and PEAC, and was aware of development in the vicinity of the Subject Property.

52. As to natural resources on site, Petitioners focus on an area of the Subject Property which Mr. Forgey first testified were "significant wetlands." Yet on cross-examination, Mr. Forgey admitted there were no wetlands on the Subject Property.

53. The applicant for the Plan Amendment submitted an environmental impact analysis with the application.[6] The application states that the analysis "indicate[s] there are no issues of concern … [and] did not indicate the presence of any protected species."

54. Further, the County received analyses of the Plan Amendment from both the Department of Environmental Protection ("DEP") and Southwest Florida Water Management District ("the WMD").

55. DEP conducted a "detailed review that focused on potential adverse impacts to important state resources and facilities, specifically … wetlands and other surface waters of the state … greenways and trails, [and] conservation easements[.]" DEP found "no provision that, if adopted, would result in adverse impacts to important state resources subject to the Department's jurisdiction."

56. The Subject Property does contain two areas within the 100-year floodplain. On that basis, the WMD commented that "[e]ncroachments [into

[6] The environmental impact analysis was noted as an Appendix to the application, but the appendix was not introduced in evidence.

the floodplain] should be avoided or minimized. The use of low-impact development (LID) principles could help accomplish this."

57. Petitioners' concern over the floodplain is directed at the conceptual site plan for the Subject Property submitted with the concurrent rezoning application. The conceptual lot layout encroaches on the floodplain areas, contrary to the direction of the WMD. But the scope of the instant proceeding is limited to the Plan Amendment, not the concurrent rezoning. If Petitioners wish to challenge the rezoning application, they may do so in an appropriate forum.

58. On the issue of historic resources, Petitioners focus on the location of the Subject Property in the District, arguing that the Plan Amendment fails to protect the District by converting property used for agricultural purposes—consistent with the history of the area as an African American land grant community dating back to emancipation and the Homestead Act of 1862—to suburban residential. Petitioners' expert testified that the conversion erodes the historic significance as a rural historic district.

59. However, the Subject Property is not within the District recognized by DOS. In its review of the Plan Amendment, DOS noted that "the proposed amendment area is located adjacent to the Community of Royal Historic District [and] … adjacent to … Royal Cemetery, which is a contributing resource to [the historic district]." DOS recommends that "any future development plans should be sensitive to avoiding potential direct or indirect adverse impacts to any resources."

60. DOS's comments relate to future development of the Subject Property, not the Plan Amendment itself. Petitioners point out that the main entrance to the development depicted on the conceptual site plan is directly across the street from the Royal Cemetery, which will adversely affect the cemetery with increased traffic and other urban impacts. That objection is, again, directed to the conceptual site plan, rather than the generalized Plan Amendment. DOS's direction to "be sensitive to" the cemetery as a

contributing resource to the district is limited to "future development plans." Perhaps locating the subdivision entrance further south along CR 229 is a method by which the County could demonstrative "sensitivity" to the cemetery as a contributing resource. But that issue is not the subject of Plan Amendment approval.

61. Finally, Petitioners complain that the County did not analyze data regarding the soils of the Subject Property. Petitioners are correct that the record contains no data or analysis of the soils present on the Subject Property and their suitability for residential use. Yet Petitioners, who carry the burden of proof, did not introduce any evidence on soil data and whether the soils were unsuitable for the proposed use.

(3) Internal Inconsistencies

62. Petitioners contend the Plan Amendment is inconsistent with Comprehensive Plan Policies 1.3.6 and 1.3.7, which read, as follows:

> Policy 1.3.6. Protection of Rural Areas
>
> Rural and agricultural areas shall be protected from premature urbanization by managing the UDA restrictions. Areas shall be provided outside this UDA where agriculture and rural land uses can coexist and flourish without mandating the preservation of agriculture through government regulations.
>
> a. Urban and suburban uses incompatible with agricultural uses shall be directed toward areas appropriate for urban development as within the UDA, MSAs, and Economic Activity Centers;
>
> b. Small-scale agribusinesses (neighborhood commercial and industrial) shall be encouraged within rural and agricultural areas where there is direct access to a collector or arterial road. The agribusiness must directly support the surrounding agricultural uses; and

> c. Home occupations and cottage industries that complement the rural character of the agricultural area and promote self-sufficiency shall be encouraged when compatible with surrounding land uses.
>
> Policy 1.3.7 Conversion of Agricultural Lands
>
> Conversion of agricultural lands to a mixed-use, industrial, commercial, or residential future land use category shall demonstrate the following:
>
> a. The amendment will not result in urban sprawl as defined in Chapter 163, Part II, Florida Statutes;
>
> b. Availability of public infrastructure, including centralized water and sewer, to serve more dense or intense use, [sic] or will be available at the time of development and is secured under a Developer's Agreement;
>
> c. The proposed use will complement the rural qualities of the community by supporting a diverse and efficient resource-based economy; and
>
> d. The relationship of the proposed amendment site to the UDA boundary and other more densely or intensely designated or developed lands.

63. Policy 1.3.6 relies on the UDA restrictions to protect agricultural areas from premature urbanization. The policy directs urban and suburban uses "incompatible with agriculture" to areas within the UDA, MSAs, and PEACs. The Subject Property is located within all of these designated urban areas and is appropriate for development within the UDA. The rest of the policy relates to agribusiness, home occupations, and cottage industries, which are inapplicable to the Plan Amendment.

64. Policy 1.3.7 provides that conversion of agricultural lands to residential is appropriate when four conditions are met: 1) it does not result in urban sprawl; 2) public infrastructure will be available at the time of

development; 3) the use will complement the rural qualities of community by supporting a diverse and efficient resource-based economy; and 4) the relationship between the site and the UDA boundary is demonstrated.

65. The Plan Amendment meets the first criteria because it will not result in urban sprawl.

66. The Plan Amendment also meets the second criteria. Although the Plan Amendment is not subject to a Developer's Agreement, there is sufficient evidence to determine that the Subject Property will be served by centralized water and sewer at the time of development, thus meeting the second criteria. There was insufficient evidence to determine that a Developer's Agreement would be necessary to extend water and sewer services to the Subject Property or otherwise subsidize the City's provision of those services to the Subject Property.

67. County staff testified, credibly, that the location of housing on the Subject Property would complement the new agribusiness in the area and provide potential housing for the expected 100 employees of the recently-approved agribusiness to the north. The Plan Amendment meets the third criteria.

68. The Subject Property is located within the UDA, where properties are expected to become more urban and interlocal agreements are in place to provide urban utilities to serve those properties. The Plan Amendment meets the fourth criteria.

69. Petitioners did not prove the Plan Amendment is inconsistent with Policies 1.3.6 and 1.3.7.

CONCLUSIONS OF LAW

70. The Division has jurisdiction over the subject matter of this proceeding, and the parties, under sections 163.3184(5), 120.569, and 120.57(1), Florida Statutes.

Standing

71. To have standing to challenge a local comprehensive plan amendment, Petitioners must meet the statutory criteria for an "affected person," which is defined as follows:

> "Affected person" includes the affected local government; persons owning property, residing, or owning or operating a business within the boundaries of the local government whose plan is the subject of the review; owners of real property abutting real property that is the subject of a proposed change to a future land use map; and adjoining local governments that can demonstrate that the plan or plan amendment will produce substantial impacts on the increased need for publicly funded infrastructure or substantial impacts on areas designated for protection or special treatment within their jurisdiction. Each person, other than an adjoining local government, in order to qualify under this definition, shall also have submitted oral or written comments, recommendations, or objections to the local government during the period of time beginning with the transmittal hearing for the plan or plan amendment and ending with the adoption of the plan or plan amendment.

§ 163.3184(1)(a), Fla. Stat.

72. Petitioner Caruthers is an "owner of real property abutting real property that is the subject of" the Plan Amendment." § 163.3184(1)(a), Fla. Stat. Caruthers also submitted "oral or written comments, recommendations, or objections to the local government during the period of time beginning with the transmittal hearing for the … plan amendment and ending with the adoption of the plan or plan amendment." *Id*.

73. Petitioner Caruthers is an "affected person" with standing to challenge the Plan Amendment.

74. The County argues that Petitioner Steele does not meet the definition of an affected person because, although she is a person "owning property,

residing, or owning or operating a business within the boundaries of the" County, that particular standing clause is limited to challenges to the local government comprehensive plan, rather than a plan amendment. The County notes that the plain language of the statute specifically includes plan amendments when defining other categories of persons with standing (e.g., "owners of real property abutting real property that is the subject of a *proposed change to a future land use map*"; "adjoining local governments that can demonstrate that *the plan or plan amendment* will produce substantial impacts[.]").

75. While the County's interpretation has some merit, the undersigned must follow established law. *See Putnam Cnty. Sch. Bd. v. Debose*, 667 So. 2d 447, 449 (Fla. 1st DCA 1996) ("Under the doctrine of stare decisis, lower courts are bound to adhere to the rulings of higher courts when considering similar issues even though the lower court might believe the law should be otherwise.") In *Melzer v. Department of Community Affairs*, 881 So. 2d 623, 624 (Fla. 4th DCA 2004), the court held that county residents are "affected persons," under section 163.3184(1)(a), with standing to challenge a county *plan amendment* because they are "persons owning property, residing, or owning or operating a business within the boundaries of the local government whose plan is the subject of the review." The Division has consistently followed this precedent in determining standing of individuals to challenge plan amendments. *See, e.g.*, *Rogers v. Escambia Cnty.*, Case No. 22-3224GM (Fla. DOAH Mar. 17, 2023); *Melzer v. Martin Cnty.*, Case No. 22-3021GM (Fla. DOAH Mar. 17, 2023); *Hills v. Hernando Cnty.*, Case No. 21-3808GM (Fla. DOAH Apr. 11, 2022).

76. Petitioner Steele is an "affected person" with standing to challenge the Plan Amendment.

Legal Issues and Burden of Proof

77. The ultimate legal issue in this proceeding is whether the Plan Amendment is "in compliance," as that term is defined in section 163.3184(1)(b).

78. Petitioners, as the parties challenging the Plan Amendment, have the burden of proof. *See Young v. Dep't of Cmty. Aff.*, 625 So. 2d 831, 835 (Fla. 1993).

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

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

81. In *Martin County v. Yusem*, 690 So. 2d 1288 (Fla. 1997), the Court said, "The fairly debatable standard of review is a highly deferential standard requiring approval of a planning action if reasonable persons could differ as to its propriety." *Id.* at 1295. Quoting from *City of Miami Beach v. Lachman*, 71 So. 2d 148, 152 (Fla. 1953), the Court also stated that "[a]n ordinance may be said to be fairly debatable when for any reason it is open to dispute or controversy on grounds that make sense or point to a logical deduction that in no way involves its constitutional validity." Put more simply, in the context of a challenge to a comprehensive plan amendment, the amendment is fairly debatable if its validity can be defended with a sensible argument. *Id.*

82. The mere existence of contravening evidence cannot by itself establish that a land planning decision is "fairly debatable." It is firmly established that:

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

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

Urban Sprawl

83."Urban sprawl" means "a development pattern characterized by low density, automobile-dependent development with either a single use or multiple uses that are not functionally related, requiring the extension of public facilities and services in an inefficient manner, and failing to provide a clear separation between urban and rural uses." § 163.3164(52), Fla. Stat.

84. Petitioners failed to prove their allegation that the Plan Amendment fails to discourage the proliferation of urban sprawl as required by section 163.3177(6)(a)9. Competent, substantial evidence supported findings that none of the primary indicators of urban sprawl were triggered by the Plan Amendment.

85. It is at least fairly debatable that the Plan Amendment is consistent with section 163.3177(6)(a)9.

Data and Analysis

86. Section 163.3177(1)(f) sets forth the requirements for data supporting plan amendments as follows:

> All … 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.

87. In addition, section 163.3177(6)(a)8. provides that future land use map amendments "shall be based upon … an analysis of the availability of facilities and services[, and] [a]n analysis of the suitability of the plan amendment for its proposed use considering the character of the undeveloped land, soils, topography, natural resources, and historic resources on site."

88. The Plan Amendment is supported by adequate data and analysis of availability of potable water and sewer services, fire services, roadway capacity, and school capacity. Natural resource data, and the analysis of said data by both the applicant and DEP, confirmed no negative environmental impacts from the Plan Amendment.

89. Petitioners' main contention here is that the County did not react appropriately to the data establishing the District within the vicinity of the Subject Property, and the location of floodplain areas on the Subject Property. The only evidence introduced as to what "appropriate reaction" would be to introducing Urban Residential land use in proximity to the District was from Mr. Davis, who suggested the County should have considered other uses the Subject Property could be developed for under the current Agricultural classification that would be consistent with the adjacent District. But this was not a County-initiated Plan Amendment. The owner presented the County with the Plan Amendment to change the Subject Property to Urban Residential, not another use.

90. Under the existing Comprehensive Plan, if the Subject Property remains in Agriculture, it could be developed for some uses which may be less conducive to the District, such as borrow pits, mining, or private airports.

91. The County considered that the Subject Property is not located in a designated historic district, but is in proximity to a district eligible for listing on the National Register of Historic Places.[7] The County also considered that the Subject Property is located in the UDA, an area planned for urban development, where urban services are available.

92. It is a least fairly debatable that the Plan Amendment is supported by data and analysis, and represents an appropriate reaction to data and analysis available at the time the Plan Amendment was filed.

93. Petitioners did not prove the Plan Amendment is inconsistent with sections 163.3177(1)(f) and 163.3177(6)(a)8.

Internal Inconsistencies

94. Section 163.3187(4) provides that a comprehensive plan "may only be amended in such a way as to preserve the internal consistency of the plan[.]"

95. Petitioners did not prove that the Plan Amendment was inconsistent with either Policy 1.3.6 or 1.3.7.

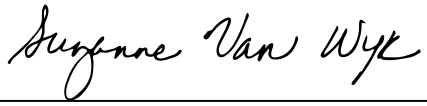
96. Petitioners did not prove, beyond fair debate, that the Plan Amendment is inconsistent with section 163.3187(4).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Economic Opportunity enter a final order determining that the Plan Amendment, adopted by Sumter County on October 11, 2022, is "in compliance," as that term is defined by section 163.3184(1)(b).

[7] Although the Subject Property is not included in the District recognized by the Department of State for listing on the National Register of Historic Places, the application being filed with DOS defines a larger area which does include the Subject Property.

DONE AND ENTERED this 1st day of June, 2023, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 1st day of June, 2023.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.