

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

DEPARTMENT OF COMMUNITY
AFFAIRS,

Petitioner,

vs.

Case No. 09-7048GM

CITY OF TALLAHASSEE and
LEON COUNTY,

Respondents.

STIPULATED SETTLEMENT AGREEMENT

THIS STIPULATED SETTLEMENT AGREEMENT is entered into by and between the State of Florida, Department of Community Affairs, the City of Tallahassee, and Leon County, as a complete and final settlement of all claims raised in the above-styled proceeding.

RECITALS

WHEREAS, the State of Florida, Department of Community Affairs ("DCA" or "Department"), is the state land planning agency and has the authority to administer and enforce the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes; and

WHEREAS, The City of Tallahassee ("City") is a local government with the duty to adopt comprehensive plan amendments that are "in compliance;" and

WHEREAS, Leon County ("County") is a local government with the duty to adopt comprehensive plan amendments that are "in compliance;" and

WHEREAS, the City and County have a titular Joint Comprehensive Plan. Unless otherwise noted within the Plan, the provisions therein apply equally in the respective jurisdictions of both governmental entities; and

WHEREAS, the City and County adopted a Comprehensive Plan Amendment which amended the Capital Improvements Element ("Plan Amendment") by Ordinance Nos. 09-O-43AA (for the City) and 09-36 (for the County) on October 13, 2009; and

WHEREAS, the Plan Amendment adopted provisions for proportionate-share, allowing aggregations of payments for the purpose of addressing one or more failing roadway facilities that may significantly benefit the transportation system as a whole; and

WHEREAS, the Department issued its Statement and Notice of Intent regarding the Plan Amendment on December 16, 2009; and

WHEREAS, as set forth in the Statement of Intent, the Department contends that the Plan Amendment is not "in compliance" because the policies do not meet the requirements of sections 163.3177 and 163.3180, Florida Statutes, and Rules 9J-5.005, 9J-5.006, and 9J-5.019, Florida Administrative Code; and

WHEREAS, pursuant to Section 163.3184(10), Florida Statutes, the Department has initiated the above-styled formal administrative proceeding challenging the Amendment; and

WHEREAS, the City and County dispute the allegations of the Statement of Intent regarding the Amendment; and

WHEREAS, the parties wish to avoid the expense, delay, and uncertainty of lengthy litigation and to resolve this proceeding under the terms set forth herein, and agree it is in their respective mutual best interests to do so;

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinbelow set forth, and in consideration of the benefits to accrue to each of the parties, the receipt and sufficiency of which are hereby acknowledged, the parties hereby represent and agree as follows:

GENERAL PROVISIONS

1. Definitions. As used in this agreement, the following words and phrases shall have the following meanings:

a. Act: The Local Government Comprehensive Planning and Land Development Regulation Act, as codified in Part II, Chapter 163, Florida Statutes.

b. Agreement: This stipulated settlement agreement.

c. Comprehensive Plan Amendment or Plan Amendment: Comprehensive Plan Amendment adopted by Ordinance Nos. 09-O-43AA (for the City) and 09-36 (for the County) on October 13, 2009.

d. DOAH: The Florida Division of Administrative Hearings.

e. In compliance or into compliance: The meaning set forth in Section 163.3184(1)(b), Florida Statutes.

f. Notice: The notice of intent issued by the Department to which was attached its statement of intent to find the plan amendment not in compliance.

g. Petition: The petition for administrative hearing and relief filed by the Department in this case.

h. Remedial Action: A remedial plan amendment, submission of support document or other action described in the statement of intent or this agreement as an action which must be completed to bring the plan amendment into compliance.

i. Remedial Plan Amendment: An amendment to the plan or support document, the need for which is identified in this agreement, including its exhibits, and which the local government must adopt to complete all remedial actions. Remedial plan amendments adopted pursuant to this Agreement must, in the opinion of the Department, be consistent with and substantially similar in concept and content to the ones identified in this Agreement or be otherwise acceptable to the Department.

j. Statement of Intent: The statement of intent to find the Plan Amendment not in compliance issued by the Department in this case which is attached to this Agreement as Exhibit A.

k. Support Document: The studies, inventory maps, surveys, data, inventories, listings or analyses used to develop and support the Plan Amendment or Remedial Plan Amendment.

2. Department Powers. The Department is the state land planning agency and has the power and duty to administer and enforce the Act and to determine whether the Plan Amendment is in compliance.

3. Negotiation of Agreement. The Department issued its Notice and Statement of Intent to find the Plan Amendment not in compliance, and filed the Petition in this case to that effect. Subsequent to the filing of the Petition the parties conferred and agreed to resolve the issues in the Petition, Notice and Statement of Intent through this Agreement. It is the intent of this Agreement to resolve fully all issues between the parties in this proceeding.

4. Dismissal. If the City and County complete the Remedial Actions required by this Agreement, the Department will issue a cumulative Notice of Intent addressing both the

Remedial Plan Amendment and the initial Plan Amendment subject to these proceedings. The Department will file the cumulative Notice of Intent with DOAH. The Department will also file a request to relinquish jurisdiction to the Department for dismissal of this proceeding or for realignment of the parties, as appropriate under Section 163.3184(16)(f), Florida Statutes.

5. Description of Provisions not in Compliance and Remedial Actions; Legal Effect of Agreement. Exhibit A to this Agreement is a copy of the Statement of Intent, which identifies the provisions not in compliance. Exhibit B contains Remedial Actions needed for compliance. Exhibits A and B are incorporated in this Agreement by this reference. This Agreement constitutes a stipulation that if the Remedial Actions are accomplished, the Plan Amendment will be in compliance.

6. Remedial Actions to be Considered for Adoption. The City and County agree to consider for adoption by formal action of their respective governing bodies all Remedial Actions described in Exhibit B no later than the time period provided for in this Agreement.

7. Adoption or Approval of Remedial Plan Amendments. Within 60 days after execution of this Agreement by the parties, the City and County shall consider for adoption all Remedial Actions or Plan Amendments and amendments to the Support Documents. This may be done at a single adoption hearing. Within 10 working days after adoption of the Remedial Plan Amendment, the City and County shall transmit 3 copies of the amendment to the Department as provided in Rule 9J-11.011(5), Florida Administrative Code. The City and County also shall submit one copy to the regional planning agency and to any other unit of local or state government that has filed a written request with the governing body for a copy of the Remedial Plan Amendment and a copy to any party granted Intervenor status in this proceeding.

The Remedial Plan Amendment shall be transmitted to the Department along with a letter which describes the remedial action adopted for each part of the plan amended, including references to specific portions and pages.

8. Acknowledgment. All parties to this Agreement acknowledge that the “based upon” provisions in Section 163.3184(8), Florida Statutes, do not apply to the Remedial Plan Amendment.

9. Review of Remedial Plan Amendments and Notice of Intent. Within 30 days after receipt of the adopted Remedial Plan Amendments and Support Documents, the Department shall issue a Notice of Intent pursuant to Section 163.3184, Florida Statutes, for the adopted amendments in accordance with this Agreement.

a. In Compliance: If the adopted Remedial Actions satisfy this Agreement, the Department shall issue a cumulative Notice of Intent addressing both the Plan Amendment and the Remedial Plan Amendment as being in compliance. The Department shall file this cumulative notice with DOAH and shall move to realign the parties or to have this proceeding dismissed, as may be appropriate.

b. Not in Compliance: If the Remedial Actions do not satisfy this Agreement, the Department shall issue a Notice of Intent to find the Plan Amendment not in compliance and shall forward the notice to DOAH for consolidation with the pending proceeding.

10. Effect of Amendment. Adoption of any Remedial Plan Amendment shall not be counted toward the frequency restrictions imposed upon plan amendments pursuant to Section 163.3187(1), Florida Statutes.

11. Purpose of this Agreement; Not Establishing Precedent. The parties enter into this Agreement in a spirit of cooperation for the purpose of avoiding costly, lengthy and unnecessary litigation and in recognition of the desire for the speedy and reasonable resolution of disputes arising out of or related to the Plan Amendment. The acceptance of proposals for purposes of this Agreement is part of a negotiated agreement affecting many factual and legal issues and is not an endorsement of, and does not establish precedent for, the use of these proposals in any other circumstances or by any other local government.

12. Approval by Governing Body. This Agreement has been approved by the City's and County's respective governing bodies at a public hearing advertised at least 10 days prior to the hearing in a newspaper of general circulation in the manner prescribed for advertisements in Section 163.3184(16)(c), Florida Statutes. This Agreement has been executed by the appropriate officer as provided in the City's and County's charter or other regulations.

13. Changes in Law. Nothing in this Agreement shall be construed to relieve either party from adhering to the law, and in the event of a change in any statute or administrative regulation inconsistent with this agreement, the statute or regulation shall take precedence and shall be deemed incorporated in this Agreement by reference.

14. Other Persons Unaffected. Nothing in this Agreement shall be deemed to affect the rights of any person not a party to this Agreement. This Agreement is not intended to benefit any third party.

15. Attorney Fees and Costs. Each party shall bear its own costs, including attorney fees, incurred in connection with the above-captioned case and this Agreement.

16. Effective Date. This Agreement shall become effective immediately upon execution by the Department and the City of Tallahassee and Leon County.

17. Filing and Continuance. This Agreement shall be filed with DOAH by the Department after execution by the parties. Upon the filing of this Agreement, the administrative proceeding in this matter shall be stayed by the Administrative Law Judge in accordance with Section 163.3184(16)(b), Florida Statutes.

18. Retention of Right to Final Hearing. Both parties hereby retain the right to have a final hearing in this proceeding in the event of a breach of this Agreement, and nothing in this Agreement shall be deemed a waiver of such right. Any party to this Agreement may move to have this matter set for hearing if it becomes apparent that any other party whose action is required by this Agreement is not proceeding in good faith to take that action.

19. Construction of Agreement. All parties to this Agreement are deemed to have participated in its drafting. In the event of any ambiguity in the terms of this Agreement, the parties agree that such ambiguity shall be construed without regard to which of the parties drafted the provision in question.

20. Entire Agreement. This is the entire agreement between the parties and no verbal or written assurance or promise is effective or binding unless included in this document.

21. Governmental Discretion Unaffected. This Agreement is not intended to bind the City or County in the exercise of governmental discretion which is exercisable in accordance with law only upon the giving of appropriate public notice and required public hearings.

22. Multiple Originals. This Agreement may be executed in any number of originals, all of which evidence one agreement, and only one of which need be produced for any purpose.

23. Captions. The captions inserted in this Agreement are for the purpose of convenience only and shall not be utilized to construe or interpret any provision of this Agreement.

In witness whereof, the parties hereto have caused this Agreement to be executed by their undersigned officials as duly authorized.

DEPARTMENT OF COMMUNITY AFFAIRS

By: _____
Charles Gauthier, AICP, Director
Division of Community Planning

Approved as to form and legality:

Matthew Davis, Esq.
Assistant General Counsel

Date

Date

CITY OF TALLAHASSEE

By:

The Honorable John Marks, Mayor
City of Tallahassee

Date

Approved as to form and legality:

Linda R. Hudson, Esq.
Senior Assistant City Attorney

Date

LEON COUNTY

By:

The Honorable John Dailey, Chairman
Board of County Commissioners

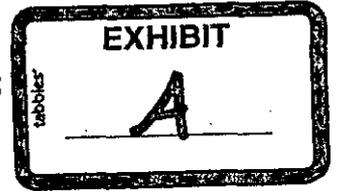
Date

Approved as to form and legality:

Laura Youmans, Esq.
Leon County Attorney's Office

Date

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS



IN RE: CITY OF TALLAHASSEE/LEON
COUNTY COMPREHENSIVE PLAN
AMENDMENT 09-2; ADDING THE
CAPITAL IMPROVEMENTS ELEMENT
POLICY 1.2.2.1.c

Docket No. 09-2-NOI-3701-(A)-(N)

STATEMENT OF INTENT TO FIND
COMPREHENSIVE PLAN AMENDMENTS
NOT IN COMPLIANCE

The Florida Department of Community Affairs hereby issues its Statement of Intent to find the Comprehensive Plan amendment by City of Tallahassee/Leon County, Capital Improvements Element Policy 1.2.2.1.c, identified as a portion of the text of "Exhibit A" in Section 9 of Ordinances 09-O-43AA adopted by the City of Tallahassee and 09-36 adopted by Leon County on October 13, 2009, *Not In Compliance*. The Department finds the plan amendment not "in compliance," as defined in Section 163.3184(1)(b), Florida Statutes (F.S), because it is not consistent with Section 163.3177, F.S., the State Comprehensive Plan and Rule 9J-5, Florida Administrative Code (F.A.C.), for the following reasons:

I. AMENDMENTS FOUND NOT IN COMPLIANCE

A. CAPITAL IMPROVEMENTS ELEMENT POLICY 1.2.2.1.c TO IDENTIFY THE USE OF
THE SIGNIFICANT BENEFIT SYSTEM FOR TRANSPORTATION FINANCIAL
FEASIBILITY:

1. Inconsistent Provisions: The inconsistent provisions of the plan amendment under this subject heading follow:

The amendment adopted provisions for proportionate-share, allowing aggregation of payments for the purpose of addressing one or more failing roadway facilities that may significantly benefit the transportation system as a whole, intending to demonstrate and meet the requirements for financial feasibility pursuant to Section 163.3177(3), 163.3180(16)(f), and 163.3164(32), F.S. However, the amendment fails to provide meaningful and predictable guidelines and standards describing how the "significant benefit program" will be implemented in a consistent manner to achieve a financially feasible plan. Therefore, the amendment has not demonstrated how financial feasibility for transportation will be achieved and does not ensure coordination of transportation with the future land use plan and map consistent with Sections 163.3177 and 163.3180, F.S., and Rules 9J-5.005, 9J-5006, and 9J-5.019, F.A.C.

Rules: 9J-5.003(82) and (90); 9J-5.005(6); 9J-5.0055(1)(b); 9J-5.006(3)(b) and (c); and 9J-5.016(3)(c)1.f., (4)(a)2 and 4 and (b); and 9J-5.019(3)(a), (f) and (h), (4)(b)2 and (c)11, F.A.C.

Sections: 163.3164(32), 163.3177(1), (2), (3), (6)(a), (6)(j)(5), and (9), and 163.3180(16)(f), F.S.

2. Recommended Remedial Actions. The above inconsistencies may be remedied by taking the following actions:

Recommendation: Revise Capital Improvements Element Policy 1.2.2.1.c to include meaningful and predictable standards identifying how, and the conditions under which the "significant benefit approach" will be used to achieve financial feasibility, the improvements that constitute the significant benefit, a map linking specific significant benefit improvements

to specific areas, a requirement that the proportionate-share amount be sufficient to pay for one or more improvements that constitute the significant benefit, a requirement that a binding proportionate-share agreement be entered into between the City/County and the developer at the time of the plan amendment guaranteeing the payment of the proportionate-share amount, and a requirement that the significant benefit improvement be incorporated into the capital improvements plan at the time of the plan amendment adoption.

II. CONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

A. Inconsistent Provisions. The inconsistent provisions of the plan amendment under this subject heading are as follows:

1. The comprehensive plan amendment is inconsistent with the State Comprehensive Plan goals and policies, including the following provisions (Section 163.3184(1)(b)):

- a. Goal (17), Public Facilities, and Policies (b)6 and 7; and
- b. Goal (25), Plan Implementation, and Policy (b)7.

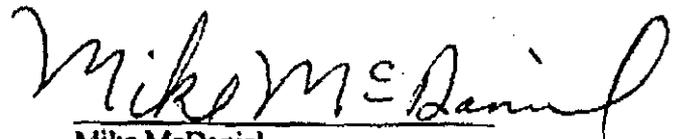
B. Recommended Remedial Action. These inconsistencies may be remedied by taking the following action:

1. Revise the plan amendment as described in Section I.A.2 above.

CONCLUSIONS

1. The plan amendment is not consistent with the State Comprehensive Plan.
2. The plan amendment is not consistent with Chapter 9J-5, F.A.C.
3. The plan amendment is not consistent with the requirements of Section 163.3177, Florida Statutes.
4. The plan amendment is not "in compliance" as defined in Section 163.3184(1)(b), Florida Statutes.
5. In order to bring the plan amendment into compliance, the County may complete the recommended remedial actions described above or adopt other remedial actions that eliminate the inconsistencies.

Executed this 16th day of December, 2009, at Tallahassee, Florida



Mike McDaniel
Chief of Comprehensive Planning
Division of Community Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

EXHIBIT B

The City of Tallahassee and Leon County will adopt the following language to bring a portion of the comprehensive plan amendment 09-2, specifically Capital Improvements Element Policy 1.2.2.1.c., in Exhibit A in Section 9 of Ordinances 09-O-43AA adopted by the City of Tallahassee and 09-36 adopted by Leon County on October 13, 2009, into Compliance pursuant to Section 163, Part II, Florida Statutes:

From the Tallahassee-Leon County Capital Improvements Element:

FINANCIAL FEASIBILITY

...

Policy 1.2.2: (CI) (Revised Effective 12/8/98; Revision Effective 7/21/05)

Existing and future development shall both pay for the costs of needed public facilities.

I. Future development

a. Future development shall pay for its proportional share of the capital improvements needed to address the impact of such development. Enterprise fund user charges, connection fees, and other user fees paid by new development shall be reviewed every two years to assure that provision of capital improvements needed to address the impact of future development will not increase ad valorem tax rates or rates of electric, gas, water or sewer utilities. Upon completion of construction, "future" development becomes "present" development, and shall contribute to paying the costs of the replacement of obsolete or worn out facilities as described in subsection 2, below.

b. Future development's payments may take the form of, but are not limited to, voluntary contributions for the benefit of any public facility, impact fees, capacity fees, dedications of land, provision of public facilities, and future payments of user fees, special assessments and taxes.

c. Future development's payment of proportionate fair-share mitigation for various deficient facilities may be aggregated to pay for one or more transportation system improvements. "Significant benefit" proportionate fair-share may be applied to calculate and expend developer mitigation in the following manner:

Assessment: The local government shall require an analysis of transportation facilities level of service to determine if deficiencies occur or are projected to occur within a prospective five-year period. If deficiencies are anticipated, the local government may use the "significant benefit" approach to assess proportionate fair-share mitigation and schedule improvements to address the identified deficiency(ies) on the impacted facility(ies) to meet the requirements for financial feasibility pursuant to Sections 163.3164(32), F.S., and 163.3177(3), F.S.

Implementation: The "significant benefit" provision shall be enacted through a Significant Benefit Memorandum of Agreement ("MOA") between the State of

Florida Department of Transportation (“FDOT”), the City of Tallahassee, and Leon County, as it may be amended from time to time. The MOA shall adhere to the following:

- a. Identify geographic zones and prioritize specific facilities that constitute “significant benefit” facilities for each zone. These facilities, and the amount of funding necessary to pay for each of them, shall be identified within the MOA. Significant benefit facilities included in the annual Capital Improvements Element update shall be noted as being funded by significant benefit proportionate fair-share. A map showing the most current boundaries of the geographic zones shall also be included in the annual Capital Improvements Element update;
- b. When there are no roadway capacity projects in the City, County, or FDOT Capital Improvements Plan (“CIP”) that address the capacity deficiency of an impacted roadway segment(s), the local government may collect proportionate fair-share mitigation based on the deficient facility(ies), and direct that mitigation toward the top priority project identified in the MOA;
- c. Proportionate fair-share mitigation shall be accumulated for the top priority significant benefit project for each zone until such time as the project is fully funded. This project shall be incorporated into the local government’s 5-Year Capital Improvements Schedule;
- d. Prior to adoption of any comprehensive plan amendment relying on a MOA for City and/or County approval, the developer/applicant shall enter into a binding agreement with the City and/or County guaranteeing payment of the proportionate fair-share amount at the time of site plan approval. This agreement shall apply to the parcel rather than the applicant, and shall be submitted to the state land planning agency as data and analysis in support of the comprehensive plan amendment
- e. In the event a plan amendment necessitates the addition, deletion or change in priority for projects listed in the significant benefit project priority list (Attachment B of the MOA), the 5-Year Capital Improvements Schedule must be amended to indicate the significant benefit project(s) to which the proportionate fair-share funding will be allocated.

...

PROGRAMS TO ENSURE IMPLEMENTATION

6. Update of Capital Improvements Element. The Capital Improvements Element shall be reviewed and updated annually. The element shall be updated in conjunction with the budget process and the release of the official population estimates and projections by the Bureau of Economic and Business Research (BEBR) of the University of Florida. The update shall include the following data and analysis:
 - a. Revision of population projections
 - b. Update of inventory of public facilities

- c. Update of costs of public facilities
- d. Update of Public Facilities Requirements analysis (actual levels of service compared to adopted standards)
- e. Update of revenue forecasts
- f. Revise and develop capital improvements projects for the next five fiscal years
- g. Update analysis of financial capacity
- h. The most current version of the Significant Benefit Memorandum of Agreement (MOA), as allowed pursuant to Policy 1.2.2(c), and notation in the Capital Improvements Schedule of specific projects allowed by Policy 1.2.2(c).