

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MANASOTA-88, INC.; GLENN )  
COMPTON; and BECKY AYECH, )  
 )  
Petitioners, )  
 )  
vs. ) Case Nos. 02-3897GM  
 ) 02-3898GM  
DEPARTMENT OF COMMUNITY )  
AFFAIRS and SARASOTA COUNTY, )  
 )  
Respondents. )  
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RECOMMENDED ORDER

Pursuant to notice, these matters were heard before the Division of Administrative Hearings by its assigned Administrative Law Judge, Donald R. Alexander, on May 13-16, June 17-20, 23-25, August 18-20, 26-28, and September 10, 11, 23, and 24, 2003, in Sarasota, Florida.

APPEARANCES

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For Respondent: Shaw P. Stiller, Esquire  
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STATEMENT OF THE ISSUE

The issue is whether a Sarasota County plan amendment adopted by Ordinance No. 2001-76 on July 10, 2002, is in compliance.

PRELIMINARY STATEMENT

This matter began on July 10, 2002, when Respondent, Sarasota County (County), adopted Ordinance No. 2001-76, which amended the Future Land Use Chapter of the County's Comprehensive Plan (Plan) by adding a "supplement," which divided the County into six Resource Management Areas and adopted related goals, objectives, and policies. On September 5, 2002, Respondent, Department of Community Affairs (Department), issued its Notice of Intent to Find the Sarasota County Comprehensive Plan Amendments in Compliance under Section 163.3184(9), Florida Statutes (2002).<sup>1</sup>

On September 26, 2002, Palmer Ranch Holdings, Ltd., and McCann Holdings, Ltd. (Case No. 02-3894GM); Taylor Ranch, Ltd. (Case No. 02-3895GM); Taylor Ranch, Inc. (Case No. 02-3896GM); Manasota-88, Inc. (Manasota-88) and Glenn Compton (Compton) (Case No. 02-3897GM); and Becky Ayech (Ayech) (Case No. 02-

3898GM) filed Petitions for Administrative Hearing (Petitions). All cases were forwarded to the Division of Administrative Hearings on October 3, 2002, with a request that an administrative law judge conduct a hearing. By Order dated October 25, 2002, the cases were consolidated. On October 30, 2002, the County's Motion to Dismiss the Petition of Becky Ayech was granted, without prejudice; an amended filing was subsequently made by that Petitioner on November 18, 2002. Case No. 02-3894GM was voluntarily dismissed on February 10, 2003, while Case Nos. 02-3895GM and 02-3896GM were voluntarily dismissed on June 26, 2003. Therefore, only the challenges in Case Nos. 02-3897GM and 02-3898GM remain.

By Notice of Hearing dated October 29, 2002, a final hearing was scheduled on December 17-20, 2002, in Sarasota, Florida. At the request of Petitioners in Case No. 02-3894GM, the matters were continued to May 13-16, 2003, at the same location. A Motion for Continuance filed by Manasota-88 and Compton was denied by Order dated April 30, 2003. Continued hearings were held on June 17-20, 23-26, August 18-20, 26-28, and September 10, 11, 23, and 24, 2003. Numerous procedural and discovery issues arose both before and during the final hearing, and the rulings on those matters are found in preliminary orders or the Transcript of the hearing.

At the final hearing, Manasota-88 and Compton presented

the testimony of Dr. Stanley K. Smith, Director of the Bureau of Economic and Business Research (BEBR) at the University of Florida and accepted as an expert; Dr. William A. Dunson, a biologist and accepted as an expert; James W. Beever, III, a Florida Fish and Wildlife Conservation Commission biologist and accepted as an expert; Richard A. Drummond, Alachua County Growth Management Director (formerly the County Chief of Long Range Planning) and accepted as an expert; R. Wayne Bennett, a planner and accepted as an expert; Dennis B. Wilkison, General Manager of the County Growth Management Business Center; Clarke Davis, a County Senior Engineer; John D. Knowles, Supervisor of Planning for the Sarasota County Utilities; Tamara W. Schells, a County planner; Michael W. Guy, Director of the Manatee/Sarasota County Metropolitan Planning Organization; Alan Wheeler, Executive Director of the Sarasota County Public Works; and John Zimmerman, a County Public Works Department employee. Also, they offered Manasota Exhibits 5-9, 15-26, 30, 31, 33, 36, 38, 45-47, 49, 51-55, 57, 58, 61, 62, 64, 65, 80, 89-93, 98, 106, 113, 116, 117, 133, 134, 140, 147, 153, 154, 159A-C, 160, and 161. All were received in evidence except Exhibit 62. Ayech testified on her own behalf and presented the testimony of Maurie Duggan and Ellen Richardson, both County residents. She also offered Ayech Exhibits 3-6, 28, 29, 40, 45-61, 74-109, 126-131, 135-139,

144A and B, and 203-206, which were received in evidence. The Department presented the testimony of Michael D. McDaniel, its State Initiatives Administrator and accepted as an expert, and offered Department Exhibit 1, which was received in evidence. The County presented the testimony of Dennis B. Wilkison, General Manager of the County Growth Management Business Center; Robbie Rogers, Sumter County Director of Planning; Olga Ronay, Manager of Planning Services; Tamara W. Schells, a County planner and accepted as an expert; Dr. Henry H. Fishkind, a economist and accepted as an expert; Theresa A. Connor, a professional engineer and County General Manager of Water Resources; Dr. Jay H. Exum, an environmental planner and accepted as an expert; Steven M. Suau, County Stormwater Program Director; Timothy T. Jackson, an urban planner and accepted as an expert; Frances E. Chandler-Marino, an urban planner and accepted as an expert; John D. Knowles, a professional engineer and Supervisor of Planning for the Sarasota County Utilities; and James K. Harriott, Jr., a professional engineer and County Transportation Planning Manager. Also, it offered County Exhibits 1A-K, 8, 10, 11, 16, 19, 21, 23, 27, 29, 33-38, 40, 47, 48, 54, and 55, which were received in evidence. Finally, the parties offered Joint Exhibits 1-6, which were received in evidence.

The Transcript of the hearing (thirty-one volumes) was

filed on February 20, 2004. By agreement of the parties, the time for filing proposed findings of fact and conclusions of law was extended to March 26, 2004. In addition, the parties were authorized to file replies to the other parties' filings no later than April 2, 2004. All parties made timely filings, and they have been considered by the undersigned in the preparation of this Recommended Order.

#### FINDINGS OF FACT

Based upon all of the evidence, the following findings of fact are determined:

##### A. Background

1. The County's original Plan, known as Apoxsee,<sup>2</sup> was adopted in 1981. In 1989, the County adopted a revised and updated version of that Plan. The current Plan was adopted in 1997 and is based on an Evaluation and Appraisal Report (EAR) approved by the County on February 20, 1996.

2. After a lengthy process which began several years earlier, included input from all segments of the community, and involved thousands of hours of community service, on February 28, 2002, the County submitted to the Department a package of amendments comprised of an overlay system (with associated goals, objectives, and policies) based on fifty-year projections of growth. The amendments were in response to Future Land Use Policy 4.7 which mandated the preparation

of a year 2050 plan for areas east of Interstate 75, which had served as an urban growth boundary in the County since the mid-1970s. Through the overlays, the amendments generally established areas in the County for the location of villages, hamlets, greenways, and conservation subdivisions. On May 10, 2002, the Department issued its Objections, Recommendations, and Comments (ORC).

3. In response to the ORC, on July 10, 2002, the County enacted Ordinance No. 2001-76, which included various changes to the earlier amendment package and generally established six geographic overlay areas in the County, called Resource Management Areas (RMAs), with associated goals, objectives, and policies in the Future Land Use Chapter. The RMAs include an Urban/Suburban RMA, an Economic Development RMA, a Rural Heritage/Estate RMA, a Village/Estate/Open Space RMA, a Greenway RMA, and an Agriculture/Reserve RMA. The amendments are more commonly known as Sarasota 2050.

4. The revised amendment package was transmitted to the Department on July 24, 2002. On September 5, 2002, the Department issued its Notice of Intent to find the amendments in compliance.

5. On September 26, 2002, Manasota-88, Compton, and Ayech (and four large landowners who subsequently voluntarily dismissed their Petitions) filed their Petitions challenging

the new amendments. In their Pre-Hearing Stipulation, Manasota-88 and Compton contend that the amendments are not in compliance for the following reasons:

vagueness and uncertainties of policies; an inconsistent, absent or flawed population demand and urban capacity allocation methodology; inconsistent planning time frames; overallocation of urban capacity; urban sprawl; failure to coordinate future land uses with planned, adequate and financially feasible facilities and services; failure to protect wetlands, wildlife and other natural resources; failure to meet requirements for multimodal and area-wide concurrency standards; failure to provide affordable housing; land use incompatibility of land uses and conditions; indefinite mixed uses and standards; lack of intergovernmental coordination; and inadequate opportunities for public participation . . . . the Amendment is internally inconsistent within itself and with other provisions of the Sarasota County Comprehensive Plan, is not supported by appropriate data and analysis and is inconsistent with the State Comprehensive Plan and the Strategic Regional Policy [P]lan of the Southwest Regional Planning Council.

6. In the Pre-Hearing Stipulation, Ayech has relied on the same grounds as Manasota-88 and Compton (except for the allegation that the amendments lack intergovernmental coordination). In addition, she has added an allegation that the amendments fail to adequately plan "for hurricane evacuation."

B. The Parties

7. The Department is the state planning agency responsible for review and approval of comprehensive plans and amendments.

8. The County is a political subdivision responsible for adopting a comprehensive plan and amendments thereto. The County adopted the amendments being challenged here.

9. At the commencement of the hearing, the parties stipulated that Petitioners either reside, own property, or own or operate a business within the County, and that they made comments, objections, or recommendations to the County prior to the adoption of the Amendment. These stipulated facts establish that Petitioners are affected persons within the meaning of Section 163.3184(1)(a), Florida Statutes, and have standing to initiate this action.

10. Given the above stipulation, there was no testimony presented by Manasota-88 describing that organization's activities or purpose, or by Compton individually. As to Ayech, however, she is a resident of the County who lives on a 5-acre farm in the "Old Miakka" area east of Interstate 75, zoned OUE, which is designated as a rural classification under the Plan. The activities on her farm are regulated through County zoning ordinances.

C. The Amendment

a. Generally

11. Under the current Plan, the County uses a number of growth management strategies including, but not limited to: an urban services area (USA) boundary; a minimum residential capacity "trigger" mechanism, that is, a minimum dwelling unit capacity of 133 percent of housing demand projected for a ten-year plan period following each EAR, to determine when the USA boundary may need to be moved; a future urban area; and concurrency requirements. Outside the USA, development is generally limited to no greater than one residential unit per five acres in rural designated areas or one unit per two acres in semi-rural areas.

12. The current Plan also includes a Capital Improvement Element incorporating a five-year and a twenty-plus-year planning period. The five-year list of infrastructure projects is costed and prioritized. In the twenty-plus-year list, infrastructure projects are listed in alphabetical order by type of facility and are not costed or prioritized. The construction of infrastructure projects is implemented through an annual Capital Improvement Program (CIP), with projects generally being moved between the twenty-plus-year time frame and the five-year time frame and then into the CIP.

13. All of the County's future urban capacity outside the USA and the majority of capacity remaining inside the USA are in the southern part of the County (south of Preymore

Street extended, and south of Sarasota Square Mall). As the northern part of the County's urban capacity nears buildout, the County has experienced considerable market pressure to create more urban designated land in the northern part of the County and/or to convert undeveloped rural land into large lot, ranchette subdivisions.

14. Because of the foregoing conditions, and the requirement in Future Land Use Policy 4.1.7 that it prepare a year 2050 plan for areas east of Interstate 75, the County began seeking ways to encourage what it considers to be a "more livable, sustainable form of development." This led to the adoption of Sarasota 2050.

15. As noted above, Sarasota 2050 consists of six geographic overlay areas in the Future Land Use Map (FLUM), called RMAs, with associated goals, objectives, and policies. As described in the Plan, the purpose and objective of the Amendment is as follows:

The Sarasota County Resource Management Area (RMA) Goal, Objectives and Policies are designed as a supplement to the Future Land Use Chapter of Apoxsee. The RMAs function as an overlay to the adopted Future Land Use Map and do not affect any rights of property owners to develop their property as permitted under the Comprehensive Plan, the Zoning Ordinance or the Land Development Regulations of Sarasota County or previously approved development orders; provided, however, that Policy TDR 2.2 shall apply to land located

within the Rural/Heritage Estate, Village/  
Open Space, Greenway and Agricultural  
Reserve RMAs where an increase in  
residential density is sought.

16. To accomplish this purpose and objective, the RMAs and their associated policies are expressly designed to preserve and strengthen existing communities; provide for a variety of land uses and lifestyles to support diverse ages, incomes, and family sizes; preserve environmental systems; direct population growth away from floodplains; avoid urban sprawl; reduce automobile trips; create efficiency in planning and provision of infrastructure; provide County central utilities; conserve water and energy; allocate development costs appropriately; preserve rural character, including opportunities for agriculture; and balance jobs and housing.

17. The Amendment creates an optional, alternative land use policy program in the Plan. To take advantage of the benefits and incentives of this alternative program, a property owner must be bound by the terms and conditions in the goal, objectives, and policies. Policy RMA1.1 explains it this way:

The additional development opportunities afforded by the Sarasota 2050 Resource Management Area Goal, Objectives and Policies are provided on the condition that they are implemented and can be enforced as an entire package. For example, the densities and intensities of land use made available by the Sarasota 2050 Resource

Management Area Goal, Objectives and Policies may not be approved for use outside the policy framework and implementing regulatory framework set forth herein.

18. Policy RMA1.3 expresses the Amendment's optional, alternative relationship to the existing Plan as follows:

The Sarasota 2050 Resource Management Area Goal, Objectives and Policies shall not affect the existing rights of property owners to develop their property as permitted under the Comprehensive Plan, the Zoning Ordinance, the Land Development Regulations or previously approved development orders; provided, however, that TDR 2.2 [relating to transfer of development rights] shall apply to land located within the Rural Heritage/ Estate, Village/Open Space, Greenway and Agricultural Reserve RMAs where an increase in residential density is sought. If a property owner chooses to take advantage of the incentives provided by the Sarasota 2050 RMA, then to the extent that there may be a conflict between the Sarasota 2050 Resource Management Area Goal, Objectives and Policies and the other Goal[s], Objectives and Policies of APOXSEE, the Sarasota 2050 Resource Management Area Goal, Objectives and Policies shall take precedence. The other Goals, Objectives and Policies of APOXSEE including, but not limited to, those which relate to concurrency management and environmental protection shall continue to be effective after the adoption of these Resource Management Area Goal, Objectives and Policies.

Therefore, if a landowner chooses to pursue the alternative development opportunities, he essentially forfeits his current development rights and accepts the terms and conditions of

Sarasota 2050.

b. The RMAs

19. The RMAs were drawn in a series of overlays to the FLUM based on the unique characteristics of different areas of the County, and they result in apportioning the entire County into six RMAs. They are designed to identify, maintain, and enhance the diversity of urban and rural land uses in the unincorporated areas of the County.

20. The Urban/Suburban RMA is an overlay of the USA and is comparable to the growth and development pattern defined by the Plan. Policies for this RMA call for neighborhood planning, providing resources for infrastructure, and encouraging development (or urban infill) in a portion of the Future USA identified in the Amendment as the Settlement Area.

21. The Economic Development RMA consists of land inside the USA that is located along existing commercial corridors and at the interchanges of Interstate 75. In this RMA, the policies in the Amendment provide for facilitating economic development and redevelopment by preparing critical area plans, encouraging mixed uses, providing for multi-modal transportation opportunities, creating land development regulations to encourage economic development, and providing more innovative level of service standards that are in accordance with Chapter 163, Florida Statutes.

22. The Greenway RMA consists of lands outside the USA that are of special environmental value or are important for environmental connectivity. Generally, the Greenway RMA is comprised of public lands, rivers and connected wetlands, existing preservation lands, ecologically valuable lands adjacent to the Myakka River system, named creeks and flow-ways and wetlands connected to such creeks and flow-ways, lands listed as environmentally sensitive under the County's Environmentally Sensitive Lands Priority Protection Program (ESLPPP), and lands deemed to be of high ecological value. This RMA is accompanied by a map depicting the general location of the features sought to be protected.

23. The Rural/Heritage Estate Resource Management RMA consists of lands outside the USA that are presently rural and very low density residential in character and development and are planned to remain in that form. In other words, the RMA's focus is on protecting the existing rural character of this area. To accomplish this objective, and to discourage inefficient use of land in the area, the Amendment contains policies that will create and implement neighborhood plans focusing on strategies and measures to preserve the historic rural character of the RMA. It also provides incentives to encourage the protection of agricultural uses and natural resources through measures such as the creation of land

development regulations for a Conservation Subdivision form of use and development in the area.

24. The Agricultural Reserve RMA is made up of the existing agricultural areas in the eastern and southeastern portions of the County. The Amendment contains policies that call for the amendment of the County's Zoning and Land Development Regulations to support, preserve, protect, and encourage agricultural and ranching uses and activities in the area.

25. Finally, the Village/Open Space RMA is the centerpiece of the RMA program. It consists of land outside the USA that is planned to be the location of mixed-use developments called Villages and Hamlets. The Village/Open Space RMA is primarily the area where the increment of growth and development associated with the longer, 2050 planning horizon will be accommodated.

26. Villages and Hamlets are form-specific, using connected neighborhoods as basic structural units that form compact, mixed-use, master-planned communities. Neighborhoods provide for a broad range and variety of housing types to accommodate a wide range of family sizes and incomes. Neighborhoods are characterized by a fully connected system of streets and roads that encourage alternative means of transportation such as walking, bicycle, or transit.

Permanently dedicated open space is also an important element of the neighborhood form. Neighborhoods are to be designed so that a majority of the housing units are within walking distance of a Neighborhood Center and are collectively served by Village Centers.

27. Village Centers are characterized by being internally designed to the surrounding neighborhoods and provide mixed uses. They are designed specifically to serve the daily and weekly retail, office, civic, and governmental use and service needs of the residents of the Village. Densities and intensities in Village Centers are higher than in neighborhoods to achieve a critical mass capable of serving as the economic nucleus of the Village. Villages must be surrounded by large expanses of open space to protect the character of the rural landscape and to provide a noticeable separation between Villages and rural areas.

28. Hamlets are intended to be designed as collections of rural homes and lots clustered together around crossroads that may include small-scale commercial developments with up to 20,000 square feet of space, as well as civic buildings or shared amenities. Each Hamlet is required to have a public/civic focal point, such as a public park.

29. By clustering and focusing development and population in the Village and Hamlet forms, less land is

needed to accommodate the projected population and more land is devoted to open space.

30. The Village/Open Space RMA is an overlay and includes FLUM designations. According to the Amendment, the designations become effective if and when a development master plan for a Village or Hamlet is approved for the property. The Urban/Suburban, Agricultural Reserve, Rural Heritage/Estate, Greenway, and Economic Development RMAs are overlays only and do not include or affect FLUM designations. For these five RMAs, the FLUM designation controls land use, and any changes in use that could be made by using the overlay policies of the Amendment that are not consistent with the land's future land use designation would require a land use redesignation amendment to the Plan before such use could be allowed.

c. Data and analysis in support of the amendment

31. The County did an extensive collection and review of data in connection with the Amendment. In addition to its own data, data on wetlands, soils, habitats, water supplies, and drainage with the Southwest Florida Water Management District (District) and the Florida Fish and Wildlife Conservation Commission (FFWCC) were reviewed. Data from the BEBR were used in deriving population and housing demand forecasts for the 2050 planning period. Transportation system modeling was

performed using data from the local Metropolitan Planning Agency (MPA). The MPA uses the Florida State Urban Transportation Model Structure (FSUTMS), which is commonly used throughout the State for transportation modeling and planning purposes. Expert technical assistance was also provided by various consulting firms, including the Urban Land Institute, Analytica, Zimmerman/Volk Associates, Inc., Urban Strategies, Inc., Duany-Plater-Zyberk, Glatting Jackson, Fishkind & Associates, Stansbury Resolutions by Design, and Kumpe & Associates. In addition, the Urban Land Institute prepared a comprehensive report on the benefits of moving towards new urbanist and smart growth forms east of Interstate 75 and a build-out 2050 planning horizon. Finally, topical reports were prepared on each of the RMAs, as well as on public participation, financial feasibility and fiscal neutrality, market analysis, and infrastructure analysis.

32. In sum, the data gathered, analyzed, and used by the County were the best available data; the analyses were done in a professionally acceptable manner; and for reasons more fully explained below, the County reacted appropriately to such data.

#### D. Petitioners' Objections

33. Petitioners have raised a wide range of objections to the Amendment, including a lack of data and analyses to

support many parts of the Amendment; flawed or professionally unacceptable population and housing projections; a lack of need; the encouragement of urban sprawl; a lack of coordination between the future land uses associated with the Amendment and the availability of capital facilities; a flawed transportation model; a lack of meaningful and predictable standards and guidelines; internal inconsistency; a failure to protect natural resources; a lack of economic feasibility and fiscal neutrality; and inadequate public participation and intergovernmental coordination.

a. Use of a 50-year planning horizon

34. Petitioners first contend that the Amendment is not in compliance because it has a fifty-year planning time frame rather than a five or ten-year time frame, and because it does not have the same time frame as the Plan itself.

35. Section 163.3177(5)(a), Florida Statutes, provides that "[e]ach local government comprehensive plan must include at least two planning periods, one covering at least the first 5-year period occurring after the plan's adoption and one covering at least a 10-year period." See also Fla. Admin. Code R. 9J-5.005(4). However, nothing in the statute or rule prohibits a plan from containing more than two planning horizons, or for an amendment to add an additional fifty-year planning period. Therefore, the objection is without merit.

b. Population and housing need projections

36. For a fifty-year plan, the County had to undertake an independent analysis and projection of future population in the County. In doing so, the County extrapolated from BEBR medium range 2030 projections and calculated a need for 82,000 new homes over the 2050 period. Examining building permit trends over the prior ten years, the County calculated a high-end projection of 110,000 new homes. The County developed two sets of estimates since it is reasonable and appropriate to use more than one approach to produce a range of future projections. The County based its planning on the lower number, but also assessed water needs relative to the higher number.

37. The data and sources used by the County in making the population and housing need projections are data and sources commonly used by local governments in making such projections. The County's expert demographer, Dr. Fishkind, independently evaluated the methodologies used by the County and pointed out that the projections came from the BEBR mid-range population projections for the County and that, over the years, these projections have been shown to be reliably accurate. The projections were then extended by linear extrapolation and converted to a housing demand in a series of steps which conformed with good planning practices. The

projections were also double-checked by looking at the projected levels of building permits based on historical trends in the previous ten years' time. These two sets of calculations were fairly consistent given the lengthy time frame and the inherent difficulty in making long-range forecasts.

38. Dr. Fishkind also found the extrapolation from 2030 to 2050 using a linear approach to be appropriate. This is because medium-term population projections are linear, and extrapolation under this approach is both reasonable and proper. Likewise, Dr. Fishkind concluded that comparing the projections to the projected level of building permits based on historical trends is also a reasonable and acceptable methodology and offers another perspective.

39. Manasota-88's and Compton's expert demographer, Dr. Smith, disagreed that the County's methodology was professionally acceptable and opined instead that the mid-range 2050 housing need was 76,800 units. He evidently accepted the BEBR mid-range extrapolation done by the County for the year-round resident population of the County through 2050, but disagreed on the number of people associated with the functional population of the County.

40. To calculate the actual number of persons in the County and the number of homes necessary to accommodate those

persons, it is necessary to add the persons who reside in the County year-round (the "resident population") to the number of people who live in the County for only a portion of the year (the "seasonal population"). See Fla. Admin. Code R. 9J-5.005(2)(e) ("The comprehensive plan shall be based on resident and seasonal population estimates and projections.") The BEBR projections are based on only the resident population. The County's demographer assigned a 20 percent multiplier to the resident population to account for the seasonal population. This multiplier has been in the Plan for many years, and it has been used by the County (with the Department's approval) in calculating seasonal population for comprehensive planning purposes since at least 1982.

41. Rather than use a 20 percent multiplier, Dr. Smith extrapolated the seasonal population trend between the 1990 census and the 2000 census and arrived at a different number for total county housing demand. Even so, based on the fifty-year time frame of the Amendment, the 2050 housing demand number estimated by Dr. Smith (76,800 units) is for all practical purposes identical to the number projected by the County (82,000). Indeed, Dr. Fishkind opined that there is no statistically significant difference between the County's and Dr. Smith's projections.

42. Section 163.3177(6)(a), Florida Statutes, requires that "[t]he future land use plan shall be based upon surveys, studies, and data regarding the area, including the amount of land required to accommodate anticipated growth [and] the projected population of the area." The "need" issue is also a factor to be considered in an urban sprawl analysis. See Fla. Admin. Code R. 9J-5.006(5)(g)1. (urban sprawl may be present where a plan designates for development "uses in excess of demonstrated need").

43. There is no allocation ratio adopted by statute or rule by which all comprehensive plans are judged. The County's evidence established that the allocation ratio of housing supply to housing need associated with the best-case scenario, that is, a buildout of existing areas and the maximum possible number of units being approved in the Villages, was nearly 1:1. Adding the total number of remaining potential dwelling units in the County at the time of the Amendment, the total amount of potential supply for the 2050 period was 82,500 units. This ratio is more conservative than the ratios found in other comprehensive plans determined to be in compliance by the Department. In those plans, the ratios tend to be much greater than 1:1.

44. Petitioners objected to the amount of allocation, but offered no independent allocation ratio that should have

been followed. Instead, Manasota-88's and Compton's expert undertook an independent calculation of potential units which resulted in a number of units in excess of 100,000 for the next twenty years. However, the witness was not capable of recalling, defending, or explaining these calculations on cross-examination, and therefore they have been given very little weight. Moreover, the witness clearly did not factor the transfer of density units or the limitations associated with the transfer of such units required by the policies in the Amendment for assembling units in the Villages.

45. Given these considerations, it is at least fairly debatable that Sarasota 2050 is based on relevant and appropriate population and housing need projections that were prepared in a professionally acceptable manner using professionally acceptable methodologies.

c. Land use suitability

46. Petitioners next contend that the identification of the RMAs is not based on adequate data and analyses of land use suitability. In this regard, Section 163.3177(6)(a), Florida Statutes, requires that future land use plans be based, in part, on surveys, studies, and data regarding "the character of undeveloped land." See also Fla. Admin. Code R.

9J-5.006(2), which sets forth the factors that are to be evaluated when formulating future land use designations.

47. The Amendment was based upon a land use suitability analysis which considered soils, wetlands, vegetation, and archeological sites. There is appropriate data and analyses in the record related to such topics as "vegetation and wildlife," "wetlands," "soils," "floodplains," and "historical and archeological sites." The data were collected and analyzed in a professionally acceptable manner, and the identification of the RMAs reacts appropriately to that data and analyses. The County's evidence demonstrated that the locations chosen for the particular RMAs are appropriate both as to location and suitability for development. It is at least fairly debatable that the Amendment is supported by adequate data and analyses establishing land use suitability.

d. Urban sprawl and need

48. Petitioners further contend that the Amendment fails to discourage urban sprawl, as required by Florida Administrative Code Rule 9J-5.006(5), and that it is not supported by an appropriate demonstration of need. Need is, of course, a component of the overall goal of planning to avoid urban sprawl.

49. The emerging development pattern in the northeast area of the County tends toward large-lot development. Here,

the RMA concept offers a mixture of uses and requires an overall residential density range of three to six units per net developable Village acre, whereas most of the same residential areas of the County presently appear to have residential densities of one unit per five acres or one unit per ten acres. If the Villages (and Hamlets) are developed according to Plan, they will be a more desirable and useful tool to fight this large-lot land use pattern of current development and constitute an effective anti-urban sprawl alternative.

50. Petitioners also allege that the Amendment will allow urban sprawl for essentially three reasons: first, there is no "need" for the RMA plan; second, there are insufficient guarantees that any future Village or Hamlet will actually be built as a Village or similar new urbanist-type development; and third, the Amendment will result in accelerated and unchecked growth in the County. The more persuasive evidence showed that none of these concerns are justified, or that the concerns are beyond fair debate.

51. The Amendment is crafted with a level of detail to ensure that a specific new urbanist form of development occurs on land designated as Village/Open Space land use. (The "new urbanistic form" of development is characterized by walkable neighborhoods that contain a diversity of housing for a range

of ages and family sizes; provide civic, commercial, and office opportunities; and facilitate open space and conservation of natural environments.) The compact, mixed-use land use pattern of the Villages and Hamlets is regarded as Urban Villages, a development form designed and recognized as a tool to combat urban sprawl.

52. "New town" is defined in Florida Administrative Code Rule 9J-5.003(80) as follows:

"New town" means a new urban activity center and community designated on the future land use map and located within a rural area or at the rural-urban fringe, clearly functionally distinct or geographically separated from existing urban areas and other new towns. A new town shall be of sufficient size, population and land use composition to support a variety of economic and social activities consistent with an urban designation. New towns shall include basic economic activities; all major land use categories, with the possible exception of agricultural and industrial; and a centrally provided full range of public facilities and services. A new town shall be based on a master development plan, and shall be bordered by land use designations which provide a clear distinction between the new town and surrounding land uses.

53. The Village/Open Space RMA is consistent with and furthers the concept embodied in this definition, that is, the creation of an efficient urban level of mixed-use development. Urban Villages referenced in the Rule are also a category and development form expressly recognized to combat urban sprawl.

54. The Village/Open Space RMA policies include the types of land uses allowed, the percentage distribution among the mix of uses, and the density or intensity of each use. Villages must include a mix of uses, as well as a range of housing types capable of accommodating a broad range of family sizes and incomes. The non-residential uses in the Village, such as commercial, office, public/civic, educational, and recreational uses, must be capable of providing for most of the daily and weekly retail, office, civic, and governmental needs of the residents, and must be phased concurrently with the residential development of the Village. The policies set the minimum and maximum size for any Village development. Other policies establish standards for the minimum open space outside the developed area in the Village. The minimum density of a Village is three dwelling units per acre, the maximum density is six dwelling units per acre, and the target density is five dwelling units per acre. An adequate mix of non-residential uses must be phased with each phase or subphase of development. The maximum amount of commercial space in Neighborhood Centers is 20,000 square feet. Village Centers can be no more than 100 acres, the maximum amount of commercial space is 300,000 square feet, and the minimum size is 50,000 square feet. The Town Center may have between 150,000 and 425,000 square feet of gross leasable space.

Villages must have sufficient amounts of non-residential space to satisfy the daily and weekly needs of the residents for such uses. Percentage minimums and maximums for the land area associated with uses in Village Centers and the Town Center are also expressed in the policies.

55. Hamlets have a maximum density of one dwelling unit per acre and a minimum density of .4 dwelling unit per acre. The maximum amount of commercial space allowed in a Hamlet is 10,000 square feet. The number of potential dwelling units in the Village/Open Space RMA is limited to the total number of acres of land in the Village/Open Space and Greenway RMAs that are capable of transferring development rights. Calculations in the data and analyses submitted to the Department, as well as testimony at the hearing, set this number at 47,000-47,500 units once lands designated for public acquisition under the County's ESLPPP are properly subtracted.

56. To take advantage of the Village option and the allowable densities associated with Villages, property owners in the Village/Open Space RMA must assemble units above those allowed by the Plan's FLUM designation by acquiring and transferring development rights from the open space, the associated greenbelt and Greenway, the Village Master Plan, and other properties outside the Village. The means and strategy by which transfer sending and receiving areas are

identified and density credits are acquired are specified in the Amendment.

57. There are three village areas (South, Central, and North) in the Village/Open Space RMA, and the amendment limits the number of Villages that may be approved in each of the areas. In the South and Central Village areas, a second village cannot be approved for fifteen years after the first village is approved. The amount of village development in the South Village must also be phased to the construction of an interchange at Interstate 75 and Central Sarasota Parkway. In the North Village area, only one village may be approved. In addition, to further limit the amount and rate of approvals and development of Villages, village rezonings and master plans cannot be approved if the approval would cause the potential dwelling unit capacity for urban residential development within the unincorporated county to exceed 150 percent of the forecasted housing demand for the subsequent twenty-year period.

58. To evaluate the housing demand for the subsequent twenty-year period, among other things, Policy VOS2.1(a)2. sets forth the following items to be considered in determining housing demand:

Housing demand shall be calculated by the County and shall consider the medium range population projections of the University of

Florida's Bureau of Economic and Business Research for Sarasota County, projected growth in the Municipalities and residential building permit activity in the Municipalities and unincorporated County.

59. Petitioners contend that Policy VOS2.1 is an illegal population methodology. However, the County established that the Policy merely sets forth factors to be considered and does not express a specific methodology. The County's position is consistent with the language in the policy.

60. Petitioners also contend that the policy is vague and ambiguous because the outcome of the application of the factors is not ordained (since weights are not assigned to each factor), and because building permit activity is not a valid or proper factor to consider in making housing demand projections. The evidence establishes, however, that the factors are all proper criteria to consider in making housing projections, and that a fixed assignment of weights for each item would be inappropriate. In fact, even though Manasota-88's and Compton's demographer stated that building permit activity is not an appropriate factor to consider, he has written articles that state just the opposite.

61. The County also established that Sumter County (in central Florida) had examined and used building permit activity in projecting population in connection with their

comprehensive plan, and had done so after consulting with BEBR and receiving confirmation that this factor was appropriate. That building permit activity demonstrated that population projections and housing demand were higher in Sumter County than BEBR was

projecting at the time, and that Sumter County's own projections were more accurate than BEBR's projections.

62. Petitioners essentially claim that the County should only use BEBR's medium range projections in calculating future housing needs. However, the evidence does not support this contention. Future housing need is determined by dividing future population by average household size. Because BEBR's medium population projections for a county include all municipalities in the county, they must always be modified to reflect the unincorporated county. Moreover, BEBR's projections are the result of a methodology that first extrapolates for counties, but then adjusts upward or downward to match the state population projection. A projection based on this medium range projection, but adjusted by local data, local information, and local trends, is a more accurate indicator of population, and therefore housing need, than simply the BEBR county-wide medium range projection.

63. At the same time, future conditions are fluid rather than static, and the clear objective of Policy VOS2.1 is to project housing demand as accurately as possible. Assigning fixed weights to each factor would not account for changing conditions and data at particular points in time and would be more likely to lead to inaccurate projections. As specified in Policy VOS2.1, the factors can properly serve as checks or

balances on the accuracy of the projections. Given that the clear intent of Policy VOS2.1 is to limit housing capacity and supply, accurately determining the housing demand is the object of the policy, and it is evident that the factors should be flexibly applied rather than fixed as to value, weight, or significance.

64. There is also persuasive evidence that the RMA amendments can be reasonably expected to improve the Plan by providing an anti-sprawl alternative. Florida Administrative Code Rule 9J-5.006(5)(k) directly addresses this situation in the following manner:

If a local government has in place a comprehensive plan found in compliance, the Department shall not find a plan amendment to be not in compliance on the issue of discouraging urban sprawl solely because of preexisting indicators if the amendment does not exacerbate existing indicators of urban sprawl within the jurisdiction.  
(emphasis added)

65. Petitioners did not offer persuasive evidence to refute the fact that the RMAs would improve the existing development pattern in the County. While Petitioners alleged that the Amendment allows for the proliferation of urban sprawl in the form of low-density residential development, the evidence shows, for example, that the County's current development pattern in the USA has an overall residential density between two and three units per acre. The Rural

Heritage/Estate and Agricultural Reserve RMAs may maintain or reduce the existing density found in the Plan by the transfer of development rights. The three to six dwelling units per net developable residential acre required for Village development in the Village/Open Space RMA, coupled with the Amendment's specific policies directing the location of higher density residential uses, affordable housing, and non-residential uses, provide meaningful and predictable standards for the development of an anti-sprawl land use form. They also provide a density of focused development that diminishes, rather than exacerbates, the existing potential for sprawl found in the Plan.

66. In reaching his opinions on urban sprawl, Manasota-88's and Compton's expert indicated that he only assessed the question of sprawl in light of the thirteen primary indicators of sprawl identified in Florida Administrative Code Rule 9J-5.006(5)(g). Unlike that limited analysis, the County's and the Department's witnesses considered the sprawl question under all of the provisions of Chapter 163, Florida Statutes, and Florida Administrative Code Chapter 9J-5 and concluded that the Amendment did not violate the urban sprawl prohibition. As they correctly observed, there are other portions of the law that are critically relevant to the analysis of sprawl in the context of this Amendment. Urban

villages described in Florida Administrative Code Rule 9J-5.003(80) are a category and development form expressly designed to combat urban sprawl. In addition, Florida Administrative Code Rule 9J-5.006(5)(1) recognizes urban villages and new towns as two "innovative and flexible" ways in which

comprehensive plans may discourage the proliferation of urban sprawl.

67. The more persuasive evidence establishes that the Village form contained in the Amendment will discourage urban sprawl. The types and mix of land uses in the amendment are consistent with Florida Administrative Code Chapter 9J-5 and will serve to discourage urban sprawl. Therefore, it is at least fairly debatable that the Amendment does not exacerbate existing indicators of urban sprawl within the County and serves to discourage the proliferation of urban sprawl. It is also beyond fair debate that the Amendment describes an innovative and flexible planning and development strategy that is expressly encouraged and recognized by Section 163.3177(11), Florida Statutes, and Florida Administrative Code Rule 9J-5.006(5)(1) as a means to avoid and prevent sprawl.

e. Natural resource protection and wetlands impacts

68. Petitioners next allege that the Amendment fails to protect natural resources, as required by Florida Administrative Code Rules 9J-5.006(3)(b)4. and 9J-5.013(2)(b) and (3)(a) and (b).

69. At a minimum, by providing for a Greenway area, clustering of development, large open space requirements, wildlife crossings, floodplain preservation and protection,

greenbelts and buffers, transfers of development rights placing higher value on natural resources, best management practices, and the encouragement of development in the RMA pattern, the RMA plan creates a level of natural resource protection greater than the County's existing Plan.

70. Though Petitioners disagreed with the extent and breadth of the protections afforded by the Amendment, they could only point to one area where protections may not be as significant as in the Plan: wetland impacts in Villages where the Village Center is involved. On this issue, Policy VOS1.5 provides that:

The County recognizes that prevention of urban sprawl and the creation of compact, mixed-use development support an important public purpose. Therefore, the approval of a Master Development Plan for a Village may permit impacts to wetlands within the Village Center itself only when it is determined that the proposed wetland impact is unavoidable to achieve this public purpose and only the minimum wetland impact is proposed. Such approval does not eliminate the need to comply with the other wetland mitigation requirements of the Environmental Technical Manual of the Land Development Regulations, including the requirement for suitable mitigation. The Board of County Commissioners will review such proposals on a case-by-case basis as part of the Master Development Plan review process.

71. Contrary to Petitioners' claims, the Policy does not encourage wetland destruction. Impacts to wetlands with

appropriate mitigation are allowed under this policy only when the impact is "unavoidable" and "the minimum impact is proposed." The term "unavoidable impact" is not an ambiguous term in the area of wetland regulation. It is not unbridled in the context of the policy, nor is it ambiguous when properly viewed in the context of the overriding concern of the amendment to "preserve environmental systems." The term "unavoidable impact" is used and has application and meaning in other wetland regulatory programs, such as the federal Clean Water Act and the regulations implementing that law. Regulations based on "unavoidable impacts," both in this policy as well as in the state and federal regulations, can be applied in a lawfully meaningful way.

72. Considering the policies regarding environmental systems, habitats, wildlife, and their protection, especially when read in conjunction with the protections required in the Plan, the Amendment as a whole reacts appropriately to the data and can be expected to afford protection of natural resources.

73. The Greenway RMA was based on data and analyses that generated a series of environmental resource overlays, that when completed, comprised the Greenway RMA. The overlays layered public lands, rivers and connected wetlands, preservation lands, ecologically valuable lands associated

with the Myakka River system, named creeks and flow-ways, wetlands connected to such creeks and flow-ways, lands listed as environmentally sensitive under the County's ESLPPP, lands deemed to be of high ecological value, and appropriate connections. The evidence establishes that the staff and consultants reviewed and consulted a wide range of professionally appropriate resources in analyzing and designating the Greenway RMA.

74. Manasota-88 and Compton also contend that the Greenway RMA is inadequate in the sense that the RMA does not include all appropriate areas of the County. This claim was based on testimony that the Greenway did not include certain areas west and south of Interstate 75 in the Urban/Suburban and Economic Development RMAs, as well as a few conservation habitats (preserve areas) set aside by Development of Regional Impacts or restricted by conservation easements. However, the preserve areas and conservation easement properties will be preserved and maintained in the same fashion as the Greenway, so for all practical purposes their non-inclusion in the Greenway is not significant. The area located south of Interstate 75 was found to be the Myakka State Forest, which is in the planning jurisdiction of the City of North Port.

75. Manasota-88's and Compton's witness (an employee of the FFWCC) also advocated a slightly different greenway plan

for fish and wildlife resources, which he considered to be a better alternative than the one selected by the County. The witness conceded, however, that his alternative was only one of several alternative plans that the County could properly consider. In this regard, the County's Greenway RMA reacts to data on a number of factors, only one of which is fish and wildlife. One important factor disregarded by the witness was the influence of private property rights on the designation of areas as greenway. While the FFWCC does not factor the rights of property owners in its identification of greenways, it is certainly reasonable and prudent for the County to do so. This is because the County's regulatory actions may be the subject of takings claims and damages, and its planning actions are expected to avoid such occurrences. See § 163.3161(9), Fla. Stat.

76. Petitioners also alleged that the lack of specific inclusion of the term "A-E Flood Zone" in the Greenway designation criteria of Policy GS1.1 does not properly react to the data and analyses provided in the Greenway Final Support Document. (That policy enumerates the component parts of the Greenway RMA.) Any such omission is insignificant, however, because in the Greenway RMA areas, the A-E Flood Zone and the areas associated with the other criteria already in Policy GS1.1 are 90 percent coterminous. In addition, when an

application for a master plan for a Village is filed, the master plan must specifically identify and protect flood plain areas. At the same time, through fine tuning, the development review process, the open space requirements, and the negotiation of the planned unit development master plan, the remaining 10 percent of the A-E Flood Zone will be protected like a greenway.

f. Greenway crossings

77. The Greenway RMA is designed in part to provide habitat and corridors for movement of wildlife. In the initial drafts of the Amendment, future road crossings of the Greenway were located to minimize the amount of Greenway traversed by roads. After further review by the County, and consultation with a FFWCC representative, the number of crossings was reduced to eleven.

78. The road crossings in the Amendment are not great in length, nor do they bisect wide expanses of the Greenway. All of the proposed crossings traverse the Greenway in areas where the Greenway is relatively narrow. Of the eleven crossings in the Greenway, three crossings presently exist, and these crossings will gain greater protection for wildlife through the design requirements of Policy GS2.4 than they would under the current Plan.

79. Petitioners also expressed concerns with the wording

of Policy GS2.4 and contended that the policy was not specific enough with regard to how wildlife would be protected at the crossings. The policy provides that

Crossings of the Greenway RMA by roads or utilities are discouraged. When necessary to ensure the health, safety and welfare of the citizenry, however, transportation corridors within the Greenway RMA shall be designed as limited access facilities that include multi-use trails and prohibit non-emergency stopping except at designated scenic viewpoints. Roadway and associated utility corridors shall be designed to have minimal adverse impacts to the environment, including provisions for wildlife crossings based on accepted standards and including consideration of appropriate speed limits.

80. Accordingly, under the policy, wildlife crossings must be designed to facilitate minimal adverse impacts on wildlife, and such designs must be "based on accepted standards." While Petitioners contended that what is required by "accepted standards" is vague and ambiguous, the County established that this language, taken individually or in the context of the policies of the Amendment, is specific and clear enough to establish that a crossing must be properly and professionally designed for the target species that can be expected to cross the Greenway at the particular location. It was also appropriate to design the crossing at the time of the construction of the crossing to best react to the species that will be expected to cross. Although Petitioners disagreed

that the policy was acceptable, their witness agreed that it is essential to know what species are inhabiting a particular area before one can design a wildlife crossing that will protect the wildlife using the crossing. He further acknowledged that he typically designs crossings for the largest traveling species that his data indicates will cross the roadway.

81. In deciding where to locate roads, as well as how they should be designed, crossings for wildlife are not the only matter with which the local government must be concerned. Indeed, if it were, presumably there would likely be no roads, or certainly far fewer places where automobiles could travel. To reflect legitimate planning, and to reasonably react to the data gathered by the local government, the County's road network should reflect recognition of the data and an effort to balance

the need for roads with the impacts of them on wildlife. The Amendment achieves this purpose.

82. In summary, Petitioners have failed to show beyond fair debate that the crossings of the Greenway do not react appropriately to the data and analyses, or that the policies of the crossings are so inadequate as to violate the statute or rule.

g. Transportation planning

83. Manasota-88 and Compton next contend that the data and analyses for the transportation planning omit trips, overstate the potential intensity and density of land uses, and understate trips captured in the Villages.

84. The transportation plan was based on use of the FSUTMS, a model recommended by the State and widely used by transportation planners for trip generation and modeling for comprehensive plan purposes. In developing the transportation plan, the County relied upon resources from the Highway Capacity Manual, the Transportation Research Board, and the Institute of Transportation Engineers. It also reviewed the data and analyses based on the modeling performed in September 2001 in the Infrastructure Corridor Plan, an earlier transportation plan used by the County. To ensure that the 2001 model was still appropriate for the Amendment, the County conducted further review and analyses and determined that the

modeling was reasonable for use in connection with the Amendment even though the intensity of development eventually provided for in the Villages was less than had been analyzed in the model.

85. The evidence supports a finding that the data was the best available, and that they were evaluated in a professionally acceptable manner. The evidence further shows that the Amendment identifies transportation system needs, and that the Amendment provides for transportation capital facilities in a timely and financially feasible manner.

86. Transportation network modeling was performed for the County both with and without the 2050 Amendment. Based on the modeling, a table of road improvements needed to support the Amendment was made a part of the Amendment as Table RMA-1. Because the modeling factored more residential and non-residential development than was ultimately authorized by the Amendment, the identification of the level of transportation impacts was conservative, as were the improvements that would be needed.

87. Manasota-88 and Compton correctly point out that the improvements contained in the Amendment are not funded for construction. Even so, this is not a defect in the Amendment because the improvements are not needed unless property owners choose to avail themselves of the 2050 options; if they do,

they will be required to build the improvements themselves under the fiscal neutrality provisions of the Amendment. Further, the County's CIP process moves improvements from the five-to-fifteen year horizon to the five-year CIP as the need arises. Thus, as development proposals for Villages or Hamlets are received and approved in the areas east of I-75, specific improvements would be identified and provided for in the development order, or could be placed in the County's appropriate CIPs, as needed. The improvements necessary under the Amendment can be accommodated in the County's normal capital improvements planning, and the transportation system associated with the Amendment can be coordinated with development under the Amendment in a manner that will assure that the impacts of development on the transportation system are addressed. It is noted that the Amendment requires additional transportation impact and improvement analysis at the time of master plan submittal and prior to approval of that plan.

88. Accordingly, the Amendment satisfies the requirements of Chapter 163, Florida Statutes, and Florida Administrative Code Chapter 9J-5 for transportation planning. The County used the best available data and reacted to that data in a professionally appropriate way and to the extent necessary as indicated by the data. As noted above, the

transportation impacts and needs were conservatively projected, and the County was likely planning for more facilities than would be needed. It is beyond fair debate that the Amendment is supported by data and analyses.

h. Utilities

89. Manasota-88 and Compton also contend that the Amendment is not in compliance because the policies relating to capital

facilities are not supported by data and analyses, and that there is a lack of available capital facilities to meet the demand.

90. The County analyzed data on water supplies and demands and central wastewater facilities needs under the Amendment. The data on water supplies and demands were the best available data and included the District water supply plan as well as the County's water supply master plan. The data were analyzed in a professionally acceptable manner and the conclusions reached and incorporated into the Amendment are supported by the analyses. The utilities system for water and wastewater has been coordinated in the Amendment with the County's CIP in a manner that will ensure that impacts on the utilities are addressed.

91. The County established that there are more than adequate permittable sources of potable water to serve the needs associated with the Amendment, and that the needed capital facilities for water and wastewater can reasonably be provided through the policies of the Amendment. The evidence showed that the Amendment provides for capital facilities for utilities in a timely and financially feasible manner.

92. The total water needs for the County through the year 2050 cannot be permitted at this time because the District, which is the permitting state agency, does not issue

permits for periods greater than twenty years. Also, there must be a demonstrated demand for the resources within a 20-year time frame before a permit will issue. Nonetheless, the County is part of a multi-jurisdictional alliance that is planning for long-term water supplies and permitting well into the future. It has also merged its stormwater, utilities, and natural resources activities to integrate their goals, policies, and objectives for long-term water supply and conservation purposes.

93. No specific CIP for water or wastewater supplies and facilities was adopted in the Amendment. The County currently has water and wastewater plans in its Capital Improvement Element that will accommodate growth and development under the land use policies of the Plan. From the list contained in the Capital Improvement Element an improvement schedule is developed, as well as a more specific five-year CIP. Only the latter, five-year program identifies funding and construction of projects, and the only projects identified in the Capital Improvement Element are projects that the County must fund and construct.

94. Because of the optional nature of the Amendment, supplies and facilities needed for its implementation will only be capable of being defined if and when development under the Amendment is requested. At that time, the specific

capital facility needs for the development can be assessed and provided for, and they can be made a part of the County's normal capital facilities planning under the Plan's Capital Facilities Chapter and its related policies. Policy VOS 2.1 conditions approval of Village development on demonstrating the availability and permitability of water and other public facilities and services to serve the development. Further, the Amendment provides for timing and phasing of both Villages and development in Villages to assure that capital facilities planning, permitting, and construction are gradual and can be accommodated in the County's typical capital improvement plan programs. Most importantly, the fiscal neutrality policies of the Amendment assure that the County will not bear financial responsibility for the provision of water or the construction of water and wastewater capital facilities in the Village/Open Space RMA. Supplies and facilities are the responsibility of the developers of the Villages and Hamlets that will be served. Additionally, Policy VOS3.6 requires that all irrigation in the Village/Open Space RMA (which therefore would include Villages and Hamlets) cannot be by wells or potable water sources and shall be by non-potable water sources such as stormwater and reuse water.

95. The supplies and improvements that will be associated with the optional development allowed by the

Amendment have been coordinated with the Plan and can be accommodated in the County's normal capital improvement planning. Through the policies in the Amendment, the water and wastewater facility impacts of the Amendment are addressed. Indeed, due to the fiscal neutrality policies in the Amendment, the County now has a financial tool that will make it easier to fund and provide water and wastewater facilities than it currently has under the Plan.

96. Finally, to ensure that capital facilities are properly programmed and planned, the Amendment also contains Policy VOS2.2, which provides in pertinent part:

To ensure efficient planning for public infrastructure, the County shall annually monitor the actual growth within Sarasota County, including development within the Village/Open Space RMA, and adopt any necessary amendments to APOXSEE in conjunction with the update of the Capital Improvements Program.

97. It is beyond fair debate that the capital facilities provisions within the Amendment are supported by adequate data and analyses, and that they are otherwise in compliance.

i. Financial feasibility and fiscal neutrality

98. The Capital Improvement Element identifies facilities for which a local government has financial responsibility, and for which adopted levels of service are

required, which include roads, water, sewer, drainage, parks, and solid waste.

99. Manasota-88 and Compton challenge the "financial feasibility" of the Amendment. As noted above, there is significant data and analyses of existing and future public facility needs. The data collection and analyses were conducted in a professionally acceptable manner. The evidence shows that as part of its analyses, the County conducted a cost-benefit analysis of the Village development and determined that Village and Hamlet development can be fiscally neutral and financially feasible. Dr. Fishkind also opined that, based upon his review of the Amendment, it is financially feasible as required by the Act.

100. Policy VOS2.9 of the Amendment provides in part:

Each Village and each Hamlet development within the Village/Open Space RMA shall provide adequate infrastructure that meets or exceeds the levels of service standards adopted by the County and be Fiscally Neutral or fiscally beneficial to Sarasota County Government, the School Board, and residents outside that development. The intent of Fiscal Neutrality is that the costs of additional local government services and infrastructure that are built or provided for the Villages or Hamlets shall be funded by properties within the approved Villages and Hamlets.

101. Policies VOS2.1, VOS2.4, and VOS2.9 provide that facility capacity and fiscal neutrality must be demonstrated,

and that a Fiscal Neutrality Plan and Procedure for Monitoring Fiscal Neutrality must be approved at the time of the master plan and again for each phase of development. In addition, under Policy VOS2.9, an applicant's fiscal neutrality analysis and plan must be reviewed and approved by independent economic advisors retained by the County. Monitoring of fiscal neutrality is also provided for in Policy VOS2.2.

102. Finally, Policy VOS2.10 identifies community development districts as the preferred financing technique for infrastructure needs associated with Villages and Hamlets.

103. The evidence establishes beyond fair debate that the policies in the Amendment will result in a system of regulations that will ensure that fiscal neutrality will be accomplished.

j. Internal inconsistencies

104. Manasota-88 and Compton further contend that there are inconsistencies between certain policies of the Amendment and other provisions in the Plan. If the policies do not conflict with other provisions of the Plan, they are considered to be coordinated, related, and consistent.

105. Conflict between the Amendment and the Plan is avoided by inclusion of the following language in Policy

RMA1.3:

If a property owner chooses to take advantage of the incentives provided by the Sarasota 2050 RMA, then to the extent that there may be a conflict between the Sarasota 2050 Resource Management Area Goal, Objectives and Policies and the other Goal[s], Objectives and Policies of APOXSEE, the Sarasota 2050 Resource Management Area Goal, Objectives and Policies shall take precedence. The other Goals, Objectives and Policies of APOXSEE including, but not limited to, those which relate to concurrency management and environmental protection shall continue to be effective after the adoption of these Resource Management Area Goal, Objectives and Policies.

106. As to this Policy, Manasota-88's and Compton's claim is really nothing more than a preference that the Plan policies should also have been amended at the same time to expressly state that where there was a conflict between themselves and the new Amendment policies, the new Amendment would apply. Such a stylistic difference does not amount to the Amendment's not being in compliance. Therefore, it is fairly debatable that the Amendment is internally consistent with other Plan provisions.

k. Public participation and intergovernmental coordination

107. Petitioners next contend that there was inadequate public participation during the adoption of the Amendment as well as a lack of coordination with other governmental bodies.

Ayech also asserted that there were inadequate procedures adopted by the County which resulted in less than full participation by the public. However, public participation is not a proper consideration in an in-compliance determination. In addition, the County has adopted all required procedures to ensure public participation in the amendment process.

108. The County had numerous meetings with the municipalities in the County, the Council of Governments (of which the County is a member), and meetings and correspondence by and between the respective professional staffs of those local governments. The County also met with the Hospital Board and the School Board. The evidence is overwhelming that the County provided an adequate level of intergovernmental coordination.

1. Regional and state comprehensive plans

109. Petitioners have alleged violations of the state and regional policy plans. On this issue, Michael D. McDaniel, State Initiatives Administrator for the Department, established that

the Amendment was not inconsistent with the State Comprehensive Plan. His testimony was not impeached or refuted.

110. Petitioners' claim that the Amendment is not consistent with the regional policy plan is based only on a report prepared by the Southwest Florida Regional Planning Council (SWFRPC) at the Amendment's transmittal stage. There was no evidence (by SWFRPC representatives or others) that the report raised actual inconsistencies with the SWFRPC regional policy plan, nor was any evidence presented that the SWFRPC has found the amendment, as adopted, to be inconsistent with its regional plan.

111. There was no persuasive evidence that the Amendment is either in conflict with, or fails to take action in the direction of realizing goals or policies in, either the state or regional policy plan.

m. Other objections

112. Finally, all other objections raised by Petitioners and not specifically discussed herein have been considered and found to be without merit.

E. County's Request for Attorney's Fees and Sanctions

113. On April 5, 2004, the County filed a Motion for Attorneys Fees and Sanctions Pursuant to F.S. § 120.595 (Motion). The Motion is directed primarily against Ayech and

contends that her "claims and evidence were without foundation or relevance," and that her "participation in the proceeding was 'primarily to harass or cause unnecessary delay, or for frivolous purpose.'" The Motion also alleges that Manasota-88 and Compton "participated in this proceeding with an intent to harass and delay the Amendment from taking effect." Replies in opposition to the Motion were filed by Petitioners on April 12, 2004.

114. The record shows that Ayech aligned herself (in terms of issues identified in the Pre-Hearing Stipulation) with Manasota-88 and Compton. While her evidentiary presentation was remarkably short (in contrast to the other Petitioners and the County), virtually all of the issues identified in the parties' Pre-Hearing Stipulation were addressed in some fashion or another by one of Petitioners' witnesses, or through Petitioners' cross-examination of opposing witnesses. Even though every issue has been resolved in favor of Respondents (and therefore found to be either fairly debatable or beyond fair debate), the undersigned cannot find from the record that the issues were so irrelevant or without some evidentiary foundation as to fall to the level of constituting frivolous claims. Accordingly, it is found that Petitioners did not participate in this proceeding for an improper purpose.

## CONCLUSIONS OF LAW

115. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties hereto pursuant to Sections 120.569, 120.57(1), and 163.3184(9), Florida Statutes.

116. The parties have stipulated that Petitioners reside, own property, or own or operate a business within the County, and that they submitted oral or written comments, objections, or recommendations to the County before the challenged amendment was adopted. Therefore, Petitioners are affected persons and have standing to bring this action.

117. Section 163.3184(9), Florida Statutes, provides that when the Department has rendered a notice of intent to find a comprehensive plan provision to be in compliance, as it did here, those provisions "shall be determined to be in compliance if the local government's determination is fairly debatable." Thus, Petitioners must bear the burden of proving beyond fair debate that the challenged amendments are not in compliance. This means that "if reasonable persons could differ as to its propriety," a plan amendment must be upheld. Martin County v. Yusem, 690 So. 2d 1288, 1295 (Fla. 1997). Or, as another court has stated, where there is "evidence in support of both sides of a comprehensive plan amendment, it is difficult to determine that the County's decision was anything

but 'fairly debatable.'" Martin County v. Section 28 Partnership, Ltd., 772 So. 2d 616, 621 (Fla. 4th DCA 2000).

118. Based upon all of the evidence, Petitioners have failed to establish beyond fair debate that the amendments are not supported by adequate data and analyses, that they are vague and fail to provide predictable standards, that they conflict with other Plan provisions, or that they are otherwise not in compliance, as alleged in their Petitions.

119. Finally, the County's Motion for Attorneys Fees and Sanctions under Section 120.595(1), Florida Statutes, should be denied. Likewise, Manasota-88's and Compton's Motion to Strike Sarasota County's Proposed Recommended Order is denied.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Department of Community Affairs enter a final order determining that the Sarasota County plan amendment adopted by Ordinance No. 2001-76 on July 10, 2002, is in compliance.

DONE AND ENTERED this 14th day of May, 2004, in  
Tallahassee, Leon County, Florida.

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DONALD R. ALEXANDER  
Administrative Law Judge  
Division of Administrative Hearings  
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1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 14th day of May, 2004.

ENDNOTES

1/ Unless otherwise noted, all future references are to  
Florida Statutes (2002).

2/ The word "Apoxsee" is a Seminole Indian word meaning  
tomorrow.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days of the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will render a final order in this matter.