IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

MIAMI-DADE COUNTY; ALIGNED REAL ESTATE HOLDINGS, LLC; SOUTH DADE INDUSTRIAL PARTNERS, LLC; BEDROCK SOUTH DADE 112 AVENUE, LLC; and BEDROCK SOUTH DADE 268 STREET, LLC,

Plaintiffs,

v. Case No. 2023 CA 1487

FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY,

Defendant.
_____/

FINAL SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS ON ALL COUNTS OF PLAINTIFFS' COMPLAINT

THIS CAUSE came before the Court on the Cross-Motions for Summary Judgment filed in this matter by Plaintiffs, Miami-Dade County (the "County"), Aligned Real Estate Holdings, LLC, South Dade Industrial Partners, LLC, Bedrock South Dade 112 Avenue, LLC, and Bedrock South Dade 268 Street, LLC (collectively, the "Owners" and together with the County, the "Plaintiffs"); Defendant, Florida Department of Commerce (formerly Florida Department of Economic Opportunity) (the "Department"); and Defendant-Intervenor, Dr. Nita Lewis ("Lewis" and together with the Department, the "Defendants"). The Court has reviewed the pleadings, motions, responses, replies, and other filings in this matter, and the entire record in this cause. The Court held a hearing on the Cross-Motions on February 21, 2024, and heard arguments of counsel for all parties. The Court, having been fully advised in the premises, finds that there is no genuine dispute as to any material fact and the Defendants are entitled to judgment as a matter of law on all Counts of Plaintiffs' Complaint. It is therefore Ordered and Adjudged as follows:

RELIEF REQUESTED

The Plaintiffs filed their Complaint on May 8, 2023, seeking declaratory and injunctive relief related to the adoption of an amendment to the County's comprehensive plan under Section 163.3184, Florida Statutes (the "Statute"). In the Complaint, the Plaintiffs ask the Court to declare that, under the Statute: (1) the Department had no authority to determine whether the amendment was a final or new proposed amendment once more than five working days had elapsed after the Department's receipt of the amendment package; and (2) the amendment is a final amendment, the Department's determination that the amendment was a new proposed amendment was erroneous, and the Department's direction to the County to "adopt, adopt with changes, or not adopt the proposed amendment" after the County Commission took final action on the amendment on November 1, 2022, has no basis in any statutorily prescribed process or remedy. The Plaintiffs also ask the Court to enter a permanent injunction barring the Department from initiating an administrative challenge to the proposed amendment on the basis that, under the Plaintiffs' reading of the Statute, the statutory deadline for the Department's filing of a challenge would have expired on January 26, 2023.

This is a matter of pure statutory interpretation. The material facts are not in dispute. The relevant provisions of the Statute and material facts are set forth below.

THE STATUTE

The Statute sets forth the process for adoption of comprehensive plan amendments. § 163.3184, Fla. Stat. Subsection (3) of the Statute sets forth the expedited state review ("ESR") process, which is applicable to the amendment at issue. § 163.3184(3), Fla. Stat. The ESR process establishes a clearly defined timeline for consideration of proposed amendments. *Id*. Under the ESR process, the local government proposing the amendment and the Department (as

well as other reviewing agencies) are required to take certain actions within certain timeframes. *Id*.

The ESR process is comprised of two stages. *Id*. The first stage is the transmittal stage. § 163.3184(3)(b), Fla. Stat. The second stage is the adoption stage. § 163.3184(3)(c), Fla. Stat. At both the transmittal and adoption stages, the local government considering the amendment must hold public hearings pursuant to subsection (11). § 163.3184(3)(b) and (3)(c), Fla. Stat.

Subsection (11)(a) sets forth the procedure for transmittal and adoption of amendments. § 163.3184(11)(a), Fla. Stat. Transmittal of a complete proposed amendment pursuant to subparagraph (3)(b)1. and adoption of an amendment pursuant to subparagraph (3)(c)1 "shall be by affirmative vote of not less than a majority of the members of the governing body present at the hearing." Under subsection (11)(b), the local governing body must hold at least two advertised public hearings on all proposed amendments. § 163.3184(11)(b), Fla. Stat.

"The first public hearing shall be held at the transmittal stage." § 163.3184(11)(b)1., Fla. Stat. If the local government votes to transmit the proposed amendment to the Department and the other reviewing agencies, it must transmit the proposed amendment with supporting data and analysis within 10 working days after the initial public hearing. § 163.3184(3)(b)1, Fla. Stat. Following transmittal, the Department and the other reviewing agencies have 30 days to review the proposed amendment and provide comments. § 163.3184(3)(b)2, Fla. Stat.

"The second public hearing shall be held at the adoption stage." § 163.3184(11)(b)2, Fla. Stat. The "second public hearing . . . shall be a hearing on whether to adopt [the proposed amendment] pursuant to subsection (11)." § 163.3184(3)(c)1. "If the local government fails, within 180 days after receipt of agency comments [or as extended], to hold the second public hearing, the amendment[] shall be deemed withdrawn . . ." *Id*. If the local government votes to

adopt the amendment, it must be "transmitted within 10 working days after the second public hearing to the [Department] . . ." § 163.3184(3)(c)2, Fla. Stat.

Within five working days after receipt of an amendment package, the Department must review the package for completeness and notify the local government of any "deficiencies" in the package. § 163.3184(3)(c)3, Fla. Stat. "For purposes of completeness, an amendment shall be deemed complete if it contains a full, executed copy of the adoption ordinance or ordinances; in the case of a text amendment, a full copy of the amended language in legislative format with new words inserted in the text underlined, and words deleted stricken with hyphens; in the case of a future land use map amendment, a copy of the future land use map clearly depicting the parcel, its existing future land use designation, and its adopted designation; and a copy of any data and analyses the local government deems appropriate." *Id*.

An amendment adopted by the local government does not become effective "until 31 days after the [Department] notifies the local government that the plan amendment is complete" or, if timely challenged, "until the [Department] or the Administration Commission enters a final order determining the adopted amendment to be in compliance." § 163.3184(3)(c)4, Fla. Stat.

THE UNDISPUTED FACTS[1]

On September 9, 2021, the County held the first public hearing on, and voted to transmit to the Department, a proposed amendment to the County's Comprehensive Development Master Plan ("CDMP"), identified by the County as CDMP20210003 (the "Amendment"). (Complaint, Ex. C).[2] On September 22, 2021, the County transmitted the proposed Amendment to the

[1] Although a recitation of the facts and records is helpful, the only facts and records that have any legal significance are the those which establish the statutory deadlines and the adoption date of the Amendment. Moreover, as discussed herein, the parties' characterization of the public hearings is irrelevant and cannot override the clear and unambiguous plain language of the Statute.

[2] The Undisputed Facts are based almost exclusively on the exhibits to the Complaint, which are referenced by the corresponding letter of the Exhibit. The only other document referenced in the

Department. (Complaint, Ex. B at 1).

On October 22, 2021, the Department sent the County a letter with technical assistance comments regarding the proposed Amendment. (Complaint, Ex. G). In the letter, the Department advised the County that, pursuant to Section 163.3184(3)(c), Florida Statutes, the County must hold the second public hearing on whether to adopt the proposed Amendment within 180 days of receipt of agency comments, or the proposed Amendment will be deemed withdrawn unless extended by agreement with notice to the Department. *Id*.

By letter dated April 1, 2022, the County provided notice to the Department regarding an agreed extension of the 180-day deadline. (Complaint, Ex. I). In the letter, the County advised the Department that "a 6-month extension is hereby deemed adequate, to conclude review of the [proposed Amendment] and for the Board to subsequently take final action on the [proposed Amendment]." *Id*. at 2. The letter further provided that "[t]he 180-day timeframe expires on April 27, 2022, and the 6-month extension will expire on October 27, 2022." *Id*.

By letter dated April 5, 2022, the Department acknowledged "[t]he new extended adoption date [of] October 27, 2022" and advised the County that the proposed Amendment, if adopted, must be submitted "within 10 working days of adoption pursuant to Section 163.3184, Florida Statutes." (Department MSJ, Ex. 1).

On May 9, 2022, the County published notice of a second public hearing on the proposed Amendment, which was set for May 19, 2022. (Complaint, Ex. K). On May 19, 2022, the County held a public hearing on the proposed Amendment. (Complaint, Ex. J at 31). However, the County did not take final action on the proposed Amendment at that hearing, and instead deferred final action to the June 1, 2022, County Commission meeting. *Id.* The County

Undisputed Facts is a letter dated April 5, 2022, from the Department to the County, discussed below, which is attached to the Department's Cross-Motion as Exhibit 1 and will be referenced accordingly.

Commission again deferred final action on the proposed Amendment at its June 1, 2022, meeting (*see* Complaint, Ex. L at 29), and again at its September 22, 2022, meeting (*see* Complaint, Ex. M at 6), and again at its October 18, 2022, meeting (*see* Complaint, Ex. N at 23).

At the October 18, 2022, meeting, the County Commission voted to defer final action on the proposed Amendment to November 1, 2022. (Complaint, Ex. N at 23). At the meeting, the Assistant County Attorney announced that the item would need to be re-advertised to allow the Board to consider the proposed Amendment at the November 1, 2022, meeting. *Id*. The notice for the County Commission's November 1, 2022, meeting stated, in relevant part, that the "Board will conclude its hearing . . ., allowing additional public comment as to the revisions to the [proposed Amendment] . . ." (Complaint, Ex. R).

At the November 1, 2022, meeting, the County held a public hearing on and voted to adopt the proposed Amendment by Ordinance No. 22-148 (the "Ordinance"). (Complaint, Ex. S at 21–22; Ex. F). The County's Summary of Final Action for the Ordinance provides that "[t]he [Amendment] was adopted by Miami-Dade Board of County Commissioners (Board) at a public hearing held November 1, 2022, through Ordinance No. 22-148." (Complaint, Ex. A at 5).

On December 27, 2022, under cover of letter dated December 22, 2022, the County transmitted the purported final adopted Amendment package to the Department. (Complaint, Ex. T). On December 27, 2022, the Department received the Amendment package and sent the County a letter advising that the Department had "conducted a preliminary inventory of the plan amendment package to verify the inclusion of all required materials." (Complaint, Ex. U). The Department further advised that the submission package was determined to be "complete" and would be reviewed pursuant to the "process set forth in Chapter 163.3184(3), Florida Statutes." *Id*.

On January 26, 2023, the Department sent the County a letter regarding the Amendment. (Complaint, Ex. B). The letter included a chronology of the relevant events related to the Amendment and concluded that the Amendment was not timely adopted because the County did not vote to adopt it at a public hearing held prior to the expiration of the extended statutory deadline. *Id*.

On February 3, 2023, the County sent the Department a letter acknowledging that it adopted the Amendment after taking public comment at the November 1, 2022, meeting, after the expiration of the deadline. (Complaint, Ex. V at 3). However, the County argued that it complied with the statutory deadline because, by holding the second public hearing on May 19, 2022, it "had both held and concluded the required second public hearing prior to October 27, 2022." *Id*.

On March 7, 2023, the Department sent the County a letter advising that, upon careful consideration of the information provided by the County and applying it to Section 163.3184, Florida Statutes, it found nothing which would prompt it to recede from its January 26, 2023, letter. (Complaint, Ex. W).

THE STATUTE APPLIED TO THE FACTS

The resolution of this case and the relief requested by the Plaintiffs depends solely on the interpretation of the Statute. The parties have extensively briefed the Court on their competing interpretations. However, they have not directed the Court to, and the Court has not independently located, any binding authority regarding the interpretation of the relevant provisions of the Statute. Accordingly, this is a matter of first impression.

For the reasons that follow, the Court finds that the plain language of the Statute, read *in pari materia* and consistently throughout, must be interpreted to define the "second public

hearing" as the hearing at which a decision is made on "whether to adopt" the Amendment. That is the only interpretation that harmonizes all of the provisions of the Statute, gives them significance and effect, and does not render any of them superfluous or require them to be rewritten. It is undisputed that the County decided to adopt the Amendment at a public hearing held on November 1, 2022, after the statutory deadline. Therefore, the Court will enter final summary judgment in favor of the Department on all counts of the Complaint.

I. The Department Has the Authority to Advise the County that the Amendment was Untimely

The Plaintiffs first ask the Court to declare that the Department was without authority to determine whether the Amendment was timely adopted once more than five working days had elapsed after the Department's receipt of the Amendment package. The Plaintiffs' request is based on subsection (3)(c)3's requirement that the Department notify the County of any "deficiencies" within five working days after receipt of the Amendment package.

First, to the extent the Plaintiffs argue that the Department does not have standing to proceed, the Court rejects the argument. The Plaintiffs filed this action against the Department and invoked the Court's jurisdiction. The Court finds that it has jurisdiction over the parties and the subject matter of this proceeding.

Regarding Plaintiffs' argument, § 163.3184(3)(c)3, Florida Statutes, sets forth the Department's obligations with respect to completeness reviews of adopted amendment packages. § 163.3184(3)(c)3, Fla. Stat. Under subsection (3)(c)3, the Department must notify local governments of any "deficiencies" within five working days after receipt of an amendment package. *Id*. The term "deficiencies" in the first sentence of subsection (3)(c)3 is unambiguously defined with reference to the following sentence, which lists the materials required for a complete amendment package. § 163.3184(3)(c)3, Fla. Stat. Those materials include: an

executed copy of the adoption ordinance and appropriate data and analysis; for text amendments, a copy of the amended language in legislative format; and for future land use map amendments, a copy of the map depicting the parcel's current designation and its new adopted designation. *Id*. The Court finds that the Statute does not require the Department to identify any possible procedural issues related to the adoption of amendments during the abbreviated five-day completeness review, and that the failure to timely adopt an amendment is not a "deficiency" that the Department must notify local governments of within five working days after receipt of an amendment package.

Section 163.3184(3)(c)4, Florida Statutes, establishes the time when amendments become effective, and provides that amendments "do not become effective until 31 days after the [Department] notifies the local government that the plan amendment is complete" or, if timely challenged, "until the [Department] or the Administration Commission enters a final order determining the adopted amendment to be in compliance." § 163.3184(3)(c)4, Fla. Stat.

The challenge referenced in subsection (3)(c)4 is defined with reference to § 163.3184(5)(b), which allows the Department to file a petition with the Division of Administrative Hearings ("DOAH") pursuant to §§ 120.569 and 120.57 to challenge whether the plan or plan amendments adversely impacts an important state resource or facility. § 163.3184(5)(b)1, Fla. Stat.

Thus, the challenge referenced in subsection (3)(c)4 is an administrative proceeding filed with DOAH under subsection (5), which provides for administrative challenges to the merits of a timely adopted amendment that was timely transmitted to the Department. Here, the proposed amendment was not timely adopted, nor was the amendment timely transmitted. Accordingly, the Department could not file a challenge with DOAH for a determination as to whether the Amendment adversely impacts an important state resource or facility under subsection (3)(c)4,

and subsection (5)(b).

Moreover, the language in Section 163.3184(3)(c)1 provides that "amendments shall be deemed withdrawn" if they are not adopted prior to the statutory deadline. § 163.3184(3)(c)1, Fla. Stat. Subsection (3)(c)1 is self-executing. Once the statutory deadline expired, the Amendment was automatically withdrawn. Thus, the Department determined that it was a nullity, and there was nothing for the Department to challenge in an administrative proceeding.

The Statute provides the specific authority for the Department to (1) determine, within five days, whether an amendment package is complete (i.e., includes the specific materials listed in the Statute which enable the Department to evaluate the merits of the Amendment); and (2) file, within 30 days, an administrative compliance challenge to the merits of an amendment.

The Department could not notify the County that the Amendment package was incomplete because it determined that it included all of the materials required by the Statute. The Department also could not file an administrative challenge to the merits of the Amendment because the Amendment was deemed withdrawn and therefore a nullity.

The Statute does not specifically address the time and manner in which the Department should notify a local government that an amendment was not timely adopted. However, the Statute includes specific deadlines that must be enforced, and the Department must have the authority to enforce them. Otherwise, the statutory deadlines would have no significance and would be rendered mere surplusage. The Legislature would not have adopted deadlines that cannot be enforced. Thus, the lack of specific language related to the enforcement of the statutory deadlines should not be read as a lack of authority. Instead, the Department's authority to enforce the deadlines through a determination of untimeliness is implied by the general purpose and scope of the Statute and the mandatory language accompanying the deadline. The

Department's notification of the County's untimely adoption of the Amendment was not an invalid exercise of delegated legislative authority.

The Court therefore enters final summary judgment on Count I of the Complaint in favor of the Defendants and declares that the Department has the authority to enforce the deadlines in the Statute, and that it timely and properly notified the County of its determination that the Amendment was untimely adopted by sending notice to the County prior to the Amendment becoming effective.

II. The Amendment Was Not Timely Adopted or Transmitted and is not a Final Amendment

In Count II of the Complaint, the Plaintiffs ask the Court to declare that: (1) the Department's determination that the Amendment was a new proposed amendment was erroneous; (2) the Amendment is a final amendment; and (3) the Department's direction to the County to "adopt, adopt with changes, or not adopt the proposed amendment" after the County Commission took final action on the amendment on November 1, 2022, has no basis in any statutorily prescribed process or remedy. The Plaintiffs' request is based on their characterization of the May 19, 2022, public hearing as the "second public hearing" referenced in the Statute, and their position that the County therefore complied with the Statute by holding the "second public hearing" prior to the statutory deadline despite not adopting or transmitting the Amendment before the statutory deadlines expired.

First, there is and can be no dispute that the plain language of the Statute required the County to transmit the Amendment to the Department "within 10 working days after the second public hearing." § 163.3184(3)(c)2, Fla. Stat. The County takes the position that it held the second public hearing on May 19, 2022, but concedes that it did not transmit the Amendment until December 22, 2022. Accordingly, by the County's own admission, it did not timely

transmit the Amendment. For that reason alone, the Plaintiffs' position must be rejected as irreconcilable with the plain language of the Statute.

Moreover, even if that were not the case, the Court finds that the plain language of the Statute requires an alternate basis for entry of summary judgment in favor of the Defendants on Count II of the Complaint. Subsection (3)(c)1 required the County to "hold its second public hearing . . . on whether to adopt [the Amendment] pursuant to subsection (11)." § 163.3184(3)(c)1, Fla. Stat. Subsection (11) sets forth the public hearing requirements and procedure for the adoption of the Amendment. § 163.3184(11), Fla. Stat. Subsection (11)(a) requires adoption "pursuant to subparagraph[] (3)(c)1. . . . by affirmative vote of not less than a majority of members of the governing body present at the hearing." § 163.3184(11)(a), Fla. Stat. Subsection (11)(b) required the County to hold at least two public hearings on the Amendment. § 163.3184(11)(b), Fla. Stat. "The first public hearing shall be held at the transmittal stage." § 163.3184(11)(b)1, Fla. Stat. "The second public hearing shall be held at the adoption stage." § 163.3184(11)(b)2, Fla. Stat.

Subsection (3)(c)2 required the County to transmit the Amendment to the Department within 10 working days after the second public hearing. § 163.3184(3)(c)2, Fla. Stat. Under subsection 3(c)1, if the County failed to hold the second public hearing by the statutory deadline, the Amendment was deemed withdrawn. § 163.3184(3)(c)1, Fla. Stat.

Under the plain language of subsection (11)(a), the County was required to adopt the Amendment by affirmative vote of a majority of the members of the County Commission present at the hearing pursuant to subsection (3)(c)1. § 163.3184(11)(a), Fla. Stat. The County could not comply with the statutory requirement to adopt the Amendment pursuant to subsection (3)(c)1 by simply holding the "second public hearing . . . on whether to adopt" the Amendment prior to the

statutory deadline. It could only comply with the mandate in subsection (11)(a) by adopting the Amendment prior to the deadline.

Moreover, if the County is not required to adopt the Amendment at the "second public hearing," it would be impossible for the County to transmit the adopted Amendment "within 10 working days after the second public hearing" in accordance with subsection (3)(c)2. § 163.3184(3)(c)2, Fla. Stat.

The phrase "second public hearing" is used multiple times in subsections (3)(c)1, (3)(c)2, and (11), and must carry the same meaning each time that it is used. Thus, the "second public hearing" in the first sentence of subsection (3)(c)1 must be the same "second public hearing" referenced in the second sentence, pursuant to which the Amendment is deemed withdrawn if not adopted by the statutory deadline. § 163.3184(3)(c)1, Fla. Stat. The "second public hearing" in subsection (3)(c)1 must also be the same "second public hearing" in subsection (3)(c)2, which requires transmittal "within 10 working days after the second public hearing." § 163.3184(3)(c)2, Fla. Stat. The County could not simply consider "whether to adopt" the proposed Amendment at the "second public hearing" without taking action because it would be impossible to transmit the adopted Amendment to the Department "within 10 working days after the second public hearing." §§ 163.3184(3)(c)1 and 2, Fla. Stat.

Moreover, the "second public hearing" referenced three different times in subsections (3)(c)1 and (3)(c)2 must also be the same "second public hearing" referenced in subsection (11)(b)2, which must be "held at the adoption stage." § 163.3184(11)(b)2, Fla. Stat. Subsection (11)(b)2 must be read with reference to subsection (11)(a), which requires amendments to be adopted pursuant to subsection (3)(c)1. § 163.3184(11)(a), Fla. Stat. Again, it would be impossible to adopt the Amendment pursuant to subsection (3)(c)1 if the County was not required to make a

decision on whether to adopt the Amendment at the "second public hearing."

The Court must construe the "second public hearing" consistently throughout the Statute. It cannot construe the "second public hearing" in subsection (3)(c)2 as the "adoption hearing," but construe the "second public hearing" in subsections (3)(c)1 and (11)(b)2 as the hearing that is "second in time." The only way to give the same meaning to the "second public hearing" in subsections (3)(c)1, (3)(c)2, and (11) is to define it as the hearing at which a decision is made on "whether to adopt" the amendment.

Subsection (11)(b)'s allowance for "at least two" public hearings on proposed amendments does not require the Court to interpret the "second public hearing" as the hearing that is second in time. In fact, such an interpretation is inconsistent with the plain language of the Statute and ignores the possibility of multiple public hearings at the transmittal stage. Subsection (11)(b) requires local governments to hold "at least two" public hearings. § 163.3184(11)(b), Fla. Stat. The first public hearing must be held at the "transmittal stage." § 163.3184(11)(b)1, Fla. Stat. The second public hearing must be held at the "adoption stage." § 163.3184(11)(b)2, Fla. Stat.

If local governments can hold as many public hearings on proposed amendments as they would like, they can hold more than one public hearing at the transmittal stage. If each of the public hearings had to be numbered sequentially in the order that they are conducted, as the Plaintiffs contend, multiple public hearings at the transmittal stage would result in the "second public hearing" being held at the "transmittal stage." Thus, if a local government held multiple public hearings at the transmittal stage, it would be impossible for the "second public hearing" to be "at the adoption stage" as required by subsection (11)(b)2 because "the second public hearing" would have been held at the "transmittal stage." § 163.3184(11)(b), Fla. Stat.

The Statute must be construed as a whole, in context and with reference to all relevant subsections. Terms that are used multiple times in the Statute must carry the same meaning each time that they are used. All parts of the Statute must be harmonized and given significance and effect, without rendering any of them superfluous or rewriting the Statute.

There is only one way to interpret the Statute which complies with these rules of statutory construction. The Statute allows local governments to hold as many public hearings on proposed amendments as are necessary or desired. However, the first and second public hearings referenced in the Statute, held respectively at the transmittal and adoption stages, are the hearings at which the local government makes a decision on whether to transmit or adopt the amendment. If the local government decides to transmit or adopt the amendment at the statutory first or second public hearing, it must be transmitted to the Department within ten working days after the hearing. If the local government fails to adopt the amendment at the statutory second public hearing held prior to the statutory deadline, the amendment is deemed withdrawn.

The Court also finds this interpretation to be consistent with the purpose and intent of the adoption process set forth in the Statute. The expedited state review process applicable to the Amendment establishes a clearly defined timeline and deadlines for consideration of amendments. Under the Plaintiffs' proposed interpretation, the County could consider the Amendment indefinitely. The Court finds that the Legislature could not have intended such an absurd result.[3]

[3] Although the Court finds that the plain language of the Statute is clear and unambiguous, and it therefore does not need to consider legislative history, the Court also finds that the history does not show that the Legislature intended to change the requirement that local governments adopt amendments prior to the statutory deadline when it adopted the current text of the Statute. The bill that adopted the current text of the Statute made numerous changes to Florida's growth management laws and comprehensively rewrote several sections and subsections of Part II of Chapter 163, including Section 163.3184 and, in particular, subsection (3) by adopting language from a pilot program. The adoption of the text from the pilot program as part of a comprehensive rewrite of the entire section (and multiple sections and subsections of the Part) does not evidence

The Court acknowledges that comprehensive plan amendments are legislative acts. Although legislative acts are afforded more discretion than judicial or quasi-judicial acts, they must still be exercised within the confines of state law. In this case, that means subsection (3)(c)1, which deems amendments withdrawn if they are not adopted by the statutory deadline.

The Court finds, for the reasons set forth herein, that the "second public hearing" referenced repeatedly in the Statute must necessarily be the hearing at which the County made a decision on "whether to adopt" the Amendment. The County's characterization of the public hearings is irrelevant and cannot override the clear and unambiguous plain language of the Statute.

Thus, the only records that have any legal significance are the records showing the statutory deadline and the adoption date of the Amendment. Those records are: (1) the County's April 1, 2022, letter notifying the Department of the extension of the statutory deadline; (2) the Department's April 5, 2022, letter acknowledging the extension; (3) the minutes from the May 19, 2022, County Commission meeting; (4) the minutes from the November 1, 2022, County Commission meeting; and (5) the County's December 22, 2022, letter transmitting the Amendment package. Those records are clear and speak for themselves, and there is no dispute regarding the relevant facts set forth therein.

The County's April 1, 2022, letter notified the Department of an extension of the statutory deadline through October 27, 2022. (Complaint, Ex. I). The Department's April 5, 2022, letter acknowledged "[t]he new extended adoption date [of] October 27, 2022" and advised the County that the proposed amendment, if adopted, must be submitted "within 10 working days of adoption pursuant to Section 163.3184, Florida Statutes." (Department MSJ, Ex.

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an intent to alter the requirement that amendments be adopted prior to the expiration of the statutory deadline.

1). The minutes of the May 19, 2022, County Commission meeting show that the County did not vote to adopt the Amendment. (Complaint, Ex. J at 31). The minutes of the November 1, 2022, County Commission meeting show that the County voted to adopt the Amendment. (Complaint, Ex. S at 21-22). The County's December 22, 2022, letter shows that the County transmitted the Amendment package to the Department on or after December 22, 2022. (Complaint, Ex. T).

Therefore, there is and can be no dispute that the statutory deadline was extended to October 27, 2022, and that the Amendment was adopted on November 1, 2022, and transmitted to the Department on or after December 22, 2022. There may be other records indicating that the County considered either the May 19, or the November 1, public hearing (or both) to be the "second public hearing," but those records, and the County's characterization, are legally irrelevant. Under the plain language of the Statute, the County held the statutory second public hearing and made a decision on whether to adopt the Amendment on November 1, 2022, five days after the extended statutory deadline of October 27, 2022. Therefore, under subsection (3)(c)1, the Amendment was deemed withdrawn. Moreover, the County transmitted the Amendment package to the Department on or after December 22, 2022, well over 10 working days after the second public hearing, in violation of subsection (3)(c)2.

The Court therefore enters final summary judgment in favor of Defendants on Count II of the Complaint and declares that the Amendment was not adopted or transmitted prior to the statutory deadlines. The Amendment was therefore deemed withdrawn.

III. The Plaintiffs have not Established the Right to an Injunction

In order to prevail on a claim for a permanent injunction, Plaintiffs must show (1) a clear legal right to the relief requested; (2) an inadequate remedy at law; and (3) that irreparable harm will occur absent injunctive relief. Because the Court has determined that the Amendment was not timely adopted and transmitted, and the Department timely and properly exercised its authority

to notify the County that the Amendment was untimely, the Court does not need to reach this issue.

Moreover, even if Plaintiffs had established a legal basis for the relief they seek, the Court finds that the Plaintiffs have not established the elements for a permanent injunction. First, the Plaintiffs have not shown that they have a clear legal right to the unchallenged adoption of the Amendment. For all of the reasons set forth herein, the County failed to adopt the Amendment in accordance with state law, and the Plaintiffs' request for an injunction fails accordingly. The County's failure to adopt the Amendment prior to the statutory deadline deemed the Amendment withdrawn. § 163.3184(3)(c)1., Fla. Stat. Thus, the Amendment was a nullity, and there was nothing to challenge in an administrative proceeding. § 163.3184 (5)(b), Fla. Stat. (an administrative challenge to an amendment is a challenge to its merits).

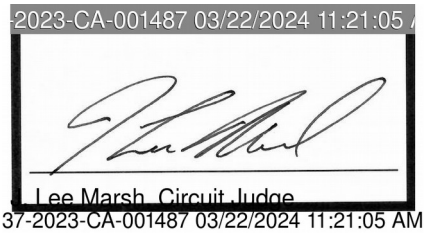
The Plaintiffs also have not established that they would be irreparably harmed if the Department was given the opportunity to file an administrative challenge to the Amendment within 30 days of a final adjudication in the event the Court's decision is overturned on appeal. The potential challenge and expenditure of funds in the event of possible litigation cannot constitute irreparable harm. It is unknown whether the Department would choose to file an administrative challenge to the merits of the Amendment if the Court's decision is overturned on appeal. Since the Department determined that the Amendment was not timely adopted, it likely has not considered the merits. Upon consideration, the Department may or may not decide to file a challenge. If it decides not to file a challenge, there has been no harm. If it decides to file a challenge, Plaintiffs would be entitled to all of the rights and remedies afforded under the law regardless of when it is filed. Moreover, the Intervenor has already filed an administrative challenge, so the Amendment will be subject to review, and Plaintiffs will be subject to litigation

costs regardless of whether the Department files an administrative challenge.

In addition, the Plaintiffs contention that the time for filing an appeal cannot be tolled because the Statute does not include an express tolling provision need not be addressed. As set forth herein, the Statute does not specifically address the procedure for notification of untimely adopted amendments. This Court need not enter an advisory opinion on equitable tolling. That issue, if it arises, may be addressed by an appropriate court.

The Court therefore enters final summary judgment in favor of Defendants on Count III of the Complaint.

DONE and ORDERED on Friday, March 22, 2024.



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