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1998-99 "Y" Contract file



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STATE OF FLORIDA

DEPARTMENT OF COMMUNITY AFFAIRS

"Helping Floridians create safe, vibrant, sustainable communities"

JEB BUSH
Governor

STEVEN M. SEIBERT
Secretary

April 19, 1999

By Certified Mail (Return Receipt Requested)

Daniel D. Richardson, Esq.
LeBoeuf, Lamb, Greene & McRae, L.L.P.
50 North Laura Street
Suite 2800
Jacksonville, Florida 32202-3650

Michael Mullin, Esq.
Nassau County Attorney
191 Nassau Place
Yulee, Florida 32097

Re: *Department of Community Affairs v. Nassau County & Y.P.C., Inc.*, DOAH Case
No. 97-5611GM

Dear Dan and Mike:

Enclosed please find an original, fully-executed Stipulated Settlement Agreement in the above-referenced matter for each of your files. I await receipt of the adopted remedial amendment from the Nassau County.

Thank you again for your consideration and cooperation in this matter.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Shaw P. Stiller".

Shaw P. Stiller
Assistant General Counsel

2555 SHUMARD OAK BOULEVARD • TALLAHASSEE, FLORIDA 32399-2100
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**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

DEPARTMENT OF COMMUNITY
AFFAIRS,

Petitioner,

v.

NASSAU COUNTY, a political
subdivision of the State of Florida,

DOAH Case No. 97-5611GM

Respondent,

and

Y.P.C., Inc.

Intervenor.

_____ /

STIPULATED SETTLEMENT AGREEMENT

Petitioner, Department of Community Affairs ("the Department"), Respondent, Nassau County, Florida ("the County"), and Intervenor, Y.P.C., Inc., ("the Intervenor") hereby stipulate and agree as follows:

GENERAL PROVISIONS

1. Recitals and Findings. In entering into this Stipulated Settlement Agreement the parties agree that, as modified by the Remedial Actions (as defined below) set forth in this Agreement, the Plan Amendment (as defined below) will allow development of the property which is the subject of the Plan Amendment in a manner which would provide the County with a good quality residential community on appropriate water and sewer infrastructure and the dedication of road right-of-way and for roadway and intersection improvement on an important minor arterial in the County.

In entering into this Stipulated Settlement Agreement, the Department finds that the County and the Intervenor have submitted appropriate data and analyses to support the Remedial Plan Amendment (as defined below). These data and analyses were submitted to the Department under cover letters dated July 20 and August 11, 1998

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

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

b. Agreement: This stipulated settlement agreement.

c. Comprehensive Plan Amendment or Plan Amendment: Comprehensive Plan Amendment 97-2 (Department Number), which was adopted by the County on September 22, 1997, by Ordinance No. 97-26.

d. DOAH: The Florida Division of Administrative Hearings.

e. In compliance or into compliance: Consistent with Sections 163.3177, 163.3178, 163.3180, and 163.3191, Florida Statutes, Chapter 187, Florida Statutes, the applicable strategic regional policy plan, and Chapter 9J-5, Florida Administrative Code.

f. Notice: The Notice of Intent issued by the Department on November 14, 1997, to which was attached the Statement of Intent to find the Plan Amendment not in compliance.

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

h. Remedial Action: A Remedial Plan Amendment, submission of a support document, or other action described in the Statement of Intent or this Agreement as an action which must be completed to bring the Plan Amendment into compliance.

i. Remedial Plan Amendment: An amendment to the Nassau County Comprehensive Plan or support document, the need for which is identified in this Agreement, including its exhibits, and which the County must adopt to complete all Remedial Actions. Remedial Plan Amendments adopted pursuant to this Agreement must, in the opinion of the Department, be consistent with and substantially similar in concept and content to the ones identified in this Agreement, including exhibits, or be otherwise acceptable to the Department.

j. Statement of Intent: The Statement of Intent to find the Plan Amendment not in compliance issued on November 13, 1997 by the Department in the above-styled case.

k. Support Document: The studies, inventory maps, surveys, data, inventories, listings or analyses used to develop and support a comprehensive plan or a plan amendment.

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

4. Approval by Governing Body. This Agreement has been approved by the County's governing body at a public hearing advertised at least 10 days prior to the hearing in a newspaper of general circulation in the manner prescribed for advertisements in Sections 163.3184(15)(c) and 163.3184(16)(d), Florida Statutes. This Agreement has been executed by the appropriate officer as provided in the County's charter or other regulations.

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

6. Other Persons Unaffected. Nothing in this Agreement shall be deemed to affect the rights of any other person under the law.

7. Attorney Fees and Costs. Each party shall bear its own costs, including attorney fees.

8. Effective Date. This Agreement shall become effective upon the latest to occur of the dates on which it is signed by the Department, the County, or the Intervenor.

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

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

11. Exhibits. Exhibits A and B are hereby incorporated by reference.

12. Negotiation of Agreement. The Department issued its Notice and Statement of Intent to find the Plan Amendment not in compliance, and filed the Petition in this

case to that effect. Subsequent to the filing of the Petition the parties conferred and agreed to resolve the issues in the Petition, Notice and Statement of intent through this Agreement. It is the intent of this Agreement to resolve fully all issues between the parties in this proceeding.

13. Dismissal. If the County and the Intervenor complete the Remedial Actions required by this agreement, the Department will issue a cumulative notice of intent addressing both the Remedial Plan Amendment required by this Agreement and the initial Plan Amendment which is the subject to these proceedings. The Department will file the cumulative notice of intent with DOAH. The Department will also file a request with DOAH to relinquish jurisdiction to the Department for dismissal of this proceeding.

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

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

16. Description of Provisions not in Compliance and Remedial Actions; Legal Effect of Agreement. Exhibit A to this Agreement is a copy of the Statement of Intent, which identifies the provisions not in compliance. Exhibit B contains Remedial Actions needed for

compliance. This Agreement constitutes a stipulation that if the Remedial Actions are accomplished, the Plan Amendment will be in compliance.

17. Remedial Actions to be Considered for Adoption. The County agrees to consider for adoption by formal action of its governing body all Remedial Actions described in Exhibit B no later than the time period provided for in this agreement.

18. Adoption or Approval of Remedial Plan Amendments. Within five (5) days after execution of this Agreement by the parties, the County shall publish required notice of, and as soon thereafter as legally possible consider for adoption, all Remedial Actions or Plan Amendments and amendments to the support documents. Adoption of the Remedial Plan Amendments may be done at a single hearing. Within ten (10) working days after adoption by ordinance of the Remedial Plan Amendment or an ordinance or resolution relating to a Remedial Action, the County shall transmit five (5) copies of the adopted Remedial Plan Amendment and any ordinance or resolution relating to any Remedial Action to the Department as provided in Rule 9J- 11.011(5), Florida Administrative Code. The County also shall submit one (1) copy of any such document to the regional planning agency, the Florida Department of Transportation, and to any other unit of local or state government that has filed a written request with the governing body for a copy of the Remedial Plan Amendment or such ordinance or resolution and a copy to any party granted intervenor status in this proceeding. The document shall be transmitted to the Department along with a letter which describes the Remedial Action adopted for each part of the plan amended, including references to specific portions and pages.

19. Acknowledgment. All parties to this Agreement acknowledge that the "based upon" provisions in Section 163.3184(8), Florida Statutes, do not apply to any Remedial Action.

20. Review of Remedial Amendments and Notice of Intent. Within thirty (30) days after receipt of the adopted Remedial Plan Amendments and support documents, the Department shall issue a notice of intent pursuant to Section 163.3184, Florida Statutes, for the adopted Remedial Plan Amendment or the completion of the Remedial Actions in accordance with this Agreement.

a. In Compliance: If the adopted or completed Remedial Actions satisfy this Agreement, the Department shall issue a cumulative notice of intent addressing both the Plan Amendment and any Remedial Plan Amendment as being in compliance. The Department shall file this cumulative notice with DOAH and shall move to have this proceeding dismissed.

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

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

22. Development Agreement. The Remedial Actions specified in this Agreement include a comprehensive plan amendment and a development agreement. While the comprehensive plan amendment must be reviewed and deemed to be "in compliance" by the

Department to effectuate this Agreement, the development agreement is a contract between the County and Intervenor and is not subject to review or approval by the Department. The Department's execution of this Agreement is neither an endorsement nor criticism of the development agreement.

This agreement contains all the terms and conditions agreed to by the parties.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

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

DEPARTMENT OF COMMUNITY AFFAIRS

NASSAU COUNTY, FLORIDA

J. Thomas Beck
Carol Forthman, Director
Division of Resource Planning
and Management

J.H. Cooper
(Name) J.H. Cooper
(Title) Chairman

4-11-99
Date

March 22, 1999
Date

Shawn Burt
Assistant General Counsel

Attest:

~~County Clerk~~

J. M. "Chip" Oxley, Jr.
County Attorney-
J. M. "Chip" Oxley, Jr.
Ex-Officio Clerk

Y.P.C., INC.

Michael C.J. Fallon
(Name) Michael C.J. Fallon
(Title) President

April 1, 1999
Date

Approved as to Form by the
Nassau County Attorney

Michael S. Mullin
Michael S. Mullin

EXHIBIT "A"

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

IN RE: COUNTY OF NASSAU)
COMPREHENSIVE PLAN)
AMENDMENT ADOPTED BY) DOCKET NO. 97-2-NOI-9005-(A)-(N)
ORDINANCE NO. 97-26)
ON September 22, 1997)

STATEMENT OF INTENT TO FIND
COMPREHENSIVE PLAN AMENDMENT
NOT IN COMPLIANCE

The Florida Department of Community Affairs hereby issues its Statement of Intent to find the Comprehensive Plan amendment by Nassau County, adopted by Ordinance No. 97-26 on September 22, 1997, Not In Compliance based upon the Objections, Recommendations and Comments Report (ORC Report) issued by the Department on July 24, 1997, which is hereby incorporated by reference. The Department finds that the plan amendment is not "in compliance," as defined in Section 163.3184(1)(b), Florida Statutes (F.S.), because it is not consistent with Section 163.3177, F.S., the State Comprehensive Plan, and Chapter 9J-5, Florida Administrative Code (F.A.C.), for the following reasons:

I. Future Land Use Map

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

1. The FLUM amendment is inconsistent because it does not demonstrate a need for the increase in residential density to accommodate the projected population growth and land use needs throughout the planning timeframe. The amendment is inconsistent with Sections 163.3177(6)(a) and (8), F.S.; and Rules 9J-5.005(2); 9J-5.006(2)(c) and (5); 9J-11.007(1) and (3), F.A.C.

2. The amendment is internally inconsistent with Policy 1.02.05 of the FLUE of the comprehensive plan which establishes provisions for separation of urban and rural uses, because it fails to provide for a clear separation of urban and rural land uses and allows for incompatible uses adjacent to established rural residential and conservation uses. The amendment is inconsistent with Sections 163.3177(2), (6)(a), (9)(b) and (9)(f), F.S.; and Rules 9J-5.005(5); 9J-5.006(3)(b) 8, (3)(c) 2 and (5)(g) 9; and 9J-11.007(1) and (3), F.A.C.

3. The FLUM amendment is inconsistent because it establishes a future land use category for the subject site that has not been demonstrated to be suitable based on the character of the subject site. The FLUM amendment does not protect natural resources or

ensure compatibility with adjacent land uses. The site is located on poorly drained soils adjacent to jurisdictional wetlands. The amendment does not demonstrate how the proposed land use would be compatible with the natural resources. The amendment is inconsistent with Sections 163.3177(6)(a), (6)(d), and (8), F.S.; and Rules 9J-5.005(2), 9J-5.006(2) and (4), 9J-5.013(1) and (3), F.A.C.

4. The FLUM amendment is internally inconsistent with Policy 1.02.04 of the FLUM of the comprehensive plan which requires that amendments to the FLUM address issues pertaining to the availability of supporting infrastructure, because it does not analyze the availability of and demand on roadways, potable water, sanitary sewer, solid waste, and drainage facilities to serve the development. The amendment is inconsistent with Sections 163.3177(2), (3)(a)3, (4)(a), (6)(a), (6)(j)5, and (8), F.S.; and Rules 9J-5.005(2) and (5); 9J-5.006(3) and (4); and 9J-11.007(1) and (3), F.A.C.

B. Recommended remedial actions. The inconsistency may be remedied by taking the following action:

1. The County should provide data and analysis addressing the need for the additional medium density residential land use acreage. An inventory of the current vacant acreage of this land use category should be provided. An analysis (in terms of acreage

need compared to acreage availability) of the adequacy of this inventory to accommodate the projected population over that originally projected may be one basis for supporting this amendment.

2. The County should provide additional data and analysis to demonstrate that the amendment is consistent with Policy 1.02.05 which establishes provisions for the separation of urban and rural land uses. The amendment should be revised to establish a land use intensity appropriate to the site given the adjacent land uses, soil limitations, availability of infrastructure, and protection of natural resources.

3. The County should provide additional data and analysis identifying the level of development that is appropriate given the character of the site and its suitability for development. The analysis should also consider the impacts of development on resources adjacent to the site including water quality and wetland functional values.

4. The County should provide data and analysis which assesses the availability of and demand on the following public facilities for the property based on the most intensive land use allowed: sanitary sewer, solid waste, drainage, potable water, and traffic circulation. This analysis should identify the impacts upon the level of service standards for each facility, identify any needed

improvements along with associated costs, and assess the ability of the County to finance the improvements.

II. CONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

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

1. The comprehensive plan amendment is inconsistent with the State Comprehensive Plan goals and policies, including the following provisions (Section 163.3177(4)(a) and (9)(c), F.S.):

- a. Goal 8 (Water Resources), Policies 10 and 12.
- b. Goal 10 (Natural Systems and Recreational Lands), Policy 7.
- c. Goal 16 (Land Use), Policies 1 and 2.
- d. Goal 18 (Public Facilities), Policy 1.
- e. Goal 20 (Transportation), Policy 13.

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

- 1. Revise the plan amendment as described above in Sections I.B.

CONCLUSIONS

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

Executed this 13th day of November, 1997, at Tallahassee, Florida.

for J. Thomas Beck
Charles G. Pattison, Director
Division of Resource Planning
and Management
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399

EXHIBIT "B"

1. The Department, the County and the Intervenor agree that a Remedial Plan Amendment relating to the property which is the subject of the Plan Amendment ("the property") will be adopted by the County, that Intervenor voluntarily agrees to the imposition of the conditions contained in such Remedial Plan Amendment, and that the Remedial Plan Amendment will include the following language:

Any portion of [the property] that is developed at a gross density greater than allowed by the [Nassau County Comprehensive Plan] future land use designations in effect as of September 22, 1997, such development must be served by, and must utilize, central water and sewer utilities.

2. The County and the Intervenor agree that a Development Agreement will be executed between the County and the Intervenor which will include the following language:

Upon the earliest to occur of

(i) the application for site plan approval for [development on the Intervenor's adjoining commercially-zoned property which fronts on State Road A-1-A/State Road 200]; or

(ii) the application for building permits that would permit residential development in excess of 253 dwelling units cumulatively on [the property]; or

(iii) the issuance by the Florida Department of Transportation of a signalization warrant for the intersection of Felmor Road and State Road A-1-A/State Road 200; or

(iv) the commitment of funds by the County for the construction of the realignment of a portion of Miner Road as would be facilitated by such conveyance;

[the Intervenor] shall convey to the County, at no cost to the County, a sixty-foot (60 foot) right of way along the westerly property line of [the Intervenor's adjoining commercially-zoned property which fronts on State Road A-1-A/State Road 200], and across [the Intervenor's property], of sufficient geometry and alignment to permit the construction of a four-way, signalized intersection (constructed to Florida Department of Transportation ["FDOT"] standards for signalized intersection design) at Felmor Road and State Road A-1-A/State Road 200, said right of way connecting to the existing Miner Road at or about the southeastern corner of [the Intervenor's adjoining commercially-zoned property which fronts on State Road A-1-A/State Road 200] and aligned in a manner consistent with good engineering practice for "local" roadway geometry and design speeds.

3. The County and the Intervenor agree that a Development Agreement will be executed between the County and the Intervenor which will include the following language:

Capacity is hereby deemed sufficient and transportation services and facilities hereby reserved for the first 253 dwelling units of residential development on [the property] and, by its approval and execution of this [Development Agreement], the County declares such units to have satisfied concurrency requirements as to such services and facilities.

4. The Department, the County and the Intervenor agree that, pursuant to the Plan Amendment, the Nassau County Comprehensive Plan Future Land Use Map designation of the property will be changed to medium density residential, that a Remedial Plan Amendment relating to the property will be adopted by the County, that Intervenor voluntarily agrees to the imposition of the conditions contained in such Remedial Plan Amendment, that Intervenor will provide written notice of the Remedial Plan to any purchaser of the property from the Intervenor, and that the Remedial Plan Amendment will include the following language:

No building permits shall be issued for dwelling units or other residential development on other Nassau County property which is designated by comprehensive plan land use map changes adopted and becoming effective after September 1, 1998, for medium or high density residential, if the residential development resulting from such building permits would negatively affect the ability of development on [the property] to satisfy concurrency requirements relating to transportation services or facilities. At the time building permits are applied for relating to [the property] development in excess of the first 253 dwelling units on [the property], the applicant for such permits shall demonstrate that the LOS standards on State Road A-1-A/State Road 200 and Miner Road are not forecasted to be exceeded in the five (5) year period subsequent to such approval, based on FDOT projections.

5. The Department, the County and the Intervenor agree that a Remedial Plan Amendment will be adopted by the County, and that the Remedial Plan Amendment will include the following language:

Policy *:** The County shall not approve any change to the Future Land Use Map which would result in an increase in density or intensity of development impacting any roadway segment within the traffic impact area that is not projected to be operating at the level of service adopted in this Plan (at both the five year and overall planning timeframe) with the additional traffic from this Future Land Use Map change. The traffic impact area means all roadways and intersections of the major road network in which peak hour traffic attributable to the maximum development potential resulting from the future land use map amendment is equal to or greater than two percent (2%) of the maximum service volume of the adopted level of service standard for such roadways.