



STATE OF FLORIDA

DEPARTMENT OF COMMUNITY AFFAIRS

"Dedicated to making Florida a better place to call home"

CHARLIE CRIST
Governor

THOMAS G. PELHAM
Secretary

March 5, 2010

The Honorable Mary Bolin, Chair
Brevard County Board of County Commissioners
2725 Judge Fran Jamieson Way
Viera, Florida 32940

Dear Commissioner Bolin:

The Department of Community Affairs has completed its review of the Brevard County Comprehensive Plan Amendment (DCA Number 09-D1) adopted on December 15, 2009 by Ordinance Number 09-39. The Department has determined that the amendment is "not in compliance" with the requirements of Chapter 163, Part II, Florida Statutes (F.S.). The Department is issuing a Statement of Intent and a Notice of Intent to find the plan amendment "not in compliance". The Notice of Intent has been sent to the Florida Today newspaper for publication on March 8, 2010.

Please note that a copy of the County's adopted Comprehensive Plan Amendment 09-D1 and the Department's Statement of Intent and Notice of Intent to find the amendment "not in compliance" must be available for public inspection Monday through Friday, except for legal holidays, during normal business hours at the Office of the Planning and Development Department, Building A, 2725 Judge Fran Jamieson Way, Viera, Florida 32940. Also, Section 163.3184(8)(c)2., F.S., requires a local government operating an Internet site to post a copy of the Department's Notice of Intent on the Internet within 5 days following the receipt of the mailed copy of the Notice of Intent.

2555 SHUMARD OAK BOULEVARD ♦ TALLAHASSEE, FL 32399-2100
850-488-8466 (p) ♦ 850-921-0781 (f) ♦ Website: www.dca.state.fl.us

♦ COMMUNITY PLANNING 850-488-2356 (p) 850-488-3309 (f) ♦ FLORIDA COMMUNITIES TRUST 850-922-2207 (p) 850-921-1747 (f) ♦
♦ HOUSING AND COMMUNITY DEVELOPMENT 850-488-7956 (p) 850-922-5623 (f) ♦

The Honorable Mary Bolin
March 5, 2010
Page 2

The Notice of Intent and the Statement of Intent must be forwarded to the Division of Administrative Hearings of the Florida Department of Management Services for the scheduling of an administrative law judge pursuant to Section 120.57, F.S.

If you have any questions regarding this letter, please contact Caroline Knight, Principal Planner, at (850) 922-1773, or by e-mail: caroline.knight@dca.state.fl.us.

Sincerely,

A handwritten signature in black ink that reads "Mike McDaniel". The signature is written in a cursive style with a large, looping "M" and "D".

Mike McDaniel, Chief
Office of Comprehensive Planning

MM/ck

Enclosure: Notice of Intent
Statement of Intent

cc: Mr. Steve Swanke, Planning Manager, Planning & Development Department,
Brevard County
Mr. Phil Laurien, Executive Director, East Central Florida Regional Planning Council

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS
NOTICE OF INTENT TO FIND
BREVARD COUNTY
COMPREHENSIVE PLAN AMENDMENT
NOT IN COMPLIANCE
DOCKET NO. 09-D1-NOI-0501-(A)-(N)

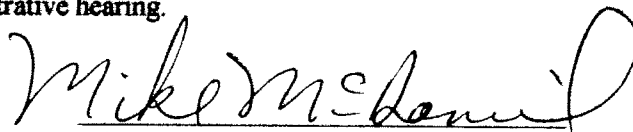
The Department gives notice of its intent to find the Amendment to the Comprehensive Plan for Brevard County, adopted by Ordinance No. 09-39 on December 15, 2009, NOT IN COMPLIANCE, pursuant to Sections 163.3184, 163.3187 and 163.3189, F.S.

The adopted Brevard County Comprehensive Plan Amendment, the Department's Objections, Recommendations, and Comments Report, (if any), and the Department's Statement of Intent to Find the Comprehensive Plan Amendment Not In Compliance will be available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at the Brevard County Planning and Development Department, Building A, 2725 Judge Fran Jamieson Way, Viera, Florida 32940.

This Notice of Intent and the Statement of Intent will be forwarded by petition to the Division of Administrative Hearings (DOAH) of the Department of Management Services for the scheduling of an administrative hearing pursuant to Sections 120.569 and 120.57, F.S. The purpose of the administrative hearing will be to present evidence and testimony on the noncompliance issues alleged by the Department in its Objections, Recommendations, and Comments Report and Statement of Intent in order to secure a recommended order for forwarding to the Administration Commission.

Affected persons may petition to intervene in this proceeding. A petition for intervention must be filed at least twenty (20) days before the final hearing and must include all of the information and contents described in Uniform Rule 28-106.205, F.A.C. Pursuant to Section 163.3184(10), F.S., no new issues may be alleged as a reason to find a plan or plan amendment not in compliance in a petition to intervene filed more than twenty one (21) days after publication of this notice unless the petitioner establishes good cause for not alleging such new issues within the twenty one (21) day time period. The petition for intervention shall be filed at DOAH, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060, and a copy mailed or delivered to the local government and the Department. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right such a person has to request a hearing pursuant to Sections 120.569 and 120.57, F.S., or to participate in the administrative hearing.

After an administrative hearing petition is timely filed, mediation is available pursuant to Subsection 163.3189(3)(a), F.S., to any affected person who is made a party to the proceeding by filing that request with the administrative law judge assigned by the Division of Administrative Hearings. The choice of mediation shall not affect a party's right to an administrative hearing.



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

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

IN RE: BREVARD COUNTY
COMPREHENSIVE PLAN AMENDMENT
09-D1; AMENDING THE FUTURE LAND
USE MAP, FUTURE LAND USE ELEMENT,
CONSERVATION ELEMENT,
TRANSPORTATION ELEMENT, AND THE
CAPITAL IMPROVEMENTS ELEMENT
ADOPTED BY ORDINANCE No 09-39 ON
DECEMBER 15, 2009

Docket No. 09-D1-NOI-0501-(A)-(N)

STATEMENT OF INTENT TO FIND
COMPREHENSIVE PLAN AMENDMENTS
NOT IN COMPLIANCE

The Florida Department of Community Affairs, pursuant to Section 163.3184(10), Florida Statutes (F.S.), and Rule 9J-11.012(6), Florida Administrative Code (F.A.C), hereby issues this Statement of Intent to find Ordinance No. 09-39 adopted on December 15, 2009 Not In Compliance based upon the Objections, Recommendations and Comments Report (“ORC Report”) issued by the Department on May 30, 2008 which is hereby incorporated by reference and based upon the changes made to the amendment as adopted. The Department finds that the amendment is not “in compliance”, as defined in Section 163.3184(1)(b), *Florida Statutes*, and is not consistent with Chapter 163, Part II, F.S., Chapter 9J-5, F.A.C. and the State Comprehensive Plan, Chapter 187, F.S., for the following reasons:

I. CONSISTENCY WITH CHAPTER 163, F.S., AND RULE 9J-5, F.A.C.:

A. **Inconsistent Provisions.** The provisions of the amendment that are inconsistent with Chapter 163, F.S., and Rule 9J-5, F.A.C., are as follows:

1. **Lack of Long Range Transportation Planning:** The adopted amendment does not address long range transportation planning. The amendment does not demonstrate the long range mobility improvements needed for the build out of the Viera DRI pursuant to the requirements of Rule 9J-5.019(4) and (5), F.A.C. Neither in the Capital Improvements Element nor on the long range transportation map does the amendment identify long range mobility improvements. The adopted amendment does not demonstrate that the level of service (LOS) standards will be achieved and maintained for the long range transportation facilities. The adopted amendment is also internally inconsistent with the goals, objectives and policies of the County's adopted comprehensive plan including Future Land Use Element Objective 12 and its implementing policies and Transportation Element Objective 2 and its implementing policies. For the reasons stated above, the adopted amendment is also inconsistent with the State Comprehensive Plan.

Therefore, the amendment is inconsistent with the following provisions: Sections 163.3177(2), (3), (4), (5)(a), (6)(a), and (j), (8), and (10); 163.3187(2), 187.201(15)(b)1., and 5., 187.201(19)(b)3., 13., and 15., 187.201(25)(b)7., F.S.; and Rules 9J-5.005(2), (4), and (5), 9J-5.006(4)(a), 9J-5.019(4), and (5), F.A.C.

2. **Capital Improvements Schedule:** The response to the Department's objections to the proposed amendment state the County is relying on the requirements of Section 163.3180(12)(a), F.S., to address the short term impacts from the adopted amendment. The proportionate share

agreement for the transportation facilities to maintain and achieve LOS was not signed when the future land use amendment was adopted. Therefore, the amendment has not demonstrated consistency with the requirements of Section 163.3180(12)(a), F.S., for a binding and legally enforceable commitment for the funding of the improvements to transportation facilities.

Absent the executed binding agreement, the Capital Improvements Schedule does not ensure that the adopted level of service standards will be achieved and maintained. The adopted amendment is also internally inconsistent with the goals, objectives and policies of the County's adopted comprehensive plan including Capital Improvements Element Objective 4 and its implementing policies. For the reasons stated above, the adopted amendment is also inconsistent with the State Comprehensive Plan.

Therefore, the amendment is inconsistent with the following provisions: Sections 163.3164(32), 163.3177(2), (3), (4), (6)(a), and (j), 163.3177(8), 163.3177(10), 163.3180(12), 163.3187(2), 187.201(17)(b)7., 187.201(b)3., 13., and 15., 187.201(25)(b)7., F.S.; and Rules 9J-5.005(2), (3), and (5), 9J-5.006(2)(a), and (3)(c)3., 9J-5.016(1), (2), (3)(b), (3)(c)4., and 6., and (4), 9J-5.019(2), - (5), F.A.C.

B. Recommended Remedial Actions: The above inconsistencies can be remedied by taking the following actions:

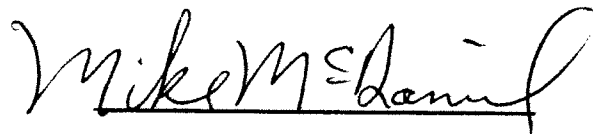
1. **Lack of Long Range Transportation Planning:** Provide an analysis of the needed long range mobility improvements to achieve and maintain the adopted level of service standards for transportation facilities at build out of the Future Land Use Map amendments. Revise the Capital Improvements Element and the Future Transportation Map to reflect these identified mobility improvements.

2. **Capital Improvements Schedule:** Execute the proportionate fair share agreements referenced in the adopted Capital Improvements Schedule amendment and in the DRI development order.

CONCLUSIONS

1. The Amendment is not consistent with the State Comprehensive Plan.
2. The Amendment is not consistent with Chapter 9J-5, *Florida Administrative Code*.
3. The Amendment is not consistent with the requirements of Chapter 163, Part II, *Florida Statutes*.
4. The Amendment is not "in compliance," as defined in Section 163.3184(1)(b) *Florida Statutes*.
5. In order to bring the comprehensive 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 5^h day of March 2010, at Tallahassee, Florida.

A handwritten signature in black ink that reads "Mike McDaniel". The signature is written in a cursive style with a horizontal line underneath the name.

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