

**STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS**

EAGLES LANDING AT OCOEE, LLC, a  
Florida limited liability company; F & J  
DEVELOPERS, LLC, a Florida limited  
liability company; WINTER GROVES, INC.,  
a Florida corporation; and JACK R. AMON  
AND JOAN B. AMON,

Petitioners,

DCA Docket No.:

1ER-NOI-3501-(A)-(1)

vs.

LAKE COUNTY, FLORIDA and the  
FLORIDA DEPARTMENT OF  
COMMUNITY AFFAIRS,

Respondents.

**PETITION FOR FORMAL ADMINISTRATIVE HEARING CHALLENGING FAILURE  
OF THE DEPARTMENT OF COMMUNITY AFFAIRS TO FIND PROPOSED  
COMPREHENSIVE PLAN AMENDMENT IN COMPLIANCE**

Eagles Landing at Ocoee, LLC, a Florida limited liability company, F & J Developers, LLC, a Florida limited liability company, Winter Groves, Inc., a Florida corporation, and Jack R. Amon and Joan B. Amon, husband and wife, (hereafter called the "Petitioners"), by and through their undersigned attorneys, and pursuant to Sections 120.569, 120.57(1) and 163.3184(9)(a), Florida Statutes ("F.S."), hereby request a formal administrative hearing to challenge the exclusion of Amendment 11 from the "in compliance" finding made by the Florida Department of Community Affairs (hereafter called the "Department") regarding the proposed Lake County Comprehensive Plan (hereafter called the "Proposed Plan"). In support thereof, Petitioners state as follows:

## A. PRELIMINARY STATEMENT

1. Petitioners are owners of property located in that portion of Lake County (hereafter called the “County”) that the County designated as the “State Road 50 Area” at the public hearing held by the Lake County Commission on May 25, 2010 (hereafter called the “Adoption Hearing”), and identified as “SR 50 and CR 50 Area, East of Clermont near Lake/Orange Line” in the State Road 50 Area Summary presented at that Adoption Hearing (hereafter called “SR 50 Area” or “Amendment 11”). A copy of the four-page exhibit provided for and utilized at the Adoption Hearing, identifying the SR 50 Area, is attached hereto as **Exhibit “A”**. A copy of the legal descriptions of the Petitioners’ property located within the SR 50 Area is attached hereto as **Exhibit “B”**.

2. The SR 50 Area was changed by unanimous vote of the County Commission from the transmitted Future Land Use Category of Rural Transition to the Future Land Use Category of Urban Low Density. This was one of thirteen (13) changes adopted by the County Commission to the Proposed Plan that had been previously transmitted to the Florida Department of Community Affairs, pursuant to Section 163.3184(3), Florida Statutes.

3. The Florida Department of Community Affairs (hereafter called the “Department”) specifically omitted ten (10) of the thirteen (13) “amendments” from its finding of “in compliance” of the Amendment to the Comprehensive Plan for Lake County, including Amendment 11. The Notice of Intent to Find Lake County Comprehensive Plan Amendment in Compliance (hereafter called the “Notice of Intent”) was published in the Lake Sentinel edition of the Orlando Sentinel on July 23, 2010. A copy of the Notice of Intent is attached hereto as **Exhibit “C”**.

4. No reason for separating the ten (10) “amendments” which were excluded from the in compliance determination was given in the Notice of Intent.

5. Oral communications between the Petitioner's attorney and the Lake County staff involved in the comprehensive plan amendment process indicate County staff' belief that the Department separated the ten (10) "amendments" from the in compliance determination because the Department believed that proper public hearing and notice process was not followed in adopting the amendments.

6. The Notice of Intent identifies thirteen (13) changes made after Transmittal, three of which are presumably included in the finding of in compliance. A table forwarded to the Department by the County along with the Transmittal is attached as **Exhibit "D"**. Amendment 11 is identified as No. 11, and is noted as reducing the allowed density on the subject property covered by Amendment 11 by 623 residential units.

7. The Department has not issued a Notice of Intent to find Amendment 11 not in compliance, and has not forwarded any notice to the Division of Administrative Hearings pursuant to Section 163.3184(10), Florida Statutes.

## **B. THE PARTIES**

8. The State agency affected by this proceeding is the Department, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100. The Department is designated the state planning agency pursuant to Section 163.3164(2), Florida Statutes, charged with administering Chapter 163, F.S., Rule 9J-5, and Rule 9J-11, F.A.C. The Division of Administrative Hearings ("DOAH") is charged with conducting proceedings under Section 120.569 and 120.57, Florida Statutes, to determine if the Proposed Plan is or is not "in compliance." Section 163.3184(10)(a), Florida Statutes; Rule 9J-11.012, F.A.C.

9. The County is a "governmental agency" and a "local government" as defined by Section 163.3164(10)(c), Florida Statutes, and hence is subject to the requirements of Part II, Chapter 163, Florida Statutes. The County's address is 315 West Main Street, Tavares, Florida

32778. On May 25, 2010, the County adopted Ordinance No. 2010-25 which is the Proposed Plan that is being challenged by this Petition.

10. Eagles Landing at Ocoee, LLC (hereafter called “Eagles Landing”), is a Florida limited liability company, whose mailing address and principal place of business is 132 West Plant Street, Suite 200, Winter Garden, Florida 34787. Eagles Landing owns property within the boundaries of Amendment 11. Such property is described on **Exhibit “B”**.

11. F & J Developers, LLC (hereafter called “F & J”), is a Florida limited liability company whose mailing address and principal place of business is 124 Terra Mango Loop, Suite A, Orlando, Florida 32835. F & J owns property within the boundaries of Amendment 11. Such property is described on **Exhibit “B”**.

12. Winter Groves, Inc. (hereafter called “Winter Groves”) is a Florida corporation whose mailing address and principal place of business is 17009 Winter Road, Montverde, Florida 34756. Winter Groves owns property within the boundaries of Amendment 11. Such property is described on **Exhibit “B”**.

13. Jack R. Amon and Joan B. Amon, husband and wife, (hereafter called “the Amons”) are individuals whose mailing address is P. O. Box 187, Santa Ynez, California 93460-0187. The Amons own property within the boundaries of Amendment 11. Such property is described on **Exhibit “B”**.

14. Each of the Petitioners is an “affected person” as defined in Section 163.3184(1)(a), Florida Statutes, and they or their designated representative has either timely submitted written comments, recommendations and objections, or appeared at and has spoken regarding some iteration of the Proposed Plan through one or more designated representatives during the period of time beginning with the transmittal hearing and ending with the County

Commission's adoption of the Proposed Plan. *See* Minutes of a Special Meeting of the Board of County Commissioners on January 19, 2010 (the "Transmittal Hearing") attached hereto as **Exhibit "E"**; Minutes of a Special Meeting of the Board of County Commissioners on May 11, 2010, attached hereto as **Exhibit "F"**; Minutes of the Regular Meeting of the Board of County Commissioners on May 18, 2010, attached hereto as **Exhibit "G"**; and Minutes of a Special Meeting of the Board of County Commissioners on May 25, 2010 (the "Adoption Hearing"), attached hereto as **Exhibit "H"**.

15. The substantial interests of the Petitioners will be determined in this proceeding, as hereinafter more particularly set forth.

16. In these proceedings, the Petitioners are represented by the law firm of Boyette, Cummins & Nailos, PLLC, located at 1635 East SR 50, Suite 300, Clermont, Florida 34711. Lead counsel is Jimmy D. Crawford (hereinafter "Counsel"). Counsel may be contacted via e-mail at [jcrawford@bcnlawfirm.com](mailto:jcrawford@bcnlawfirm.com), and by phone on behalf of each of the listed Petitioners at (352) 394-2103.

17. Counsel for the Petitioners received notice of the Notice of Intent ("NOI") on July 23, 2010, by seeing it published on the Department's website. A true and correct copy of the NOI is attached to this Petition as **Exhibit "C."**

### **C. STATEMENT OF ULTIMATE FACTS**

18. The Petitioners own property within the boundaries of Amendment 11. This area is located east of Lake County Road 455, west of the County's common boundary with Orange County north of State Road 50, and south of Lake Apopka.

19. The County Commission provided advance public notice of its Transmittal Hearing for January 19, 2010, its Special Meeting of May 11, 2010, its Regular Meeting of May 19, 2010, and its Special Meeting of May 25, 2010, pursuant to applicable law.

20. The area included within Amendment 11 was identified on the Future Land Use Map transmitted at the January 19, 2010 meeting, to the Department, as being changed from the existing Urban Expansion land use category to Rural Transition.

21. Following the Transmittal Hearing and prior to the Adoption Hearing, the Petitioners or their representatives contacted County staff and each member of the County Commission to request a change to the proposed Rural Transition land use category, to Urban Low Density. Based upon such contact, County staff prepared the document attached as **Exhibit “A”**.

22. The County Commission conducted a Special Meeting on May 11, 2010, and a Regular Meeting on 18, 2010, to discuss, among other topics, the Future Land Use Map designations. No change was made regarding the property included within Amendment 11 as a result of these hearings. Both of those hearings were duly advertised, and the public was given advance notice. Both hearings were well attended and public input was allowed. See Exhibits “E”, “F”, “G” and “H”.

23. The County Commission provided advance public notice of its Adoption Hearing on May 25, 2010, consistent with applicable law. At the Adoption Hearing, Commissioner Renick proposed changing the Land Use Category for the area covered by Amendment 11 from the existing Urban Expansion Category, to Urban Low Density, consistent with **Exhibit “A”**.

24. Upon Commissioner Conner’s motion, by unanimous vote, the County Commission approved that change, therefore adopting Amendment 11.

25. Following the Adoption Hearing, the County staff made changes to the Future Land Use Map and included the Future Land Use Category of Urban Low Density within the area of Amendment 11.

26. Also at the Adoption Hearing, twelve (12) other changes were made to the Proposed Plan (See **Exhibit “A”**). In its Notice of Intent, the Department specifically made no compliance determination as to ten (10) of the thirteen (13) amendments that were changes in the Proposed Plan between transmittal and adoption. The Department, however, did find in compliance the other changes made to the Comprehensive Plan between transmittal and adoption, including Amendment 13, which involves the addition of the SAP designation to the Future Land Use Map or the addition of the SAP Policy; even though this designation and policy was completely new, and were never mentioned in a public forum or publicly noticed at any time prior to the Adoption Hearing. The Department found those changes to be “in compliance” along with the vast majority of the Proposed Plan.

**D. STATEMENT OF DISPUTED MATERIAL FACTS**

27. The disputed issues of material fact in this Petition are:

(a) Whether the procedures followed by the County during and prior to the Adoption Hearing on May 25, 2010 regarding Amendment 11 provided potentially affected persons with appropriate notice and met statutory and rule requirements.

(b) Whether Amendment 11 is properly adopted pursuant to applicable law.

(c) Whether the Department is required by Section 163.3184(8), Florida Statutes, within 45 days of receipt of adopted Amendment 11, to determine if Amendment 11 is in compliance or not in compliance, and to issue A Notice of Intent so stating.

28. Petitioners are not aware of any disputed issues regarding their status as “affected persons” under Section 163.3184(1)(a), F.S. and how they are “substantially affected” by Amendment 11 and/or the Proposed Plan.

## E. ULTIMATE FACTS ALLEGED

### I. **Section 163.3184(8), Florida Statutes, Requires the Department to issue a Notice of Intent Finding Plan Amendments In Compliance or Not In Compliance.**

29. Section 163.3184(8)(b), Florida Statutes, states in pertinent part:

... the state land planning agency, upon receipt of a local government's complete adopted comprehensive plan or plan amendment, shall have 45 days for review and to determine if the plan or plan amendment is in compliance with this act ...”

30. Section 163.3184(8)(c)1., Florida Statutes, states in pertinent part:

... the state land planning agency shall issue, through a senior administrator or the secretary, as specified in the agency's procedural rules, a notice of intent to find that the plan or plan amendment is in compliance or not in compliance.

31. The Notice of Intent states, at Paragraph 1, line 6, “[t]he Department did not make a compliance determination on Amendments 1, 2, 3, 4, 5, 6, 7, 9, 10 and 11.”

32. Amendment 11 was duly adopted by the County Commission, at the Adoption Hearing on May 25, 2010, and transmitted to the Department within ten(10) days as required by Section 163.3184(7)(a), Florida Statutes.

### II. **Applicable Statute, Rule and Case Law Allows a Local Government to Make Changes to a Proposed Comprehensive Plan or Plan Amendment Between Transmittal and Adoption.**

33. Section 163.3184(7)(a), Florida Statutes, which governs comprehensive plan or plan amendment adoption procedures, states in pertinent part:

... The local government, upon receipt of written comments from the state land planning agency, shall have 120 days to adopt or adopt with changes the proposed comprehensive plan or s. 163.3191 [EAR-related] plan amendments. In the case of comprehensive plan amendments other than those proposed pursuant to s. 163.3191, the local government shall have 60 days to adopt the amendment, adopt the amendment with changes, or determine that it will not adopt the amendment. (Emphasis added).



As shown, the governing statute specifically allows the local government considering adoption of a plan amendment, following transmittal and receipt of comments from the Department, to make changes to the plan that were not considered by the Department at transmittal or reviewed pursuant to Section 103.3184(6), Florida Statutes.

34. Further, Section 163.3184(7)(b), Florida Statutes, provides a different Department approval procedure for amendments which are “unchanged from the proposed plan amendment transmitted...” This statute would be meaningless if a local government was not allowed to make changes to plan amendments after transmittal.

35. Further, Rule 9J-11.011(5)(a)5.a., F.A.C. requires local governments, when transmitted adopted plan amendments to the Department, to include “[a] listing of additional changes made in the adopted plan or amendment which were not previously reviewed by the Department.” The County did so, as evidenced by **Exhibit “A”**.

36. It is common practice in fact for local governments to make changes to land use plan amendments between the time of transmittal and the time of adoption. See, for example, *B&H Travel Corporation v. Department of Community Affairs*, 602 So. 2d 1362 (Fla. 1<sup>st</sup> DCA 1992); *Department of Community Affairs, et al., v. Hamilton County*, DOAH Case No. 91-6038GM.

37. In this case, the Department states in the Notice of Intent that there were thirteen (13) changes after the transmittal, but withholds its ruling of “in compliance” on only ten (10) of those. See Exhibit C, Paragraph 1, lines 5-7.

38. Amendment 13, as shown on **Exhibit “D”**, involves extensive, detailed and complex changes in land protection and property rights, covering 11,608 acres. Amendment 13

was never discussed or evaluated in public or by County staff or staff of the Department prior to the adoption hearing; yet Amendment 13 was found to be in compliance in the Notice of Intent.

**III. There Were Numerous Opportunities for Public Comment and Numerous Public Hearings regarding the Plan Amendment as a Whole and Amendment 11 Specifically.**

39. The change adopted as Amendment 11 was discussed numerous times during the public hearing process that was begun in April 2004, which involved more than 100 public hearings and meetings from April 2004 to May 25, 2010.

40. The change adopted as Amendment 11 was discussed by the Land Planning Agency several times during the development of the Proposed Plan, and again at the County Commission workshop on May 11, 2010, at which time County staff was directed to draft **Exhibit “A”** and bring it back for further County Commission discussion and potential action at the May 25, 2010 adoption hearing.

41. No landowner within or abutting the Amendment 11 Area, or other Lake County landowner, has at any time voiced or submitted any objection or negative comment regarding the adoption of Amendment 11.

**F. STATEMENT OF GOVERNING RULES AND STATUTES**

42. A finding that Amendment 11 is in compliance is required by statutes and rules which include but are not limited to:

- (a) Chapter 120, Florida Statutes.
- (b) Chapter 163, Florida Statutes; specifically Section 163.3184(4), F.S.
- (c) Chapter 187, Florida Statutes.
- (d) Chapter 373, Florida Statutes.
- (e) Chapter 380, Florida Statutes.
- (f) Rules 9J-5.001, *et seq.*, F.A.C.; specifically Rule 9J-11.012, F.A.C.

(g) Rules 28-106.201, *et seq.*, F.A.C.

**G. RELIEF REQUESTED BY PETITIONERS**

43. The Petitioners hereby request that:

(a) That this Petition be forwarded to the Division of Administrative Hearings and assigned to an Administrative Law Judge;;

(b) That the Administrative Law Judge enter an order requiring that the Department issue a Notice of Intent that finds Amendment 11 in compliance;

(c) That, if necessary, a formal administrative hearing be scheduled and conducted by the Administrative Law Judge regarding the Department's failure to issue a compliance determination regarding Amendment 11;


(d) That the Administrative Law Judge enter an order recommending that Amendment 11 is "in compliance" as defined in Section 163.3184(1)(b), F.S.;

(e) That the Department determine, based on the recommended order, that Amendment 11 is "in compliance";

(f) That the Administration Commission enter a Final Order finding Amendment 11, adopted by Ordinance 2010-25 "in compliance"; and

(g) That such other relief be granted Petitioners as may be appropriate.

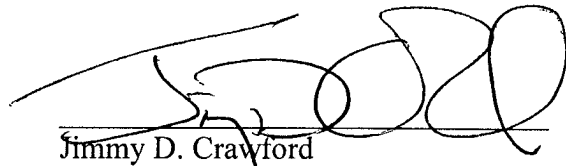
Respectfully submitted this 13<sup>th</sup> day of August 2010.



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 13<sup>th</sup> day of August, 2010, a true and correct copy of the foregoing Petition has been furnished by electronic transmission to the Agency Clerk of the Florida Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, FL 32399-2100 (850-922-2679) and by electronic transmission and U.S. Mail to Melanie Marsh, Acting County Attorney for Lake County, Florida, 315 West Main Street, Tavares, FL 32778 (352-343-9787)



Jimmy D. Crawford