

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

SORRENTO COMMONS, LLC,)
)
 Petitioner,)
)
 v.)
 DEPARTMENT OF COMMUNITY AFFAIRS,) Case No.
)
 and)
)
 LAKE COUNTY,)
 Respondents.)

PETITION FOR FORMAL ADMINISTRATIVE HEARING

COMES NOW, Sorrento Commons, L.L.C., a Florida limited liability company ("Petitioner"), and files this Petition for Formal Administrative Hearing with the Florida Department of Community Affairs (the "Department"), pursuant to Sections 163.3184(9), 120.569, and 120.57, Florida Statutes, and Rule 28-106.201, F.A.C., challenging Lake County's (the "County") comprehensive plan amendment identified as Ordinance No. 2010-25 and the Department's Notice of Intent to find said amendment "in compliance" and states:

AFFECTED AGENCIES

1. The agencies affected by this Petition include the State of Florida Department of Community Affairs, whose address is 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399, and whose file or identification number is Docket No. 10-1ER-NOI-3501-(A)-(I); and Lake County, whose address is 315 West Main Street, Tavares, Florida 32778, and whose file or identification number is unknown.

IDENTIFICATION OF PETITIONER

2. Petitioner is a Florida limited liability company with a business address of 3529 Madaca Lane, Tampa, Florida 33618, and a telephone number of 813- 933- 0629.

3. Petitioner owns real property in Lake County, Florida, consisting of approximately 22 acres of land located at the intersection of State Road 46 and County Road 437, in northeast Lake County, Florida (the "Property").

4. Petitioner's representative is Cecelia Bonifay, Esq., Akerman Senterfitt, Post Office Box 231, Orlando, Florida 32802, (407) 423-4000. The representative's address shall be the address for service purposes during the course of this proceeding.

NOTICE OF AGENCY ACTION

5. In accordance with Section 163.3184(9), Florida Statutes, the Department issued its "Notice of Intent" (the "Notice of Intent"), Department Docket No. 10-1ER-NOI-3501-(A)-(I), to find the amendment to the Lake County Comprehensive Plan (the "Plan"), adopted under Lake County Ordinance No. 2010-25 (the "Plan Amendment"), "in compliance," as that term is defined in Section 163.3184(1)(b), Florida Statutes.

6. Petitioner received notice of publication of the Notice of Intent in the July 3, 2010, edition of the *Orlando Sentinel – Lake Sentinel*. A copy of said Notice of Intent is attached as Exhibit "A."

PETITIONERS' STANDING

7. Petitioner is an "affected person" pursuant to Section 163.3184(1)(a), Fla. Stat., by virtue of owning the Property within unincorporated Lake County, and by having submitted oral and written comments to the County objecting to the Plan Amendment during the period of time beginning with the transmittal hearing and ending with the adoption hearing.

8. Petitioner's substantial interests are and will be adversely affected by adoption of the Plan Amendment because the Plan Amendment creates a new future land use category and district that places arbitrary restrictions on the size and total square footage of development on the Property, thus making development of the Property financially impracticable.

9. Furthermore, Petitioner's substantial interests are and will be adversely affected by the adoption of the Plan Amendment because it is not supported by adequate data and analysis, it does not establish meaningful and predictable standards for the use and development of the Property, it is internally inconsistent, and it fails to adequately balance the property rights of the landowner.

MATERIAL FACTS IN DISPUTE

10. Whether the Plan Amendment is "in compliance" with Florida law, as that term is defined in Section 163.3184(1)(b), Florida Statute.

ULTIMATE AND SPECIFIC FACTS ALLEGED

Ultimate Allegation

11. The Plan Amendment violates Sections 163.3177(6)(a) and (8), Florida Statutes, and Rules 9J-5.005(2) and 9J-5.006(2), F.A.C., because it is not based on adequate data or analysis for reasons including, but not limited to, those set forth in Section 12 - 14 below.

Specific Allegations

12. The Plan Amendment proposes to place arbitrary restrictions on the size and total square footage of development on the Property without providing any data or analysis to support such restrictions. The Plan Amendment proposes to recognize the Mount Plymouth-Sorrento Community, and create a Mount Plymouth-Sorrento Main Street Future Land Use Category that would apply to the Property.¹ Further, the Property is proposed to be an integral part of the proposed "Market Square District" located within the Mount Plymouth-Sorrento Main Street Future Land Use Category at the intersection of Hunter Avenue and State Road 46.² Petitioner believes that such proposals are generally appropriate because the Property 1) is located at the

¹ See Policy I-2.1.3 of the Plan Amendment.

² See Policy I-2.1.4 of the Plan Amendment.

intersection of an arterial and a collector and is conveniently located near several thousand existing and planned residences in the predominately residential Mount Plymouth community; 2) is cleared, level, wetlands-free, and with no historic resources or unique natural resources; and 3) is one of the few properties in the community located outside of the Wekiva River Protection Area. However, Petitioner disagrees with the County's intentions to place the following arbitrary restrictions on the size and total square footage of commercial buildings within Mount Plymouth-Sorrento Market Square District:

- (a) a 30,000 square-foot limit on the size of the anchor tenant;
- (b) an 8,000 square-foot limit on the size of all other new commercial buildings; and
- (c) a 100,000 square-foot limit on the overall intensity.³

13. The 30,000 square-foot limit on the size of the anchor tenant would prevent Petitioner from obtaining a suitable anchor tenant for the Property and undercut the viability of the County's proposed "market square" vision. As proposed, the Plan Amendment would be more than 50% below the minimum size required for primary grocery operators in Florida. In correspondence dated March 29, 2010 attached hereto as Exhibit "B," Publix Super Markets, Inc. notified Petitioner that it would not be interested or even consider the Property unless it could accommodate its 50,000 square foot prototype. Petitioner presented this information to the County prior to the approval of the Plan Amendment; however, despite not presenting any data or analysis to the contrary, the County did not alter the proposed anchor tenant restriction. Consequently, the County violated Rule 9J-5.005(2), F.A.C. by not relying on the best data and analysis available in making this determination.

³ Id.

14. Further, the 8,000 square-foot limit on commercial buildings and 100,000 square-foot aggregate limit within the Market Square District arbitrarily devalue the Property and make development of the Property financially impracticable. The aforementioned restrictions result in a floor area ration of 0.06. To put that figure into perspective, a 3,500 square-foot convenience store on a lot the size of a football field has an approximately 0.06 FAR.⁴ Such a restriction would result in the gross underutilization of the Property. Despite such significant implications, the Plan Amendment does not provide any data and analysis to support limitations in restrictions of Rule 9J-5.005(2), F.A.C.

General Allegation

15. The Plan Amendment is inconsistent with Rule 9J-5.005(6), F.A.C., because the goals, objectives and policies do not establish meaningful and predictable standards for the use and development of land, do not provide meaningful guidelines for the content of more detailed land development and use regulations, and do not allow for implementation in a consistent manner for reasons including, but not limited to, those set forth in Sections 16 - 20 below.

Specific Allegations

16. The Plan Amendment does not define "anchor store." Policy I-2.1.4 of the Plan Amendment permits "no more than one anchor store which shall be sized to serve the needs of the Mount Plymouth-Sorrento Planning Area and not exceed 30,000 square feet of floor area." Despite this limitation, the Plan Amendment does not define what constitutes an "anchor store" or how it may be sized "to serve the needs of the Mount Plymouth Sorrento Planning Area." Logically, an anchor store for the Market Square District would be a market / grocery store that would serve residents and reinforce the sense of the community in the Mount Plymouth-Sorrento Planning Area. However, as previously discussed, the size restriction on the anchor store

⁴ According to Wikipedia, an American football field is 1.32 acres in size. See <http://en.wikipedia.org/wiki/Acre>.

proposed by the County is more than 50% below the minimum size required for primary grocery operators in Florida and the Plan Amendment does not provide for other practicable alternatives. Consequently, it is not clear what kind of "market" square district the Plan Amendment intends.

17. Further, Policy I-2.1.9 – I-2.1. contains vague and unpredictable policies for the eventual adoption of such criteria into the County's Land Development Code impacting all of the Mount Plymouth-Sorrento Community , including:

- preservation of tree canopy "to the maximum extent feasible";
- protection of dark skies through a dark sky lighting ordinance; and
- signage and advertising restrictions to "enhance community character and limit the visual intrusion of commercial features."

At their core, these policies call for the protection of tree canopy, dark skies, and the character of the surrounding area, but lack specifics on how these might be accomplished in light of the planned development for the affected area. These policies are vague and immeasurable, and Petitioner is unable to determine their impact on the existing use of the Property and its ability to be developed in the future, in violation of Rule 9J-5.005(6), F.A.C.

18. Policy III-2.1.5 of the Plan Amendment states: "The County shall require the use of water conserving plumbing fixtures in all new development." The Plan Amendment does not define the term "water conserving plumbing fixtures," leading to the inconsistent application of this Policy and the lack of meaningful and predictable standards for the use and development of land in violation of Rule 9J-5.005(6), F.A.C.

19. Policy III-2.1.11 of the Plan Amendment states: "Lake County shall prohibit land uses which are known to pose a severe threat to the availability of groundwater resources or whose practices are known to pose a severe threat to the quality of groundwater." This Policy lacks meaningful and predictable standards as to what constitutes a land use that "poses a threat

to the availability of groundwater resources or whose practices are known to pose a severe threat to the quality of groundwater" in violation of Rule 9J-5.005(6), F.A.C.

20. Policy III-2.1.25 of the Plan Amendment states: "All new private central wastewater systems ... shall be designed and built as *advanced wastewater treatment systems*...." (emphasis added). The Plan Amendment does not define the term "advanced wastewater treatment system," leading to the inconsistent application of this Policy and the lack of meaningful and predictable standards for the use and development of land in violation of Rule 9J-5.005(6), F.A.C.

General Allegation

21. The Plan Amendment violates Rule 9J-5.005(5), F.A.C., because it is internally inconsistent for reasons including, but not limited to, those set forth in Sections 22 –23 below.

Specific Allegations

22. The aforementioned limitations on the size and total square footage of development on the Property⁵ are inconsistent with Policy I-2.1.12 and Objective I-7.6 of the Plan Amendment because they fail to utilize compact land-use planning and strategies designed to reduce transportation impacts and greenhouse gas emissions. The County's building size restrictions will ensure the exclusion of new grocery stores in the Mount Plymouth community, forcing residents to travel elsewhere on a nearly daily basis. This is inconsistent with the County's stated intent to preserve two lane roads within the Mount Plymouth-Sorrento Planning Area. Further, the restriction of 100,000 square-feet of aggregate development over 40 acres (0.06 FAR) not only promotes the inefficient use of land, but the inefficient use of existing transportation facilities and contributes to increased greenhouse gas emissions by requiring future residents to travel away from the Property to obtain necessary goods and services. The

⁵ See Policy I-2.1.4 of the Plan Amendment.

same also violates Section 163.3177(6)(a), Fla. Stat., which requires the future land use element to be based upon surveys, studies and data regarding greenhouse gas reduction strategies.

23. The Plan Amendment's imposition of arbitrary development restrictions on the Property is inconsistent with the Economic Element that is also contained within the Plan Amendment. The effect of the Plan Amendment to exclude a suitable anchor tenant for the Property is in direct conflict with the County's mandate to "diversify [the County's] tax base and encourage high-wage employment opportunities" and to "implement and enforce policies which require development of partnerships with public and private sectors in an effort to bring economic development and employment opportunities to Lake County" as set forth in the Economic Element of the Plan Amendment at Goal IV-1 and Objective IV-1.1, respectively.

General Allegation

24. The Plan Amendment violates the requirements of Section 163.3161(9), Fla. Stat., because it fails to protect private property rights and is inconsistent with the property rights goals and policies of the State Comprehensive Plan in Section 187.201(15), Fla. Stat., for reasons including, but not limited to, those set forth in Sections 25 – 26 below.

Specific Allegations

25. If allowed to stand, the Plan Amendment will severely diminish the value of the Property by preventing Petitioner from obtaining a suitable anchor tenant for the Property. Further, the proposed building size restrictions would result in the gross underutilization of the Property thus making development of the Property impracticable. At best, the Plan Amendment demonstrates a lack of sensitivity to private property rights and is unduly restrictive without full and just compensation, in violation of Sections 163.3161(9) and 187.201(15), Fla. Stats., and Rule 9J-5.005(8), F.A.C. At worst, the Plan Amendment amounts to a regulatory taking of

private property without just compensation in violation Rule 9J-5.001(4), F.A.C., which requires compliance with all applicable statutes, laws and rules, including the state and federal constitutions.⁶

26. Policy II-1.1.6 of the Plan Amendment contains development standards for stormwater management above and beyond that required by the applicable water management district. These standards create an additional layer of regulation that is unduly burdensome on private property rights.

General Allegation

27. In transmitting and adopting the Plan Amendment, the County failed to provide proper assurances and procedures for ensuring and encouraging public participation in the planning process as required by Rule 9J-5.004, F.A.C., and Section 163.3177, Fla. Stat., for reasons including, but not limited to, those set forth in Section 28 below.

Specific Allegations

28. The County violated Rule 9J-5.004, F.A.C., and Section 163.3177, Fla. Stat., by severely limiting Petitioner's opportunity for public comment at the transmittal hearing, while affording other property owners significantly more time. The County allotted three minutes of hearing time for each member of the public who spoke at the transmittal hearing. However, the County declined Petitioner's request to differentiate between those speakers who represented themselves and those speakers, including Petitioner's attorney, who represented multiple affected owners. Because Petitioner's case was one of several squeezed into a three minute presentation, the effect of the Lake County Board's directive was to limit Petitioner's hearing time to less than

⁶ The Takings Clause of the Fifth Amendment, which is applicable to states through incorporation of the Due Process Clause of the Fourteenth Amendment, says that private property shall not be taken for public use without just compensation. U.S. Const. amend. V; Palazzolo v. Rhode Island et.al., 533 U.S. 606, 617 (2001). Florida's Constitution similarly provides that no private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner. Fla. Const. art. X § 6.

one minute. By comparison, those owners who represented themselves received three times as much hearing time. The County failed to give advance notice to Petitioner that its right to participate in the planning process would be materially affected by its decision to hire an attorney. However, even if the County did provide such notice, such limitations on the Petitioner's rights would still be in violation of Rule 9J-5.004, F.A.C. and Section 163.3177, Florida Statutes.

General and Specific Allegation

29. Policy II-1.1.8 of the Plan Amendment attempts to fix level of service standards for potable water facilities not under the maintenance jurisdiction of the County in cases where the municipality's level-of-service is below 100 gallons per capita per day. This policy violates Section 163.3180, Fla. Stat., which states as follows:

(3) Government entities that are not responsible for providing, financing, operating, or regulating public facilities needed to serve development may not establish binding level-of-service standards on government entities that do bear those responsibilities.

General and Specific Allegation

30. Policy II-1.1.9 of the Plan Amendment attempts to fix level of service standards for sanitary sewer facilities not under the maintenance jurisdiction of the County in cases where the municipality's level-of-service is below 100 gallons per capita per day. This policy violates Section 163.3180, Fla. Stat., which states as follows:

(3) Government entities that are not responsible for providing, financing, operating, or regulating public facilities needed to serve development may not establish binding level-of-service standards on government entities that do bear those responsibilities.

General and Specific Allegation

31. The Plan Amendment is inconsistent with the concurrency requirements found in Section 163.3180, Florida Statutes. Section 163.3180(2)(c), Fla. Stat., requires needed transportation facilities to be in place or under actual construction within 3 years after the local government approves a building permit or its functional equivalent that results in traffic generation. However, under the "pay and go" option found in subsection (16), a developer is entitled to a building permit even though it otherwise fails to meet transportation concurrency, if it contributes its fair share of the cost of the needed improvement. Section 163.3180(16)(b) and (f), Fla. Stat. The developer is entitled to utilize the "pay and go" option if the improvement is reflected in the *first 5 years* of the 5-year capital improvements element of the local government's financially feasible comprehensive plan. *Id.* Policy II-3.1.6(2) of the Plan Amendment conflicts with the "pay and go" section of the statute by allowing issuance of a building permit only if the necessary road improvements are scheduled within the *first 3 years* of the County's Five-Year Capital Improvements Plan. Such action violates Rule 9J-5.001(4), F.A.C., which requires the Plan Amendment to comply with Chapter 163, Florida Statutes.

INCONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

32. The Plan Amendment is inconsistent with several provisions of the State Comprehensive Plan, including Section 187.201(14), Section 187.201(15)(b)1., Section 187.201(21)(a) and (b)1., Section 187.201(24)(b)5., and Section 187.201(25)6., Florida Statutes.

STATUTES AND RULES ENTITLING PETITIONER TO RELIEF

33. Petitioner is entitled to relief pursuant to Chapter 163, Part II, Fla. Stat., Rule 9J-5, F.A.C., and the State Comprehensive Plan.

34. Section 163.3184(1)(b), Fla. Stat., states that a comprehensive plan amendment is "in compliance" if it is consistent with Sections 163.3177, 163.3178, 163.3180, 163.3191, and

163.3245, Fla. Stat., the State Comprehensive Plan, the applicable strategic regional policy plan, and Rule Chapter 9J-5, F.A.C.

35. As alleged above, the Plan Amendment is inconsistent with Section 163.3177, Fla. Stat., Rule Chapter 9J-5, and the State Comprehensive Plan. Therefore, the Plan Amendment is not "in compliance."


RELIEF SOUGHT BY PETITIONER

36. Petitioner seeks the following relief:

(a) That this Petition be forwarded to the Division of Administrative Hearings to conduct a formal administrative hearing on this matter in the manner prescribed by law;

(b) That the Administrative Law Judge assigned to this matter issue a recommended order finding the Plan Amendment not "in compliance" for the reasons described above; and

(c) That the Administration Commission enter an order finding the Plan Amendment to be not "in compliance" and require the County to rescind the Plan Amendment or adopt remedial actions that would bring the Plan Amendment into compliance.



CECELIA BONIFAY, ESQ.
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P.O. Box 231
Orlando, FL 32802
(407) 423-4000
Fax No: (407) 254-4230

Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed with the Agency Clerk, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399; and a copy was provided to Charles Gauthier, AICP, Director Community Planning, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399; and a copy was provided to Melanie Marsh, Acting County Attorney, Lake County, 315 West Main Street, Tavares, Florida 32778, this 13th day of August, 2010.


CECELIA BONIFAY

Exhibit "A"

Published in the ORLANDO SENTINEL- LAKE SENTINEL on FRIDAY, JULY 23, 2010.

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS
NETWORK OF PLANNING AND
LAKES COUNTY
COMPREHENSIVE PLAN AMENDMENT
IN COMPLIANCE
DUCRS FMC 10-188-KU1-3501-(A)-(I)

The Department gives notice of its intent to find the amendments to the Comprehensive Plan for Lake County, adopted by Ordinance No. 2010-23 on May 25, 2010, IN COMPLIANCE, pursuant to Sections 163.3184, 163.3187 and 163.3189, F.S., except for amendments 1, 2, 3, 4, 5, 6, 7, 9, 10, and 11, which were not properly adopted and are identified in the Table entitled "Future Land Use Map Changes (Changes made after Transmittal) - Lake County 2010 Comprehensive Plan" as submitted by the County on June 11, 2010. The Department did not make a compliance determination on Amendments 1, 2, 3, 4, 5, 6, 7, 9, 10 and 11 which are further identified as follows: Amendment No. 1 - 1500 acres, west of US 27, Fruitland Park and Lady Lake area, from Rural to Urban Low Density; Amendment No. 2 - 16.3 acres, CR 44, Radio Road and CR 473 area, from Urban Expansion and Rural within a Neighborhood Activity Center, to Regional Commercial; Amendment No. 3 - 17.3 acres, CR 44 and Emerald Avenue, Teepleberg Area, from Rural Village to Industrial; Amendment No. 4 - 291 acres, Lake Road, Lake Lincoln Lane and Balco Arcout, East side area, from Suburban and Urban Expansion to Urban Low Density; Amendment No. 5 - 10 acres at SR 44 and CR 437, Payne area, from Rural, WRPA Receiving area within a Neighborhood Activity Center, to Rural, Rural Transition and WRPA Receiving area with a Rural Support Intersection Overlay; Amendment No. 6 - 40 acres on US 451 east of Mt. Ura, Florida 1 who Markets Parcel, Urban Expansion to Regional Commercial; Amendment No. 7 - 85 acres on CR 437, Jones parcel, in Mt. Plymouth Swravvick area from Urban Compact Node New-Walkiva, to Mt. Plymouth Swravvick Main Street (51 acres) and Mt. Plymouth Swravvick Neighborhood (34 acres); Amendment No. 9 - 350 acres west to Industrial Park in Shroveton area, from Suburban to Regional Office; Amendment No. 10 - 42 acres north of SR 50, East of Clermont, from Urban Expansion with Employment Center Overlay to Regional Office; and Amendment No. 11 - 615 acres north of SR 50 and CR 50, East of Clermont, from Urban Expansion to Urban Low Density.

The adopted Lake County Comprehensive Plan Amendments and the Department's Objections, Recommendations and Comments Report (if any), are available for public inspection Monday through Friday, except for legal holidays, during normal business hours at the Lake County Department of Growth Management, Division of Planning, 315 West Main Street, 3rd Floor, Administration Building, Room 410 and the Clerk's Office, 315 West Main Street, Tavares, Florida 32778-7800.

Any affected person, as defined in Section 163.3184, F.S., has a right to petition for an administrative hearing to challenge the proposed agency determination that the Amendments to the Lake County Comprehensive Plan are in Compliance, as defined in Subsection 163.3184(1), F.S. The petition must be filed within seventy-one (71) days after publication of this notice, and must include all of the information and contents described in Uniform Rule 28-106.201, F.A.C. The petition must be filed with the Agency Clerk, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, and a copy mailed or delivered to the local government. Failure to timely file a petition shall constitute a waiver of any right to request an administrative proceeding as a petitioner under Sections 120.569 and 120.57, F.S. If a petition is filed, the purpose of the administrative hearing will be to present evidence and testimony and forward a recommended order to the Department. If no petition is filed, this Notice of Intent shall become final agency action.

If a petition is filed, other affected persons may petition for leave to later come in the 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. A petition for leave to intervene shall be filed at the Division of Administrative Hearings, Department of Management Services, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right such a person has to request appearing under 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.

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

Exhibit "B"

Publix.

Tom Renne
REAL ESTATE DEPARTMENT

March 29, 2010

Richard Trzcinski
Primerica Group One, Inc.
3629 Madaca Lane
Tampa, FL 33618

RE: Proposed Town Center in Plymouth Sorrento

Dear: Richard

I understand you are still trying to get approvals for a Town Center in Plymouth Sorrento that would include a grocery use as your anchor tenant. Please be advised that Publix Super Markets, Inc. would not be interested in or even consider your project unless it could accommodate our 50,000 square foot prototype.

Please feel free to contact me should you have any question regarding this matter.

Best regard & Good Luck!

Tom Renne (signed electronically to avoid delay)

Tom Renne
Real Estate Manager

TR/rb

C File

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03/29/10

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