

**March 16, 2015
BCC Regular Meeting
Agenda Item #21**

**Correspondence Received
Following Posting of Agenda**

Gina Lemon

From: BJGREEN [bjgreen@cfl.rr.com]
Sent: Wednesday, March 11, 2015 7:45 PM
To: Nate McLaughlin; Charles Ericksen Jr.; Frank Meeker; Barbara S. Revels; George Hanns
Cc: Gina Lemon
Subject: Application #2972

Dear Commissioners,

I am writing to urge you to deny Application #2972 – Future Land Use Map Amendment and Rezoning request made by Sea Ray Boats. I understand the importance of job creation in our county and that Sea Ray has the right to operate on their current industrial site. If you allow Sea Ray to move industrial/commercial activities to land that is currently zoned residential, you will negatively impact property values, property rights and quality of life in Flagler Beach. Since Sea Ray has detailed their major expansion plans in their new DEP permit and they can now increase their VOC emissions up to 978,000 lbs in any given year, I am very concerned about the negative impact this would have on our city. I urge you to make Sea Ray capture and destroy their Hazardous Air Pollutant emissions and odors. Economic Development for our tourism-based businesses in Flagler Beach is also important. Quality of life is an important component of a community's economic development. Please don't ignore the rights of the citizens of Flagler Beach to "spot zone" for one company.

Sincerely,

*Robert Greenhalgh
605 Lambert Ave.
Flagler Beach, Fl. 32136*

Gina Lemon

From: Ashley Deal [ashleyndea@gmail.com]
Sent: Thursday, March 12, 2015 1:04 AM
To: Nate McLaughlin; Charles Ericksen Jr.; Frank Meeker; George Hanns; Barbara S. Revels
Cc: Gina Lemon
Subject: Deny Sea Ray Expansion

Dear Commissioners,

I am writing to urge you to deny Application #2972 -- Future Land Use Map Amendment and Rezoning request made by Sea Ray Boats. I understand the importance of job creation in our county and that Sea Ray has the right to operate on their current industrial site. If you allow Sea Ray to move industrial/commercial activities to land that is currently zoned residential, you will negatively impact property values, property rights and quality of life in Flagler Beach.

Since Sea Ray has detailed their major expansion plans in their new DEP permit and they can now increase their VOC emissions up to 978,000 lbs in any given year, I am very concerned about the negative impact this would have on our city. I urge you to make Sea Ray capture and destroy their Hazardous Air Pollutant emissions and odors. Economic Development for our tourism-based businesses in Flagler Beach is also important. Quality of life is an important component of a community's economic development. Please don't ignore the rights of the citizens of Flagler Beach to "spot zone" for one company.

I am unfortunately unable to attend the 5:00pm meeting on March 16th due to work obligations but I sincerely hope you will take these concerns into consideration. Flagler Beach has continuously been named Florida's best kept secret for a reason - don't destroy what's left of that by caving to the desires of a company without any regard for the citizens of this county.

Sincerely,

*Ashley Deal
342 N 11th Street
Flagler Beach, FL
(Homeowner/Permanent Resident)*

Gina Lemon

From: Roseanne Stocker (R1) [RStocker1@outlook.com]
Sent: Thursday, March 12, 2015 11:29 AM
To: Barbara Revels; Nate McLaughlin; Charles Ericksen Jr.; Frank Meeker; George Hanns; Albert J. Hadeed; Gina Lemon
Subject: Please vote to deny or make them control Hazardous Air Pollutant emissions

Dear Commissioners,

First of all, we Flagler County citizens urging you to deny the Sea Ray request are not anti-Sea Ray. Everyone knows we need jobs in this county and that Sea Ray is one of Flagler County's largest employers. Sea Ray makes high quality boats and the employees are very good at what they do.

However, Sea Ray has no add-on pollution control devices, although the technology exists to capture the Volatile Organic Compounds and Hazardous Air Pollutants that Sea Ray emits. As a result of Sea Ray's impending consolidation and resultant increase in production, the time to protect the air quality of the surrounding residents and businesses in Flagler Beach is now. Many Flagler Beach restaurants have recently built or expanded outside decks. Our beach and tourism is the county's economic engine. Our tourism sector must not be jeopardized by one industry, especially when technology is available for this world class boat builder to employ to capture its Hazardous Air Pollutant emissions.

Currently, Sea Ray blows their HAPs into the air and relies on dilution as their answer to air pollution control. If you emit a small amount of air pollution, surrounding residents and beach goers may occasionally smell Styrene, depending on wind direction. However, Sea Ray's new permit allows them to emit up to 978,000 lbs. of VOC's in a year's time. That equates to over 600,000 lbs. of Hazardous Air Pollutants. Everyone in every corner of Flagler Beach and the neighborhoods near Sea Ray Boats should be concerned.

Citizens who worry about Hazardous Air Pollutants also wonder how some business leaders can simply look the other way when it comes to HAP emissions. We citizens know there are many options for communities that wish to protect both economic development and quality of life.

In actuality, county staff has taken a backdoor approach to try to spread a very large, heavy

industry over two zoning districts, one of which is currently zoned residential and reflects that on the Future Land Use Map. "Upzoning" two parcels from residential to high intensity commercial not only have negative implications for abutting property values and quality of life, but will help pave the way for Sea Ray's expansion. As commercial uses move off the industrial parcels to the now-residential parcels, Sea Ray will free up space for more industrial production on their industrial site and have more potential to max out their new permit.

Below are some important facts and links that every citizen should consider:

Flagler Beach already ranks No. 31 (out of over 900 cities and towns in Florida) on the 2013 Toxic Air Inventory list because of emissions from Sea Ray Boats.

Source: *Right-to-Know-Network:*

http://www.rtknet.org/db/tri/tri.php?state=FL&dbtype=C&rsei=y&sortp=D&detail=1&datatype=T&reptype=f&database=tri&reporting_year=2013&submit=GO&splash=&sum_expand=PC

Nationally, the local Sea Ray facility that abuts Flagler Beach ranks #52 highest in HAP (Hazardous Air Pollutant) releases out of 1042 TRI (Toxic Release Inventory) facilities in the industry of Transportation Equipment. Also, Sea Ray's TRIs HAP releases make up 98% of Flagler County's TRI HAP releases.

Source: <http://www2.epa.gov/toxics-release-inventory-tri-program> (enter 32136 in the zip code field on the map. Click "find facilities." Click on the Blue balloon where Sea Ray Boats is located. Then, click on the name Sea Ray Boats for the full report).

What are HAPs? "Hazardous air pollutants, also known as toxic air pollutants or air toxics, are those pollutants that cause or may cause cancer or other serious health effects, such as reproductive effects or birth defects, or adverse environmental and ecological effects".

Source: <http://www.epa.gov/ttn/atw/allabout.html>

What are VOCs? VOCs play a significant role in the formation of ozone and smog. The best way to prevent to increase in ozone and smog is to eliminate these harmful VOCs from being released.

Source: <http://www.anguil.com/resources/introduction-to-pollution-control.aspx>

The majority of the Volatile Organic Compounds we breathe in from Sea Ray's emissions are HAPs, the majority of which is Styrene. Styrene is "Reasonably anticipated to be a carcinogen" under the guidelines of the National Toxicology Program, an inter-agency group coordinated by the U.S. Department of Health and Human Services.

Source: *13th Report on Carcinogens, National Toxicology Program*
http://ntp.niehs.nih.gov/ntp/roc/content/listed_substances_508.pdf

Brunswick, Sea Ray's Parent Company, ranks 19th in Florida in TRI HAP Industries out of a very long list of 5 pages of industries.

Source: http://www.rtknet.org/db/tri/tri.php?state=FL&dbtype=C&rsei=y&sortp=D&detail=1&datatype=T&reptype=f&database=tri&reporting_year=2013&submit=GO&splash=&sum_expand=PC

Recently, Sea Ray boats applied for and was granted a new DEP permit that "authorizes an increase in facility material usage such that Volatile Organic Compound (VOC) potential to increase emissions from 249 to 489 tons (or 978,000 lbs.) per any consecutive 12-month period. If Sea Ray

were to max out their permit, this would represent an approximate **470% increase over their 2013 VOC emissions** of approximately 208,000 lbs.

Source: Florida DEP Air Permit No. 0350003-011-AC

Sea Ray's **HAP emissions** for 2013 were approximately **119,000 lbs.** The new permit will allow Sea Ray to max out HAP emissions at **over 600,000 lbs.**

Source: DEP (Department of Environmental Protection)

Flagler Beach vs. Palm Coast Toxic Release Inventory

Flagler Beach has about 1/17th the population size of Palm Coast, yet has approximately **100 times the Toxic Release Inventory of Hazardous Air Pollutants** and Palm Coast due to Sea Ray Boats.

If Sea Ray were to max out its 2013 permit, **Flagler Beach may possibly have over 500 times the Toxic Release Inventory of Hazardous Air Pollutants** as Palm Coast. (There is one TRI facility in Palm Coast – Sandvik, Inc. – which released 1,243 lbs. of HAPs in 2013). Sea Ray released 119,000 lbs. in 2013.

DEP vs. Local Jurisdictions

Flagler Beach, Palm Coast and Flagler County residents cannot look to the DEP to control or eliminate odors from larger VOC and HAP emitting industries such as Sea Ray Boats. This responsibility falls to the local jurisdictions. In recent years, state funding for the DEP is at historic lows, and staff has been cut sharply. The DEP's message is that it is simply not equipped to force a manufacturer to keep its odors within its property lines. This responsibility falls to the local jurisdictions, such as cities and counties.

How would you feel if what happened in Tennessee to this park happened to our beautiful beach area?

See article: <http://web.utk.edu/~nolt/radio/Worstair.htm>

Relevant Facts about the History of the Parcels:

FACT: Approximately 10 years ago, the Flagler County Commission changed the entire east side of Roberts Road from Industrial to Low Density Residential on the Future Land Use Map. As a result, this property was then rezoned Residential. County staff presented many positive reasons for this change and it was approved unanimously by the county commission.

FACT: Since the rezoning to residential took place, on middle/north Lambert Ave. alone, 31 homes have been purchased or built by owners who did their due diligence and bought on Lambert relying on the residential zonings surrounding Sea Ray to protect their investment. Some of these homes abut the parcels now in question that Sea Ray wants to have rezoned high intensity commercial.

3. FACT: Two years ago, Sea Ray Boats applied for and received a DEP permit that enables the company to increase emissions up to almost a million pounds of Volatile Organic

Compounds in a year's time, the majority of which is made of mostly of Hazardous Air Pollutants. Also that year, Flagler County, on behalf of the property owner of the same parcels now in question, requested a FLUM and zoning change to Industrial from Low Density Residential. This request was turned down unanimously by the Flagler County Planning and Development Board on both requests. This Board cited comprehensive plan and compatibility issues. The issue died.

4. FACT: Less than two years later, Flagler County management, in their infinite wisdom, has now decided that since the Industrial request did not work, they'll come back and try for a "High Intensity Commercial" FLUM change and rezone to High Intensity Commercial C-2 Shopping Center district. The Land Development Regulations state this zoning district should be located near major arterial roads and gives examples of I-95 and 100, Palm Coast Parkway and 100 and US #1 and Hwy. #100. 4 and 6 lane major arterial roads, this is the accommodation FLUM and zoning request nonetheless. Two land service Roberts Road is not even remotely close to any of these major arterial roads in either traffic count or visibility. There were a number of other Comprehensive Plan inconsistencies members of the public, Flagler Beach city planner Larry Torino and the Flagler County Planning and Development Board identified during the hearing process. Also, a number of compatibility issues as well as lack of trust on the County's part in an attempt to continual rezone this particular piece of property were also mentioned.

5. FACT: As a result, the Flagler County Planning and Development Board turned down the request for a FLUM amendment change 7 to 0. Two of those members are certified Planners.

Setting the record straight:

7. FACT: Craig Coffee stated in a printed report this week that Sea Ray is surrounded by Industrial lots. This is simply not true. Sea Ray to the south abuts a conservation area and then residential zoning. (No industrial) Sea Ray to the east abuts residential homes. (No industrial) Sea Ray to the west abuts a mixed use of Commercial and Residential zoning. (No Industrial) Sea Ray to the South West on the opposite side of Roberts Road abuts a large parcel of mixed use of Commercial and Residential. There is a small parcel of Industrial currently there and another small sliver that abuts Colbert and Roberts, a very significant distance from Sea Ray.

8. FACT: Economic Development Director Helga Van Eckert stated earlier this month that Sea Ray will be more environmentally friendly if permitted to expand onto the residential parcels because they will have a retention area for their new parking lot. She also mentioned Sea Ray has a track record of being good neighbors and environmental stewards. There is simply no mention by Helga of Sea Ray's current Volatile Organic Compound or Hazardous Air Pollutant releases nor of their expansion increase that has been permitted by the DEP. Does a retention pond really make up for making room for expansion of a Title V

Major source of Air Pollution?

Gina Lemon

From: Carmelyn Mazanec [carmmaz@icloud.com]
Sent: Thursday, March 12, 2015 12:27 PM
To: Nate McLaughlin; Charles Ericksen Jr.; Frank Meeker; George Hanns; Barbara S. Revels
Subject: FB Hazardous Air Pollution

*Dear Commissioners,
I am writing to urge you to deny Application #2972 --
Future Land Use Map Amendment and Rezoning
request made by Sea Ray Boats. I understand the
importance of job creation in our county and that Sea
Ray has the right to operate on their current industrial
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Sea Ray capture and destroy their Hazardous Air
Pollutant emissions and odors. Economic Development
for our tourism-based businesses in Flagler Beach is
also important. Quality of life is an important
component of a community's economic development.
Please don't ignore the rights of the citizens of Flagler
Beach to "spot zone" for one company.
Sincerely,*

Carmelyn and Dan Mazanec
40 Ocean Palm Villa South
Flagler Beach, Florida 32136

Sent from my iPad

Adam Mengel

From: Adam Mengel
Sent: Friday, March 13, 2015 11:08 AM
To: 'jim@jamesmorrissa.com'
Subject: RE: Comprehensive Plan

Good morning Mr. Morris:

Your summary of our phone conversation is correct. The online posting only lacks the Data and Analysis section of the Plan.

Despite the label as a "draft" document, the 2010-2035 Comprehensive Plan provided online and as transmitted and subsequently adopted is the County's valid Plan.

Please contact me with any questions.

Thank you,

Adam

Adam Mengel, AICP, LEED AP BD+C
Planning and Zoning Director
Flagler County Planning and Zoning Department
1769 E. Moody Blvd., Building 2, Suite 105
Bunnell, FL 32110
Direct line: (386) 313-4065
E-mail: amengel@flaglercounty.org
Visit our website: www.flaglercounty.org

 Go Green: Please do not print this e-mail unless you really need to.

From: jim@jamesmorrissa.com [<mailto:jim@jamesmorrissa.com>]
Sent: Friday, March 13, 2015 11:03 AM
To: Adam Mengel
Subject: Comprehensive Plan

Adam,

Thank you for your time this morning. From our phone call, I am advised that the current adopted Flagler County Comprehensive Plan shown online, even though it appears to be a "draft document" is in fact the adopted, currently controlling comprehensive plan of Flagler County. The document is also referenced as 2010-2035.

I intend to download and print the online documents and to rely upon them as I prepare for Monday night's County Commission meeting/hearing regarding "Flagler County Board of County Commissioners- Public Hearing/Agenda Item No. 21." Accordingly, will you please (a) confirm my understanding stated above or (b) correct my understanding and direct me to the correct documents?

Thank you for your consideration.

Best regards,

Jim

REAL ESTATE • ADMINISTRATIVE • ZONING LAW

JAMES S. MORRIS, P.A.

Post Office Box 291687
Port Orange, Florida 32129

750 Oak Heights Court, Suite 304
Port Orange, Florida 32127

O. (386) 310-8785

C. (386) 871-8841

F (386) 310-8783

Adam Mengel

From: Christie L. Mayer
Sent: Friday, March 13, 2015 2:14 PM
To: Adam Mengel
Subject: FW: March 16, 2015 Meeting
Attachments: SKMBT_C28015031314120.pdf

From: jim@jamesmorrispa.com [mailto:jim@jamesmorrispa.com]
Sent: Friday, March 13, 2015 2:08 PM
To: Frank Meeker; Charles Ericksen Jr.; Barbara S. Revels; Nate McLaughlin; George Hanns
Cc: Craig Coffey; Albert J. Hadeed; Sally A. Sherman; Christie L. Mayer; Julie Murphy
Subject: March 16, 2015 Meeting

Please see the attached letter.

Thank you.

Jim

REAL ESTATE • ADMINISTRATIVE • ZONING LAW
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JAMES S. MORRIS
ATTORNEY AND COUNSELOR AT LAW

March 13, 2015

Honorable Frank Meeker, Chairman
and Board of County Commissioners
County of Flagler
1769 Moody E. Boulevard, Building 2
Bunnell, FL 32110

TRANSMITTED VIA EMAIL

**Re: Monday, March 16, 2015 Board of County Commissioners Meeting;
Agenda Item No. 21**

Dear Chairman Meeker and County Commissioners:

At your Monday, March 16, 2015, 5:00 p.m. meeting I will appear before the Commission as attorney for an opponent to the above referenced request. The opponent is a citizens group comprised of residents of Lambert Avenue who have informally (e.g., there is not corporation or other legal entity) joined together as contributors to retain my services as counsel. At the same time, I do not represent any particular individual.

Monday night's hearing is in regard to a legislative matter. Accordingly, the procedure to be followed by participants (regardless of applicant or proponent or opponent status) are set out at Flagler County Board of County Commissioners Rules of Procedure (Rules of Procedure), Sec. 3, Appearance Before the Commission. Section 3(a) provides:

Unless further time is granted by the Chair, limit comments to three (3) minutes.

Section 3(f) allows the Chair to require all persons who wish to be heard sign in with the Chair. Section 3(f) also allows a group to designate a speaker. Finally, Section 3(i) allows the Chair to waive the requirements of the procedure.

As noted above, my representation is of a group of neighbors to the subject property residing on Lambert Avenue. They are opposed to the proposal. The applicant, Craig Wall of Sea Ray is represented by at least two (2) attorneys and various consultants. The adopted procedure would seem to only allow three (3) minutes to Sea Ray.

While the matter before the Commission is legislative and it appears to be covered by Section 3, it does not appear Section 3 is appropriate for Monday's hearing. Accordingly, I proposed that as the Chairman, you waive the rules and establish a process that will allow both sides the opportunity to present their case and to respond to the points from the other side.

JAMES S. MORRIS, P.A. ♦ P.O. BOX 291687 ♦ PORT ORANGE, FL 32129
750 OAK HEIGHTS COURT, UNIT 304 ♦ PORT ORANGE, FL 32127
386-310-8784 ♦ 386-310-8783 FAX ♦ JIM@JAMESMORRISPA.COM

Individual members of the public, whether part of a represented group or entity, should still be allowed at least three (3) minutes as allowed by the rules unless the Chair grants additional time.

Respectfully, I request the following time allotments:

Initial Presentation:

Applicant: 15 minutes
Opponent: 12 minutes
Public: 3 minutes or more as allowed by the Chair

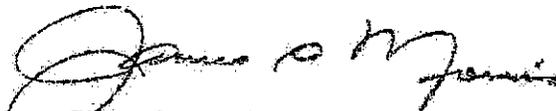
Rebuttal and Closing

Opponent: 5 minutes
Applicant: 7 minutes
No other speakers except staff and commission or direct responses to Commission questions

Thank you for your consideration.

Respectfully submitted,

JAMES S. MORRIS, P.A.



James S. Morris, Esq.

JSM/kw
Cc:

Adam Mengel

From: Adam Mengel
Sent: Friday, March 13, 2015 2:40 PM
To: 'jim@jamesmorrispa.com'
Cc: Julie Murphy
Subject: RE: Comprehensive Plan
Attachments: 20050617-DCA ORC Report-FC 2005 Second Cycle (in part for FLUM #2400).pdf; 20050728-Fufidio-FC Response to DCA ORC Report for FLUM #2400.pdf; 20060209-Fufidio-DCA Findings for 2005 Second Cycle Comp Plan amendments.pdf

Hi Mr. Morris:

Julie and I discussed your public records request; please accept this email and its attachments as the County's response to your inquiry from today.

I went back and watched the video archive for the December 12, 2005 special meeting and the motion on Application #2400 was made by Hutch King ("Does anybody want to ante up for our defense?"), based on assurances from Jim Cullis (and Paul Katz for Application #2424), seconded by Blair Kanbar, that each would respectively defend the County from any determination of non-compliance leading to an administrative hearing. The request was presented by staff to include presentation to the County of the executed settlement agreement within 10 days of approval so that the adopted amendment could be transmitted to DCA; the Board's motion specifically excluded staff's recommendation, Chairman Darby made sure to mention this as an amendment to staff's recommendation. The vote was unanimous.

We do not have the settlement agreement and, as best I can tell, the County never reviewed the draft or received the signed settlement agreement. As was mentioned in the adoption public hearing, DCA did not raise the settlement agreement in its ORC; the settlement agreement instead removed an intervenor (Sea Ray) from the amendment request and any possible challenge following adoption.

I hope this helps.

Thank you,

Adam

From: jim@jamesmorrispa.com [<mailto:jim@jamesmorrispa.com>]
Sent: Friday, March 13, 2015 11:03 AM
To: Adam Mengel
Subject: Comprehensive Plan

Adam,

Thank you for your time this morning. From our phone call, I am advised that the current adopted Flagler County Comprehensive Plan shown online, even though it appears to be a "draft document" is in fact the adopted, currently controlling comprehensive plan of Flagler County. The document is also referenced as 2010-2035.

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Best regards,

Jim

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STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

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

JEB BUSH
Governor

THADDEUS L. COHEN, AIA
Secretary

June 17, 2005

RECEIVED

JUN 20 2005

Flagler County Planning & Zoning Dept.

The Honorable James A. Darby
Chairman, Board of County Commissioners
Flagler County
1200 E. Moody Blvd, #2
Bunnell, Florida 32110

Dear Chairman Darby:

The Department has completed review of the proposed comprehensive plan amendment for Flagler County (DCA No. 05-1). Based on Chapter 163, Florida Statutes (F.S.), we have prepared the attached report, which outlines the Department's findings concerning the amendment. It is particularly important that the County address the objections set forth in our report so that the issues identified can be successfully resolved prior to adoption. We have also included copies of local, regional and state agency comments for your consideration. Within the next 60 days, the County should act by choosing to adopt, adopt with changes or not adopt the proposed amendment. For your assistance, we have attached to our report the procedures for final adoption and transmittal of the comprehensive plan amendment.

The amendment package contains five future land use map changes and one text change. The Department reviewed the proposed changes for consistency with Florida's growth management laws and consistency with Flagler County's comprehensive plan. Our report identifies several areas that need to be further addressed. The issues that we have identified include land use compatibility, demonstration that potable water and sanitary sewer services will be available and a commitment from providers to provide the needed services, site suitability, and internal consistency with the County's comprehensive plan.

2555 SHUMARD OAK BOULEVARD • TALLAHASSEE, FLORIDA 32399-2100
Phone: 850.488.8466/Suncom 278.8466 FAX: 850.921.0781/Suncom 291.0781
Internet address: <http://www.dca.state.fl.us>

CRITICAL STATE CONCERN FIELD OFFICE
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(850) 413-9969

HOUSING & COMMUNITY DEVELOPMENT
2555 Shumard Oak Boulevard
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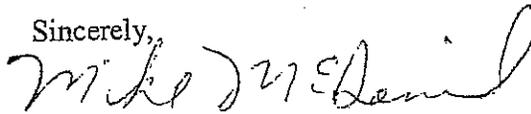
The Honorable James A. Darby

June 17, 2005

Page 2

Our report includes recommendations to help the County in addressing these issues prior to the adoption of the amendment. We are available to assist the County in responding to our report. Please contact Joseph Addae-Mensa, Senior Planner, at (850) 922-1783, if we may be of further assistance.

Sincerely,



Mike McDaniel
Acting Chief of Comprehensive Planning
Division of Community Planning

MM/jam

Enclosures: Objections, Recommendations and Comments Report
Review Agency Comments

cc: Walter Fufidio, Planning and Zoning Director, Flagler County
Ed Lehman, Director of Growth Management, NEFRPC

DEPARTMENT OF COMMUNITY AFFAIRS
OBJECTIONS, RECOMMENDATIONS AND COMMENTS REPORT

FOR

FLAGLER COUNTY AMENDMENT
DCA No. 05-1

June 17, 2005
Division of Community Planning
Office of Comprehensive Planning

This report is prepared pursuant to Rule 9J-11.010, F.A.C.

INTRODUCTION

The following objections, recommendations and comments are based upon the Department's review of Flagler County proposed comprehensive plan amendment (DCA No. 05-1), pursuant to Section 163.3184, F.S.

Objections relate to specific requirements of relevant portions of Chapter 9J-5, F.A.C., and Chapter 163, Part II, F.S. Each objection includes a recommendation of one approach that might be taken to address the cited objection. Other approaches may be more suitable in specific situations. Some of these objections may have initially been raised by one of the external review agencies. If there is a difference between the Department's objection and the external agency advisory objection or comment, the Department's objection would take precedence.

The County should address these objections when the amendment is resubmitted for our compliance review. Objections which are not addressed may result in a determination that the amendment is not in compliance. The Department may have raised an objection regarding missing data and analysis, which the County considers not applicable to its amendment. If that is the case, a statement justifying its non-applicability, pursuant to Rule 9J-5.002(2), F.A.C., must be submitted. The Department will make a determination on the non-applicability of the requirement, and if the justification is sufficient, the objection will be considered addressed.

The comments which follow the objections and recommendations are advisory in nature. Comments will not form bases of a determination of non-compliance. They are included to call attention to items raised by our reviewers. The comments can be substantive, concerning planning principles, methodology or logic, as well as editorial in nature dealing with grammar, organization, mapping, and reader comprehension.

Appended to the back of the Department's report are the comment letters from the other state review agencies and other agencies, organizations and individuals. These comments are advisory to the Department and may not form bases of Departmental objections unless they appear under the "Objections" heading in this report.

**OBJECTIONS, RECOMMENDATIONS AND COMMENTS REPORT
FOR
FLAGLER COUNTY
PROPOSED COMPREHENSIVE PLAN AMENDMENT (DCA No. 05-1)**

CONSISTENCY WITH CHAPTER 163, PART II, F.S., AND RULES 9J-5, F.A.C.

Amendment #2400 – Roberts Landing

The amendment will change the Future Land Use Map (FLUM) designation of a 166-acre property from Industrial land use category (0.45 FAR) to 139.8 acres of Residential – Low Density (3 dwelling units/acre), and 26.2 acres of Conservation. The property is located within the County's Planned Urban Service Area (PUSA), east of Roberts Road, north of SR 100 and adjacent to an existing boat manufacturing industry (Sea Ray Boats).

Objection 1: Compatibility with Existing Use

The proposed low-density single family residential development, allowing three dwelling units per acre for approximately 140 acres, creates land use incompatibility in relation to the adjacent industrially designated land, which is occupied by Sea Ray Boats manufacturing plant. Sea Ray Boats is a major boat-building factory and is characterized by styrene and other odors. Section 9J-5.003(23), Florida Administrative Code (F.A.C.), defines compatibility as "a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no one use or condition is unduly negatively impacted directly or indirectly by another use or condition". The intent of Florida's growth management law, as set forth under Section 163.3161(3), Florida Statutes (F.S.), among other things, is to ensure that local governments preserve, promote and protect the public health, safety and general welfare, through the comprehensive planning process. Local governments are also required, under Rule 9J-5.006(3)(c)2, F.A.C., to provide for the compatibility of adjacent land uses. Even though the amendment includes measures agreed upon by the County and the applicant to minimize incompatibilities, including designation of a 250-foot wide buffer, compatibility issues remain. The Florida Department of Environmental Protection (FDEP) has raised concerns about encroaching residential development around Sea Ray Boats, while citing a previous settlement with this company resulting in about one million dollars in renovations to the plant to address odor complaints. According to the FDEP, the major renovations completed by Sea Ray Boats were not designed to eliminate odors to residential developments surrounding the plant. The amendment is also internally inconsistent with Goal 1 and Policy 1.1b of the County's Future Land Use Element, which seek to achieve "orderly, harmonious and judicious use of land through a distribution of compatible land uses...", and to ensure the compatibility of adjacent land uses.

[Section 163.3161(3), 163.3177(2), 163.3177(6)(a), 163.3177(9)(b), 163.3187(2), 163.3202(2)(b), F.S., Rule 9J-5.003(23), 9J-5.006(3)(c)2, 9J-5.006(5)(h)6, 9J-5.022(1)(b), F.A.C.]

Recommendation: Consistent with **Goal 1** and **Policy 1.1b** of the County's Future Land Use Element to "ensure the compatibility of adjacent land uses", do not adopt this amendment. Alternatively, work with FDEP and Sea Ray Boats to develop an adequate buffer and/or other appropriate measures to mitigate the land use incompatibility.

Objection 2: Internal Consistency – Economic Diversification

The redesignation of the property from Industrial land use to Residential Low Density Single Family land use does not further the economic diversification goals, objectives and policies adopted in the County's comprehensive plan. The County's comprehensive plan (Table 2, Future Land Use Element) projects that industrial land use allocation will constitute only 0.28 percent of developable land in the County by the 2010 planning timeframe. This calls into question the rationale to further reduce existing industrial land use on the FLUM, in view of the County's commitment to promote industrial development in the County, as stated in the goals, objectives and policies cited below. Not only does the amendment reduce industrial land from the mix of land uses available on the FLUM, but because of compatibility concerns described in Objection #1 above, it also threatens the continuing viability of an existing industrial operation. **Goal A and Objective A.1** of the Economic Element and **Objective 12** and implementing **Policies 12.1, 12.2 and 12.3** of the Future Land Use Element commit the County to ensuring the expansion and diversification of the County's economic base, by recruiting new businesses and industries; retaining existing businesses and industries; and providing sites for industrial development. Furthermore, the County is committed under Policy A.2.3 of the Economic Element to prepare a County-wide Strategic Plan for Economic Development, involving all affected jurisdictions and entities by 2004. The amendment support documentation indicates that this study has not yet been completed. The Department is aware the County may be shifting its focus for the location of industrial development to the airport and U.S. 1 areas. However, at this time that focus is not supported by the County-wide Strategic Plan for Economic Development called for in the Economic Element nor is it reflected in the articulation of a strategy in the comprehensive plan. The amendment is therefore premature and may result in a land use distribution that could hamper efficient planning for economic diversification and job creation in the County.

[Section 163.3161(3), 163.3177(2), 163.3177(6)(a), 163.3177(9)(b), 163.3187(2), F.S., Rule 9J-5.005(5), F.A.C.]

Recommendation: To ensure that the County's limited industrial land use base on the FLUM is not further depleted through conversions to other land uses, do not adopt the amendment. Alternatively, defer adoption of this amendment until completion of the

Strategic Plan for Economic Development and the adoption of appropriate strategies for economic development based on the Strategic Plan.

Objection 3: Potable Water and Sanitary Sewer Availability

The transmittal indicates that the City of Palm Coast Utilities will provide potable water and sanitary sewer services to the site. However, the amendment does not include evidence of the availability of adequate capacity and commitment by the City of Palm Coast Utilities to meet the projected demand for the proposed development. Therefore, it has not been demonstrated that the County will maintain its adopted level of service (LOS) standards for water and sanitary sewer facilities through the planning timeframe.

[Section 163.3161(3), 163.3177(3)(a) & (b), 163.3177(4)(a), 163.3177(6)(a), 163.3177(6)(c), F.S.; Rule 9J-5.005(2)(a), 9J-5.055(1)(a), 9J-5.006(2)(a) & (b), 9J-5.006(3)(b)1, 9J-5.006(3)(c)3, 9J-5.011(1)(f)1-3, 9J-5.11(2)(b) & (c)1, F.A.C.]

Recommendation: Demonstrate that the County will maintain its adopted LOS standards for water and sanitary sewer facilities through the planning timeframe, by including evidence that City of Palm Coast Utilities has adequate capacity and is committed to provide the services to meet the projected demand.

Amendment #2418 – Eagle Lakes Phase 2

The amendment will change the FLUM designation of a 199.98-acre vacant property designated Agriculture and Timberlands land use category (1 dwelling unit/5 acres) to 166.23 acres of Residential - Low Density (3 dwelling units/acre), 20.35 acres of Conservation and 13.4 acres of Water Bodies land use categories. The property is located outside the County's PUSA, east of I-95 and west of Old Kings Road South.

Objection 4: Potable Water and Sanitary Sewer Availability

The amendment is not supported by evidence of the availability of adequate capacity of potable water and sanitary sewer and any commitment by a service provider to serve the site through the planning timeframe. The information included in the transmittal is imprecise as to the entity that will provide the services to meet the projected demand. The information indicates either Bulow Plantation (a private provider) or the City of Palm Coast or Volusia County may provide services to the site on permanent basis. In the interim, the applicant has entered into an agreement with Bulow Plantation to provide potable water and sewer to the site. Based on the 2004 usage from Bulow Plantation, relative to its consumptive use permit (CUP), the staff of the St. Johns River Water Management District has estimated that Bulow Plantation has the capacity to serve about 110 additional dwelling units. The proposed amendment will allow up to 399 dwelling units. Therefore, it has not been demonstrated that the County will maintain its adopted level of service (LOS) standards for water and sanitary sewer facilities through the planning timeframe.



**Flagler County
Board of County Commissioners**

1200 E. Moody Blvd., #2
Bunnell, FL 32110
(386) 437-7484 FAX: (386) 437-7488
Planning and Zoning Department

July 28, 2005

Ray Eubanks
Florida Department of Community Affairs
Plan Processing Section
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

RE: FLAGLER COUNTY – RESPONSE TO ORC REPORT, FLUM #2400

Dear Mr. Eubanks:

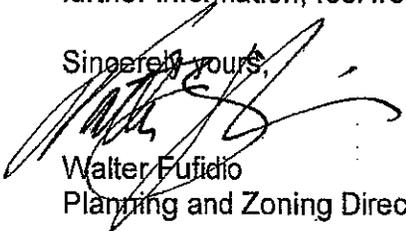
On June 17, 2005 Flagler County received the Objections, Recommendations and Comments (ORC) Report for our first amendment cycle of 2005 (DCA No. 05-1). The above-referenced amendment, a.k.a. Roberts Landing, received comments regarding internal compatibility of uses, internal inconsistency and potable water and wastewater capacity.

Enclosed please find 3 copies of our response to the ORC Report. The response, prepared by Gary B. Davenport, Esq., includes supporting information from:

1. Ken Metcalf, Director of Planning Services, Greenberg Traurig, Tallahassee
2. A "Brief Growth plan Summary" prepared by the City of Palm Coast sent under cover letter dated July 27, 2005 from Brian Matthews to Scott Blunck

The County and Applicant anticipate meeting with Joseph Addae-Mensa prior to the adoption hearing to discuss the significance of this additional information on the Department's Notice of Intent. If your office or any reviewing agency requires further information, feel free to contact me.

Sincerely yours,



Walter Fufidio
Planning and Zoning Director

c.c. Edward Lehman, Director of Growth Management, NEFRC (w/encl.)
Suzanne E. Ray, FDEP (w/encl.)
Linda Burnette, Director, Office of Communications, SJRWMD
Gary B. Davenport, Esq.
Scott Blunk, Landmar Communities

Gary B. Davenport, P.A.
Attorney

July 22, 2005

Via: Hand Delivery

Walter Fufidio, Director
Development Services
Flagler County
2729 E. Moody Blvd.
Bunnell, FL 32110

Re: FLUM Amendment 2400/Roberts Landing

Dear Walter:

I represent LandMar Group, Inc., the applicant for the above referenced Flagler County FLUM Amendment. This letter addresses the several comments generated through DCA and agency review of the FLUM amendment application:

DCA Comments:

- Objection 1: Compatibility With Existing Use. See attached response prepared by Ken Metcalf, Director of Planning Services, Greenberg Traurig
- Objection 2: Internal Consistency/Economic Diversification. See attached response prepared by Ken Metcalf
- Objection 3: Potable Water and Sanitary Sewer Availability.
The Project engineer is currently working with the City of Palm Coast Utility staff to prepare the requested information.

DEP Comments:

The DEP comments that the area has a high recharge rate and notes the location next to SeaRay and recommends that development be limited to uplands and that a buffer be provided adjacent to SeaRay. The applicant has already agreed to the buffer and has ensured the buffer will be in place by designating the area as Conservation. Further compatibility and buffers are addressed in the Comp Plan to be enforced through the County's Land Development Code. Regardless the buffer has been provided for and will be further implemented during rezoning of the Property to PUD. As to development being limited to uplands, that will also be implemented through the PUD and is the intent of the developer, except for areas necessary for access where the impact will be minimized.

Dept of State, Div of Historical Resources Comment

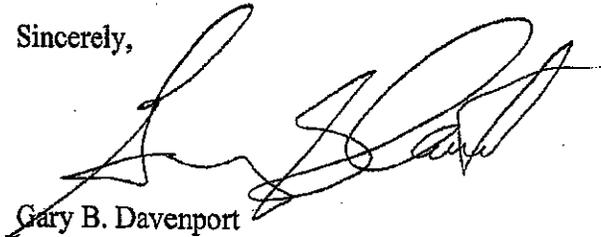
The Division references the possible inclusion of Site FL144. The applicant will further investigate and study the property and in particular the Site and will comply with Chapter 872 FS as applicable to the Property.

July 21, 2005

Page -2-

Thank you for your time and attention. Should you have any questions or require anything further, please feel free to call me

Sincerely,

A handwritten signature in black ink, appearing to read "Gary B. Davenport", written over a horizontal line.

Gary B. Davenport

GBD/shw

Enclosures

cc: Jim Smith
Jim Cullis
Scott Blunck
Ed Lehman

PREPARED BY KEN METCALF
DIRECTOR OF PLANNING SERVICES
GREENBERG TRAURIG

Amendment #2400 – Roberts Landing

DCA Objection 1.

The proposed low density single family residential development, allowing three dwelling units per acre for approximately 140 acres, creates land use incompatibility in relation the adjacent industrially designated land, which is occupied by Sea Ray Boats manufacturing plant. Sea Ray Boats is a major boat-building factory and is characterized by styrene and other odors. Section 9J-5.003(23), Florida Administrative Code (F.A.C.), defines compatibility as “a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no one use or condition is unduly negatively impacted directly or indirectly by another use or condition.” The intent of Florida’s growth management law, as set forth under Section 163.3161(3), Florida Statutes (F.S.), among other things, is to ensure that local governments preserve, promote and protect the public health, safety and general welfare, through the comprehensive planning process. Local governments are also required, under Rule 9J-5.006(3)(c)2, F.A.C., to provide for the compatibility of adjacent land uses. Even though the amendment includes measures agreed upon by the County and the applicant to minimize incompatibilities, including designation of a 250-foot wide buffer, compatibility issues remain. The Florida Department of Environmental Protection (FDEP) has raised concerns about encroaching residential development around Sea Ray Boats, while citing a previous settlement with this company resulting in about one million dollars in renovations to the plant to address odor complaints. According to the FDEP, the major renovations completed by Sea Ray Boats were not designed to eliminate odors to residential developments surrounding the plant. The amendment is also internally inconsistent with **Goal 1** and **Policy 1.1b** of the County’s Future Land Use Element, which seek to achieve “orderly, harmonious and judicious use of land through a distribution of compatible land uses...”, and to ensure the compatibility of adjacent land uses. [Section 163.3161(3), 163.3177(2), 163.3177(6)(a), 163.3177(9)(b), 163.3187(2), 163.3202(2)(b), F.S., Rule 9J-5.003(23), 9J-5.006(3)(c)2, 9J-5.006(5)(h)6, 9J-5.022(1)(b), F.A.C.]

Response

The objection raises concern regarding the compatibility of residential land use with the adjacent, existing Sea Ray Boats facility. The following response addresses several points that are relevant in evaluating the compatibility of the proposed residential land use and the nearby industrial land use.

A. Application of Statutory and Administrative Rule Requirements. The objection cites numerous statutory and rule provisions in support of the objection. However, several of these citations do not address compatibility of land uses and are not relevant in terms of establishing a specific compliance requirement that must be met for the purpose of reviewing plan amendments. Section 163.3161(3), F.S., is a general purpose provision that does not establish any compliance review requirements and is not cited in Section 163.3184(1)(b), F.S., which defines specific sections of the statute and rule that must be

considered in making a compliance determination. Section 163.3177(6)(a), F.S., does not address compatibility of land uses other than strategies to require the elimination of nonconforming uses, which is not relevant to this plan amendment. Section 163.3177(9)(b) addresses the requirement that the administrative rule include criteria for evaluating whether elements of the comprehensive plan are consistent. This provision directs the Department on rulemaking and is not relevant to the review of the plan amendment. Section 163.3187(2) deals with procedural matters that are not relevant to this plan amendment. It appears the Department intended to cite Section 163.3178(2), F.S., which address analysis requirements for the coastal element. This provision does not address compatibility. Section 163.3202(2)(b), F.S., addresses the requirement that land development regulations address compatibility. This provision is not relevant to a plan amendment compliance determination and is not cited in Section 163.3184(1)(b), F.S.

Rule 9J-5.006(5)(h)6, F.A.C., relates to the analysis used to evaluate whether an amendment discourages urban sprawl, which is not relevant to this plan amendment. Rule 9J-5.022(1)(b), F.A.C., addresses land development regulations and is not relevant to this plan amendment. Rule 9J-5.006(3)(c)2, F.A.C., is not relevant to the review of map amendments. This rule provision requires that the comprehensive plan include one or more policies that address the compatibility of adjacent land uses. This provision applies only in the review of comprehensive plan policies for the purpose of determining compliance. Similarly, Rule 9J-5.003(23), F.A.C., defines "compatibility" and is relevant only in the review of the comprehensive plan to determine if the adopted compatibility policies are in compliance.

The Flagler County Comprehensive Plan was found in compliance by the Department. Therefore, for the purpose of reviewing this plan amendment, the only relevant citations from the ORC is Section 163.3177(2), F.S., which requires consistency between the elements of the comprehensive plan. The ORC does not identify any inconsistencies between the elements of the comprehensive plan. However, the ORC suggests that the proposed amendment is internally inconsistent with Goal 1 and Policy 1.1.b of the Future Land Use Element of the adopted Flagler County Comprehensive Plan.

B. Internal Consistency with Goal 1 and Policy 1.1.b

Goal 1 is a general goal that refers to the distribution of compatible land uses. This goal is implemented through a series of objectives and policies in the comprehensive plan. Policy 1.1.b does not address how land uses are distributed on the Future Land Use Map. Rather, Policy 1.1.b addresses the adoption of land development regulations to address compatibility of land uses. This policy is not relevant to the plan amendment.

The comprehensive plan addresses compatibility of industrial land use under Objective 13 and its implementing policies, which were not cited in the ORC. Objective 13 generally indicates that the FLUM shall be used as a guide for future development. The objective is implemented through several policies that address compatibility. Two important points are obvious in reading the policies:

- 1) the policies seek to protect established residential areas from encroachment of industrial and commercial land uses through mitigation techniques; and
- 2) conversely, the policies do not prohibit residential land use from locating adjacent to industrial land use.

Most of the policies address how industrial land use will be reviewed when proposed near or adjacent to existing residential areas – not the converse situation of residential locating near existing industrial. Although only indirectly relevant to this plan amendment, even those policies seeking to protect an established residential use recognize the ability to locate industrial adjacent to the existing residential use by addressing compatibility issues through performance standards, such as land use transition and buffering.

Policy 13.3 is the only relevant policy that addresses the proposed plan amendment and other situations when new residential land use seeks to locate adjacent or in proximity to other land uses. This policy states:

“Flagler County shall implement its comprehensive plan through land development regulations which shall control the location and extent of new residential development and require mitigation to ensure that new development is compatible with the design and environmental character of the area in which it is located.”

This policy clearly contemplates that new residential use may be located in situations where mitigation may be required to address some degree of incompatibility that may otherwise occur between adjacent land uses. Flagler County and the applicant agreed that a 250' buffer would adequately address compatibility issues between the subject property and the Sea Ray site. This is fully consistent with the intent of Policy 13.3 that specifically requires mitigation as a means to address compatibility concerns. Similarly, Policy 13.7 also specifically recognizes buffering as an acceptable means of addressing compatibility when industrial is located adjacent to existing residential use. While this plan amendment allows residential in proximity to existing industrial, as opposed to converse, the intent of the policy direction is clear that mitigation buffering shall be used to ensure compatibility where deemed appropriate. The proposed amendment is compatible with the industrial land use as addressed by the comprehensive plan and is internally consistent with the comprehensive plan, including Goal 1, Objective 13 and related policies.

The rationale set forth in the Flagler Comprehensive Plan is common in comprehensive planning and recognizes that the new residential use is locating by choice adjacent to the industrial use and will utilize appropriate performance standards to protect itself from the established use. It is well established in residential location studies that residences seek home location based on a variety of considerations that involve tradeoffs of positive and negative attributes related to the site, neighborhood, city and region. The policy framework recognizes the need to provide a flexible approach to ensure compatibility, recognizing the need to accommodate residential choices. This is particularly valid when

considering residential as the new use. For these reasons, the comprehensive plan does not prohibit the establishment of residential use near or adjacent to industrial use.

C. Recognizing the Established Future Land Use Pattern. The proposed amendment does not create a new land use pattern involving proximity of residential use to the industrial use. This pattern already exists when considering the juxtaposition of Sea Ray and other adjacent and proximate land uses and when considering the amendment site and its relationship to adjacent and proximate land uses. The future land use map allows MUH abutting on the north side of the Sea Ray site. The MUH designation requires significant residential use with up to 60% of the site functioning as residential use with densities as high as 10 units per acre. The City of Flagler Beach allows residential immediately to the southeast of the SeaRay site and numerous homes already exist in that area. From a more macro level, a large subdivision, Plantation Palms, is located to the north of SeaRay within 1/4 mile, and significant residential development is located to the east of SeaRay just across the ICW. These are designated for residential use on the Future Land Use Map. A significant amount of MUH is also located within about 1/2 mile to the southwest of SeaRay.

It is also important to consider the net effect of the amendment. The proposed amendment would actually reduce the extent of industrial future land use adjacent to future residences. The subject amendment site is adjacent to significant MUH land use that abuts the property to the west. If the subject property remains industrial, more residential will occur adjacent to industrial use than without the amendment. This occurs because the density in the MUH to the west is substantially higher than the low density proposed for the subject amendment site. Thus, without the amendment, the MUH designation could allow over a 1,000 units abutting the future industrial use of the subject site. Moreover, the MUH site is oriented in a north-south direction parallel to the subject amendment site and thus a lengthy interface occurs between the properties.

The proposed amendment will eliminate the interface of the current industrial land use designation on the subject amendment site with the MUH to the west. Moreover, the subject amendment site is oriented perpendicular to the Sea Ray site, which limits the interface between the properties as compared to the interface that exists without the amendment as previously described. The orientation also allows for significant distances between the future residents and the Sea Ray site in moving perpendicularly from north to south on the subject amendment site, and the 250' buffer further mitigates the interface and adds to that buffer distance. Finally, the actual number of residents in proximity to industrial will be substantially less under the low density residential land use designation as compared to the MUH designation.

Other land use amendments are pending that will essentially eliminate most of the industrial to the west and north of SeaRay. The County's decision to replan this general area will substantially reduce the exposure of residential to industrial as compared to the currently approved future land use map. The proposed amendment is consistent with Objective 2 to reduce the extent of incompatibilities through land use decisions and performance measures.

D. Consideration of Specific Sea Ray Use

The ORC focuses on the compatibility objection specifically in regard to the styrene emissions of the Sea Ray manufacturing plant. This analysis is not appropriate for the review of the subject plan amendment. The plan amendment should be evaluated based on the relationship of future land use categories, not based on the existence of a particular industrial use. Notwithstanding that point, all of the previous findings would remain valid even if considering the specific Sea Ray use. Moreover, in considering the existing use, it would not be appropriate to consider a violation of local emission standards as the basis for determining that other uses could be incompatible. As the ORC citations reference, several policies refer to the County adopting regulations to address compatibility. The County regulations require that industrial uses emit no odors that are detectable at the property boundaries. Similarly, Rule 62-296.320(2), F.A.C., prohibits objectionable odors and Sea Ray acknowledges that it is operating in non-compliance with its FDEP air quality permit. Therefore, it is difficult to understand how FDEP could recommend against the amendment on the basis of continued permit violations. An existing violation of emissions standards should not form the basis for a compatibility determination.

DCA Objection 2. Internal Consistency – Economic Diversification

The redesignation of the property from Industrial land use to Residential Low Density Single Family land use does not further the economic diversification goals, objectives and policies adopted in the County's comprehensive plan. The County's comprehensive plan (Table 2, Future Land Use Element) projects that industrial land use allocation will constitute only 0.28 percent of developable land in the County by the 2010 planning timeframe. This calls into question the rationale to further reduce existing industrial land use on the FLUM, in view of the County's commitment to promote industrial development in the County, as stated in the goals, objectives and policies cited below. Not only does the amendment reduce industrial land from the mix of land uses available on the FLUM, but because of compatibility concerns described in Objection #1 above, it also threatens the continuing viability of an existing industrial operation. **Goal A and Objective A.1** of the Economic Element and **Objective 12** and implementing **Policies 12.1, 12.2 and 12.3** of the Future Land Use Element commit the County to ensuring the expansion and diversification of the County's economic base, by recruiting new businesses and industries; retaining existing businesses and industries; and providing sites for industrial development. Furthermore, the County is committed under Policy A.2.3 of the Economic Element to prepare a County-wide Strategic Plan for Economic Development, involving all affected jurisdictions and entities by 2004. The amendment support documentation indicates that this study has not yet been completed. The Department is aware the County may be shifting its focus for the location of industrial development to the airport and U.S. 1 areas. However, at this time that focus is not supported by the County-wide Strategic Plan for Economic Development called for in the Economic Element nor is it reflected in the articulation of a strategy in the comprehensive plan. The amendment is therefore premature and may result in a land use distribution

that could hamper efficient planning for economic diversification and job creation in the County.

[Section 163.3161(3), 163.3177(2), 163.3177(6)(a), 163.3177(9)(b), 163.3187(2), F.S., Rule 9J-5.005(5), F.A.C.]

Response

The objection raises concerns that the proposed amendment does not further economic diversity provisions of the comprehensive plan due to the reduction in industrial land use and by threatening the viability of the existing Sea Ray use due to the compatibility concerns previously raised. The response to the compatibility concerns addresses the aspect of this objection regarding compatibility. The following responses address the concern regarding economic diversification.

A. Application of Statutory and Administrative Rule Requirements. As previously noted in the response to the compatibility objection, Sections 163.3161(3), F.S. and 163.3187(2), F.S., are not relevant to a compliance determination, and are not included in Section 163.3184(1)(b), F.S., which defines statutes that pertain to a compliance determination. Section 163.3177(9)(b) addresses the requirement that the administrative rule include criteria for evaluating whether elements of the comprehensive plan are consistent. This provision directs the Department on rulemaking and is not relevant to the review of the plan amendment. Section 163.3177(6), F.S., specifically addresses economic need and job creation only in terms of *rural* communities and is not relevant to this amendment in that regard. Section 163.3177(6)(a) does not specifically discuss economic diversification and is not relevant to that issue. Section 163.3177(6)(a) generally provides that the future land use plan should be based on "...the amount of land required to accommodate anticipated growth..." This is the only provision of Section 163.3177(6)(a) that is relevant to the review of the plan amendment, but the objection does not discuss this aspect of (6)(a). Notwithstanding this limitation of the ORC, this issue is addressed below. The remaining citations address internal consistency between elements and are addressed below.

B. Industrial Land Use Allocations on the FLUM. The ORC objection questions whether the amendment, by reducing industrial land use allocation on the future land use map, is inconsistent with the economic diversification provisions of the comprehensive plan. In support of this position, the ORC cites the land use projections set forth in Table 2 of the future land use element. The ORC analyzes the projected percentage of industrial acreage as compared to the projected acreage of all land uses and apparently questions whether .28% is sufficient. This methodology is not appropriate in terms of evaluating future need. The analysis of need for the purpose of reviewing the plan amendment should compare the projected need against the supply provided on the future land use map, as recognized by the Department's technical reports on the subject. Table 2 indicates a projected need for 573 acres of industrial by 2010. Flagler County estimates that the FLUM provides 2,004 acres of industrial land use, over three times the projected

need. The proposed amendment does not preclude the County from meeting its projected need for industrial lands.

The Department's accepted methodology does not normally consider net acreage in determining need. However, even if the existing airport acreage were deducted from the future supply of Industrial, the FLUM provides adequate supply to meet projected needs. The County reports that the airport lands designated Industrial include 1,174.5 acres, which includes runways, retention areas, wetlands, etc. Even if that land were excluded from the 1,174 acres, the net acreage available at the airport includes 230 acres for industrial development within the Airport Business Park. Thus, deducting the difference (944.5 acres), the FLUM provides a total of 1,059 acres or almost twice the projected need as provided in Table 2. Finally, even with an additional reduction for the 04-2 amendment and the other land use changes pending in 05-1, a total of 616 acres will remain on the FLUM designated as Industrial, which exceeds projected need by about 7%.

Regarding the projected need for Industrial as indicated in Table 2, the comprehensive plan projected need based on per capita population projections. This methodology would have produced an unrealistically high projection in a jurisdiction experiencing high population growth. It is unrealistic to forecast industrial growth to remain on par with population growth for Flagler County, which was recently reported as the County with the highest population growth in the country. The County's EAR criticizes the methodology used to project industrial for this reason. Notwithstanding this point, the FLUM exceeds the very conservative projected need, even with the conservative assumptions used in estimating the acreage supply.

C. Internal Consistency. The ORC concludes that the amendment may be internally inconsistent with Goal A, Objective A.1 and Policy A.2.3 of the Economic Element and Objective 12 and implementing Policies 12.1, 12.2 and 12.3 of the Future Land Use Element.

Goal A generally discusses diversification and is implemented through the objectives and policies that should be evaluated to determine plan amendment consistency. Objective A.1 addresses recruitment and retention strategies. The objective does not discuss land use and is not relevant to the analysis, nor do any of the implementing policies have anything to do with land use.

The ORC also cites Policy A.2.3, which calls for the completion of a Countywide Strategic Plan by 2004. Again, nothing in the policy language suggests that the Countywide Strategic Plan is intended to address land use. Notably, the ORC does not cite the guiding objective for this particular policy. Objective A.2 clearly indicates that the purpose of the policies is to support Enterprise Flagler and the Economic Development Commission. Nothing in the objective suggests that the policies are intended to implement land use strategies. Similarly, the accompanying policies under this objective have nothing to do with land use. Policy A.2.3, which provides for a *countywide* strategy, confirms that the topic of the policy is not land use given that the

County has no jurisdiction over land use in the other jurisdictions that are listed. Moreover, *strategic* plans in regard to economic development more typically focus on stimulus policy strategies, not land use. Finally, the format of the Economic Element also indicates that land use is discussed under other more specific provisions of the element addressing that particular topic. Therefore, Objective A.1 and Policy A.2.3 are not relevant to the review of the plan amendment. However, even if they were relevant, nothing in the policy language suggests that a moratorium on industrial land use designations was contemplated if the County did not complete the study by the preferred time frame.

The more relevant provisions of the Economic Element as related to land use are set forth under Goal D, which states that "the County shall enhance land use resources for economic development in Flagler County." Similarly, Objective D.1 states that "the County shall provide quality geographically distributed sites to accommodate economic opportunities over the next planning cycle." Goal D and Objective D.1 are clearly the provisions of the Economic Element intended to address land use. The ORC does not address consistency with these more relevant provisions. Policy D.1.3 calls for the County to "re-examine its number of Industrial site locations and modernize its Land Development Regulations for Industrial/Commercial uses by the First Quarter of 2004." This policy indicates the intent of the County to reconsider its existing industrial land use allocations. The proposed amendment and similar amendments in the general area to change from Industrial to either MUH or residential designations reflect the outcome of this policy direction. Nothing in the policy suggests an intent to retain all existing industrial land use designations.

The ORC cites Objective 12 and implementing Policies 12.1, 12.2 and 12.3 of the Future Land Use Element. Objective 12 provides that "the economic base shall be increased and broadened through planning and development activities which attract new businesses and industries and expand existing businesses and industries." This is implemented through Policy 12.3 in regard to land use. Policies 12.1 and 12.3 are not relevant to the plan amendment. Policy 12.3 provides that "the County shall encourage the continued development and improvement of appropriate existing industrial areas, while also providing new sites for industrial development." As further discussed the subject amendment site is not appropriate or feasible for industrial use. Moreover, as further discussed, the County has proceeded with new sites for industrial development. Even if the amendment site were considered appropriate, the policy does not prohibit re-designation of sites that are designated as industrial. The proposed amendment is consistent with the objective and policy.

Viability of Industrial at the Subject Site. It is important to recognize that the subject site is not conducive for industrial development and does not conform to the guidelines in the comprehensive plan for the location of industrial development. The comprehensive plan (p.8) recognizes that transportation access is a critical location advantage as recognized in planning literature; interstate and rail access are not afforded at the subject site. The ability to achieve agglomeration of economies - the clustering of mutually supportive land uses - is also considered a critical factor for industrial location. The subject site

lacks other supporting land uses, which are impeded by the lack of interstate and rail access. The Evaluation and Appraisal report also recognizes the importance of these attributes. The only possible advantage for this site is marine access, but the distance to the inlet and narrowness of the ICW significantly limit this advantage.

Land values also pose a practical constraint to successful industrial development in this area. Land values are significantly higher in proximity to water and generally decline with distance from the water and from the urban core. The escalating land values near the waterfront have priced industrial out of the market in this general area. Enterprise Flagler cited by reference in the ORC does not even show the subject site on its list of parks, and has confirmed in discussions that industrial interests have repeatedly confirmed that the land values are too high in order for industrial to be feasible. Enterprise Flagler estimates that the price per square foot is at least twice that of comparable parks in the region. For all of these reasons, no industrial development has occurred on any of the designated properties for the past 30 years. The only development occurring on the Industrial properties near Sea Ray is a training center for truck drivers occurring on property that was originally intended for Industrial Training to support the industrial park. The training center does not conduct industrial training.

The comprehensive plan forecasts industrial growth to occur at the more advantageous industrial parks that are located near the airport, near the interstate and railroad and near other urban uses. Nine industrial parks exist within the county. Significant industrial development has occurred at several of these parks, including the Palm Coast and Pine Lakes Industrial Parks as discussed in the comprehensive plan. However, the analysis never forecasted significant industrial development to occur at the Palm Coast Intracoastal Industrial Park where Sea Ray is located. Instead, the analysis (p.25) indicates that manufacturing is expected to grow as a result of expansion at the Flagler Airport Industrial Park. The County has focused its efforts on recruiting industrial uses at the other parks that are clearly more conducive to industrial development. Several of the parks have substantial vacant lands that will support the expansion of the industrial base. The data and analysis support the conclusion that the proposed amendment will not preclude the County's ability diversify and expand the industrial base.

D. Residential Need and Expansion of Non-Industrial Sites. The economic expansion provisions of the comprehensive plan also recognize the need for other uses, such as mixed use development projects, within the coastal planning area. The Coastal Element, Section G (p. 16) states that "the major components of the economic base of the *coastal area* are construction, retail, commercial, tourist commercial and health care. The implementation of the future land use plan should result in the continued growth of the services and retail trade sectors." Notably, this language does not call for industrial land use in the coastal area. The County has followed this direction in planning the MUH in the coastal area west of this site and to the north adjacent to Sea Ray. This policy direction is also consistent with Policy A.3.3 which supports the expansion of mixed use developments. The general direction that the County has implemented in replanning this coastal area is consistent with the intent of the comprehensive plan.

Objective D.1 states that "the County shall provide quality geographically distributed sites to accommodate economic opportunities over the next planning cycle." The existing MUH is sufficient to meet the needs of the population in the general area and supports the expansion of the retail and service sectors as previously discussed. Therefore, MUH was not considered for this site. Instead, this site is proposed for low density residential to allow for land use transition. Policy 13.8 provides that density transitions shall be used where appropriate in considering map amendments. The proposed low density land use designation provides a density transition between the MUH to the west and the rural estate designation to the east. The low density designation is also consistent with the single family development immediately to the east in the City of Flagler County. From a macro level, the designation also continues the low density designation that occurs with single family subdivisions located along the ICW north of the Sea Ray site. Low density residential is an appropriate designation based on the land use pattern and is consistent with the policies of the comprehensive plan. The residential designation is also consistent with Objective 8 and its implementing policies in regard to the siting of infill residential development within the Planned Urban Service Area to meet projected population growth demands.

Amendment #2426 - Grand Haven Reserve Fly-In

Objection 5: Internal Consistency – Economic Diversification

The conversion of industrial land to residential low density rural estate, allowing one dwelling unit per acre, raises internal inconsistency and loss of industrial lands concerns, similar to Objection 2 above. This amendment in combination with Amendment #2400 – Roberts Landing will result in a loss of approximately 402 acres of future industrial lands. If the County's adopted objectives for economic diversification and job creation are to be accomplished, it is this industrial future land use designation located adjacent to the Flagler County Airport that should be protected, and where feasible, expanded.

[Section 163.3161(3), 163.3177(2), 163.3177(6)(a), 163.3177(9)(b), 163.3187(2), F.S., Rule 9J-5.005(5), F.A.C.]

Response. The response to Objection 2 adequately responds to this objection. The proposed amendment is consistent with the comprehensive plan regarding economic diversification. It should also be recognized that a fly-in subdivision would support accessibility by executives and would support business and industrial expansion adjacent to the airport.

DCA Objection. The proposed comprehensive plan amendment does not adequately further the State Comprehensive Plan, Chapter 187, F.S., regarding:

(7) Water Resources, Policy 5, ensuring that new development is compatible with local and regional water supplies.

(9) Natural Systems and Recreation Lands, Policy 7, protection and restoration of ecological functions of wetlands systems to ensure their long-term environmental, economic, and recreational value.

(10) Air Quality, Policy 2, ensure that developments are consistent with maintenance of optimum air quality.

(15) Land Use, Policy 3, enhance the livability and character of urban areas through the encouragement of an attractive and functional mix of living, working, shopping, and recreational activities.

(21) The Economy, Policy 1, attracting new job-producing industries to provide quality employment for the residents of Florida; Policy 12, encourage the development of business climate that provides opportunities for the growth and expansion of existing state industries, particularly those industries which are compatible with Florida's environment.

Response: See previous responses as basis for consistency with the state comprehensive plan.



Brief growth plan summary:

As of July 27, 2005

Water

The City of Palm Coast Utility Department is currently working under Consumptive Use Permit Application Number 1947, dated April 5, 1999. Our current annual allocation is based on our previous CUP # 2-035-0011NM from 1992 with a maximum annual withdrawal of 2500.6 million gallons for 1998. The City of Palm Coast anticipates receiving a new 20 year CUP prior to the end of 2005, with a request of an annual average day for withdrawal in 2025 projected at 17.847 million gallons per day (mgd). The current combined FLDEP permitted treatment capacity of the two existing water treatment plants is 12.384 mgd under PWS # 2180863. During 2004, the annual average withdrawal was 6.963 mgd or within 1.9% of the permitted annual withdrawal from 1998. As of the July 1, 2005, the annual average withdrawal is currently 7.095 mgd, but is expected to increase prior to year's end, necessitating in a request for a temporary increase in our CUP allocation to meet increasing demands unless a new CUP is issued prior to that time.

The Initial Capacity Analysis report provided to the FLDEP in August 2004, and amended in October 2004, projects a third water treatment plant to begin production by midyear of 2007, with a capacity of 3.0 mgd and expanded accordingly to a design capacity of 9.0 mgd by 2022. This will bring the Palm Coast water system to a total combined capacity of 15.384 mgd in early 2007 with a projected annual average day demand of 7.584 million gallons.

Wastewater

The City of Palm Coast Utility Department operates a conventional activated sludge Domestic Wastewater Treatment Facility under FLDEP Permit # FL0116009 with a rated capacity of 4.55 million gallon per day (mgd) annual average day flow. The facility is under construction to be expanded to a rated design capacity of 6.83 mgd annual average day flow under PA File # FL0116009-008-DW1P, with treatment improvements to meet the requirements of Part III Reuse. Construction completion and subsequent startup is expected to occur in early 2006. The annual average day flow as of March 2005 is 4.046 mgd, and has been projected to exceed 4.7 mgd before the end of 2006. A further expansion of this facility or construction of WWTP #2 is projected to be needed by 2011 as indicated in a Capacity Analysis provided to the FLDEP in March 2004.

Capacity Analysis

Both water and wastewater capacity analysis reports project a 20 year planning period ending in 2025. These reports will be amended initially on an annual basis, and then will follow the FLDEP guidelines as stated in 62-555.348, FAC and 62-600.405(5)(b), FAC.



UTILITY DEPARTMENT

July 27, 2005

Mr. Scott Blunck
Vice President of Land Development
Landmar Reality Group
5 Sandpiper Ct.
Palm Coast, FL 32137

Re: City of Palm Coast Utility Department
Capacity and Growth Planning Management

Dear Mr. Blunck,

In response to the objections stated in the FLUM amendments 2400 (Roberts Landing) and 2426 (Grand Haven Reserve Fly-In) and the apparent lack of capacity indicated on the SJRWMD Potable Water Availability Worksheets dated 2/25/05 completed for these projects, please find the following attachments:

- A brief status update on our pending CUP application
- A brief growth plan summary
- Population and flow projections through 2010
- Projection methodology

I hope the information provided fulfills the requests placed on you by the DCA and the SJRWMD.

If you have questions or if I can be of further service to you, please do not hesitate to contact me at 386-986-2353.

Sincerely,

Brian Matthews
Environmental Specialist



Status of Pending CUP Application No. 1947

Date application received by the District -- 04/06/99

Date of Request for Additional Information -- 04/26/99

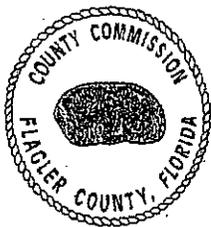
The response to the RAI is dependant on the results obtained from the Cooperative Groundwater Model and was submitted on April 25, 2005. a second RAI was generated by the SJRWMD and received by the City of Palm Coast on May 25, 2005. The City has 120 days to respond to the second RAI.

The Utility has not exceeded the 1992 CUP - Maximum Annual Groundwater Withdrawal allowed in the Permit - 2500.6 million gals. - As of June 1, 2005

The Flagler County Cooperative Groundwater Model in development since 1999, became available for use in June 2004. The City of Palm Coast Wellfield consultant began inputting data into the model in July 2004 and has been interacting with the modelers at the District to include both the Flagler Beach and Bunnell withdrawal requests in the model.

The application is currently under review by District staff. Issues under investigation include finalizing demand projections, determining alternative water sources, completing a water conservation plan, maximizing the use of lower quality water sources, and developing a wellfield management plan. The use of the regional ground water flow model just completed will be used to aid in developing strategies to meet the District's criteria for issuance of Palm Coast's CUP renewal. NOTE: This paragraph was taken directly out of the June 2005 Memorandum to the SJRWMD as the Status of Pending CUP Application.

City of Palm Coast Staff has met with the District staff on numerous occasions to review the many components required in the consumptive use permitting process and is continuing to work cooperatively towards the final issuance of a consumptive use permit.



**FLAGLER COUNTY GOVERNMENT
PLANNING & ZONING DEPT.**

MEMORANDUM

DATE: FEBRUARY 9, 2005
TO: DOUGLAS WRIGHT, COUNTY ADMINISTRATOR
FROM: WALTER FUFIDIO, P&Z DIRECTOR
SUBJECT: DCA FINDINGS - 2005 SECOND CYCLE COMPREHENSIVE PLAN AMENDMENTS

On December 12, 2005 the Board of County Commissioners adopted the second round of Comprehensive Plan amendments for calendar year 2005. The Florida Dept. of Community Affairs (DCA) has completed its statutory review and issued a Notice of Intent (N.O.I.) on February 15, 2006 addressed to Chairman Darby. DCA has found 5 of the 6 amendments in compliance. The purpose of this memorandum is to describe the situation and initiate a discussion of the County's options.

Five amendments were found in compliance, an action that is final subject only to an appeal by affected parties on or before March 8, 2006. These are:

ORDINANCE	DESCRIPTION	APPLICANT
2005-27	2005-2025 Recreation & Open Space Element	Flagler County
2005-28	Land Use Policy 4.1 - Remapping Conservation	Flagler County
2005-29	Jose Park FLUM	Ginn Company
2005-31	Roberts' Landing	Landmar Group
2005-32	Harborview	Florida Waterway

The amendment found not in compliance is Ordinance 2005-30, changes to Comprehensive Plan policies dealing with density increases within Coastal High Hazard Areas. This amendment was undertaken to respond to DCA objections and comments, in particular, Jose Park. The amendment was found in compliance but the remedial action was not. The County's options to deal with the not in compliance finding are:

1. File for an administrative hearing and appeal DCA's decision to the Cabinet. This would be a waste of time and effort since the remedial amendment was not needed.
2. Do nothing and the Ordinance will never become effective. For the sake of clarity of the public record, we may want to rescind Ordinance 2005-30.
3. Work with DCA to clarify their Statement of Intent "to include language regarding the developability and appropriateness of the offsetting parcels." DCA wants an evaluation of each offsetting density reduction as to its development potential and environmental constraints. This may become quite involved if we are forced to examine the functional values of wetlands, the financial and administrative capacity of owners to mitigate on-site wetland impacts and a complexity of other variables that serve to determine the net potential yield of a given parcel.

There is no imminent down side to this not in compliance finding nor is there a short time frame for decision-making. This department will work coordinate a recommendation for further discussion and possible Board action.

c.c. Carl E. Kern, County Attorney
Lisa Z. Bosch, Deputy County Attorney
Jim Jarrell, Deputy County Administrator



STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

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

JEB BUSH
Governor

THADDEUS L. COHEN, AIA
Secretary

February 15, 2006

The Honorable James A. Darby, Chairman
Flagler County Board of County Commissioners
1200 E. Moody Blvd., #2
Bunnell, Florida 32110

Dear Chairman Darby:

The Department has reviewed the adopted comprehensive plan amendments for Flagler County (DCA No. 05-2) adopted on December 12, 2005 by Ordinance Nos. 2005-27 through 2005-32. The Department has determined that the amendments, with the exception of the amendment adopted by Ordinance No. 2005-30, meet the requirements of Chapter 163, Part II, Florida Statutes (F.S.), for compliance. The Department is issuing a Notice of Intent to find Ordinance No. 2005-30 not in compliance and Ordinance Nos. 2005-27, 2005-28, 2005-29, 2005-31 and 2005-32 in compliance. The Notice of Intent for these amendments has been sent to the Flagler Palm Coast News Tribune for publication on February 15, 2006.

In addition, the Notice of Intent and the Statement of Intent to find Ordinance No. 2005-30 not in compliance will be forwarded to the Division of Administrative Hearings of the Department of Management Services for the scheduling of an administrative hearing pursuant to Section 120.57, F.S.

Ordinance No. 2005-30 refers to text amendments to Future Land Use Element Policies 16.1 and 16.2 and Coastal Management Element Policies 2.1.01 and 2.1.02, providing the conditions under which Flagler County will approve residential density increases within the coastal high hazard areas. The Department commends Flagler County for amending its Comprehensive Plan to include policies that may ensure the protection of the County's coastal residents and property from the effects of natural disasters. However, we have identified areas in the amendment that need to be clarified and strengthened in order for the amendment to become fully consistent with Florida's growth management laws. We have identified those areas in our Statement of Intent to find the amendment not in compliance and have offered a recommendation to address those outstanding issues.

2555 SHUMARD OAK BOULEVARD • TALLAHASSEE, FLORIDA 32399-2100
Phone: 850.488.8466/Suncom 278.8466 FAX: 850.921.0781/Suncom 291.0781
Internet address: <http://www.dca.state.fl.us>

CRITICAL STATE CONCERN FIELD OFFICE
2796 Overseas Highway, Suite 212
Marathon, FL 33050-2227
(305) 289-2402

COMMUNITY PLANNING
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100
(850) 488-2356

EMERGENCY MANAGEMENT
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100
(850) 413-9969

HOUSING & COMMUNITY DEVELOPMENT
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100
(850) 488-7956

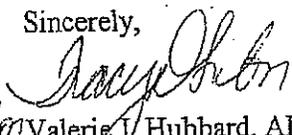
The Honorable James A. Darby
February 14, 2006
Page 2

Please note that a copy of the Flagler County adopted comprehensive plan amendments, the Department's Objections, Recommendations and Comments Report dated December 9, 2005, the Notice of Intent and the Statement of Intent must be available for public inspection, Monday through Friday, except for legal holidays, during normal business hours, at the County Clerk's Office, 2729 East Moody Blvd, Building #2, Bunnell, Florida 32110.

Pease be advised that Section 163.3184(8)(c)2, F.S., requires a local government that has an internet site to post a copy of the Department's Notice of Intent on the site within 5 days after receipt of the mailed copy of the Notice of Intent.

We are interested in meeting with you or your designee at your convenience for the purpose of negotiating an agreement that will bring your comprehensive plan amendment into compliance. If you have any questions concerning this matter, please contact Mike McDaniel, Regional Planning Administrator, at (850) 922-1806, or Joseph Addae-Mensa, Senior Planner, at (850) 922-1783.

Sincerely,


for Valerie J. Hubbard, AICP
Director, Division of Community Planning

Enclosures: Notice of Intent
Statement of Intent

cc: Walter Fufidio, AICP, Flagler County Planning & Zoning Director
Ed Lehman, Growth Management Director, NEFRPC

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS
NOTICE OF INTENT TO FIND THE FLAGLER COUNTY
COMPREHENSIVE PLAN AMENDMENTS ADOPTED BY
ORDINANCE NO. 2005-27, 2005-28, 2005-29, 2005-31 AND 2005-32
IN COMPLIANCE
AND THE COMPREHENSIVE PLAN AMENDMENTS ADOPTED BY ORDINANCE NOS. 2005-30
NOT IN COMPLIANCE.
DOCKET NO. 05-2-NOI-1801-(A)-(N)

The Department gives notice of its intent to find the Amendment(s) to the Comprehensive Plan for Flagler County, adopted by Ordinance No(s). 2005-30, on December 12, 2005, NOT IN COMPLIANCE, and Ordinance No(s). 2005-27, 2005-28, 2005-29, 2005-31 AND 2005-32 on December 12, 2005 IN COMPLIANCE, pursuant to Sections 163.3184, 163.3187 and 163.3189, F.S.

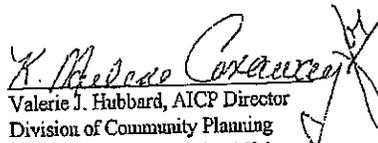
The adopted Flagler County Comprehensive Plan Amendment(s), the Department's Objections, Recommendations, and Comments Report (if any), and the Department's Statement of Intent to find the Comprehensive Plan Amendment(s) Not In Compliance will be available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at the Flagler County, City Hall, 2729 E. Moody Blvd., Building # 2, Bunnell, Florida 32110.

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 Amendment(s) to the Flagler County Comprehensive Plan are In Compliance, as defined in Subsection 163.3184(1), F.S. The petition must be filed within twenty-one (21) days after publication of this notice, a copy must be mailed or delivered to the local government 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. 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.

This Notice of Intent and the Statement of Intent for those amendment(s) found Not In Compliance 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 either proceeding referenced above. 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 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.


Valerie J. Hubbard, AICP Director
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: FLAGLER COUNTY
COMPREHENSIVE PLAN AMENDMENT
ADOPTED BY ORDINANCE NO. 2005-30
ON DECEMBER 12, 2005

Docket No. 05-2-NOI-1801

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 of Flagler County, adopted by Ordinance No. 2005-30 on December 12, 2005, Not In Compliance based upon the Objections, Recommendations and Comments Report (ORC Report) issued by the Department on December 9, 2005, which is hereby incorporated by reference. The Department finds that the plan amendments providing for the revision of existing Policies 16.1 of the Future land Use Element and 2.1.01 of the Coastal Management Element; and new Policies 16.2 the Future land Use Element and 2.1.02 of the Coastal Management Element are not "in compliance," because they are not consistent with Chapter 163, Part II, Florida Statutes (F.S.), the State Comprehensive Plan (Chapter 187, F.S.) and Rule 9J-5, Florida Administrative Code (F.A.C.), for the following reasons:

TEXT AMENDMENT - ORDINANCE No. 2005-30

**FUTURE LAND USE ELEMENT POLICIES 16.1 & 16.2, COASTAL
MANAGEMENT ELEMENT POLICIES 2.1.01 & 2.1.02**

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

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

1. Lack of Clarity

Existing Policies 16.1 of the Future Land Use Element and 2.1.01 of the Coastal Management Element are amended to state that land use plan amendments that have the effect of increasing allowable residential density in the Coastal High Hazard Area (CHHA) shall not be approved unless (among other things):

a. *The change is made to reflect existing legally permitted density that is not reflected on the Future Land Use Map.*

The term *legally permitted density* included in the policies is unclear and undefined and could be interpreted in a variety of ways.

Similarly, the phrase "*...shall not be approved unless all of the following conditions, as applicable, are present:*" included in Policy 16.1 of the Future Land Use Element is ambiguous, since it could either be interpreted as requiring that all of the four conditions listed in the policy must be met or only those conditions applicable in a particular land use change request.

Therefore, the policies are inconsistent with Rule 9J-5.005(6), F.A.C., that requires that goals, objectives and policies of the comprehensive plan must establish meaningful and predictable standards for the use and development of land and provide meaningful guidelines for the content of more detailed land development and use regulations.

2. Directing Population Concentration Away from Coastal High Hazard Areas (CHHA) and Limiting Public Expenditures that Subsidize Development Permitted in CHHA

Existing Policies 16.1 of the Future land Use Element and 2.1.01 of the Coastal Management Element, and new Policies 16.2 the Future land Use Element and 2.1.02 of the Coastal Management Element state that requested density increase within the CHHA can be

offset by an equivalent decrease in density within the CHHA. These policies do not address the developable condition of the parcel which is being used as the offset. For example, the property in question may be largely or completely wetlands which has been purchased by the state for preservation and had a very low probability of being developed or the property could have a built-out development which did not use all of its entitlements. As a practical consequence, therefore, the policies have the potential to increase residential densities in the CHHA and fail to direct population concentration as away from the County's CHHA.

Therefore, the text amendments (Ordinance No. 2005-30) are inconsistent with Section 163.3177(5)(b), 163.3177(6)(a), 163.3177(6)(g)6, 7 & 8, 163.3178 (1) & (2)(d), F.S., Rule 9J-5.005(6), 9J-5.006(3)(b)5, 9J-5.012(2)(e)1, 9J-5.012(3)(b)6 & 7, 9J-5.012(3)(c)4, 9J-5.019(3)(c), F.A.C.

B. Recommended Remedial Action

The above inconsistency may be remedied by revising the amendments: (a) to fully clarify the phrases *legally permitted density*; and “...shall not be approved unless all of the following conditions, as applicable, are present:” ; and (b) to include language regarding the developability and appropriateness of the offsetting parcels.

II. **CONSISTENCY WITH STATE COMPREHENSIVE PLAN**

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

1. The adopted comprehensive plan amendment is inconsistent with the State Comprehensive Plan goals and policies set forth in Section 187.201, F.S., including the following provisions:

(6) Public Safety, Policies 22 & 23, protecting coastal residents and property from the effects of natural disasters.

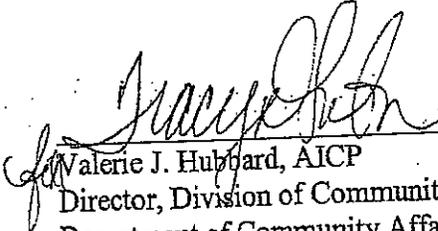
(15) Land Use, Policy 5, establishing comprehensive impact review procedures to evaluate the effects of significant development activities within local government jurisdictions;

B. Recommended Remedial Actions. These inconsistencies may be remedied by taking the actions described above in Section I.B.

CONCLUSIONS

1. The plan amendment is not consistent with the State Comprehensive Plan, Chapter 187, F.S.
2. The plan amendment is not consistent with Chapter 9J-5, F.A.C.
3. The plan amendment is not consistent with the Chapter 163, Part II, F.S.
4. The plan amendment is not "in compliance," as defined in Section 163.3184(1)(b), F.S.
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 15th day of February 2006, at Tallahassee, Florida.


Valerie J. Hubbard, AICP
Director, Division of Community Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

Adam Mengel

From: Craig Coffey
Sent: Friday, March 13, 2015 3:31 PM
To: Sally A. Sherman; Helga van Eckert; Adam Mengel
Cc: 'Kate Stangle'
Subject: FW: Sea Ray Application #2972
Attachments: Sea Ray Boats - application #2972.doc

FYI, CC

-----Original Message-----

From: George Hanns
Sent: Friday, March 13, 2015 1:24 PM
To: Albert J. Hadeed; Craig Coffey
Subject: FW: Sea Ray Application #2972

From: mybonline [mybonline@bellsouth.net]
Sent: Friday, March 13, 2015 11:41 AM
To: Gina Lemon; Barbara S. Revels; Nate McLaughlin; Charles Ericksen Jr.; Frank Meeker; George Hanns
Cc: mybonline@bellsouth.net
Subject: Sea Ray Application #2972

Please include this in the meeting packet for the upcoming meeting.

Thank you.

Dr. Michele Y. Burpeau

Dear Flagler County Commissioners,

I am opposed to and request that you vote to deny Application #2972 -- Future Land Use Map Amendment and Rezoning request made by Sea Ray Boats.

There are 2 main issues that I would like to address with you.

1. Property owners make purchases based on the zoning and future land use plans. For many of us, these residential purchases represent the lifetime of savings to purchase a home. To think that our elected County Commissioners might ignore the existing zoning and Future Land Use Map (FLUM) Amendment to change 24 acres of Low Density Residential land to the immediate south to High Intensity Commercial is, frankly, quite scary for property owners in Flagler County. While I, being from a business background, understand the importance of jobs, this is not the right way to create jobs. If this spot zoning is allowed in this instance, all of us might wonder if any of us are "safe" from the same thing happening to our own property.

2. Flagler County has many tourism and outreach endeavors and is presenting the county as an eco-tourism destination. Our area is promoting itself as an area for biking/hiking trails, pristine beaches and wetlands, birding and the like. This, given our abundance of natural resources, is a good niche for Flagler County. I am actually surprised to see this Application #2972 for rezoning before you. I would think that the County Commissioners should be having talks with Sea Ray about their current level of industrial pollution and not considering a possible increase in that pollution. There are engineering methods used elsewhere by which these harmful emissions and odors can be captured and destroyed. The County Commission should be at the table with Sea Ray to get the current situation under control before any enlargement at Sea Ray is considered. Having lived and worked in cities such as Houston, Texas, and Wilmington, NC, I can tell you first hand that the industrial smells there are not conducive to the goals of eco-tourism. See the following links that show how negatively Sea Ray is impacting the air quality and Flagler County's overall eco-tourism goals. Can you imagine an advertising campaign of "Come to Flagler County Where We Rank 31 out of 900 Cities/Towns on the 2013 Toxic Air Inventory for Florida"? This is not what I want for my county and I would assume that you would feel the same.

Please review these links prior to the meeting and before you vote:

Flagler Beach already ranks No. 31 (out of Florida's approximately 930 cities/towns - 410 incorporated, 520 unincorporated) on the 2013 Toxic Air Inventory list because of emissions from Sea Ray Boats.

Source: Right-to-Know-Network:

http://www.rtknet.org/db/tri/tri.php?state=FL&dbtype=C&rsei=y&sortp=D&detail=1&datatype=T&reptype=f&database=tri&reporting_year=2013&submit=GO&splash=&sum_expand=PC

Nationally, the local Sea Ray facility that abuts Flagler Beach ranks #52 highest in HAP (Hazardous Air Pollutant) releases out of 1042 TRI (Toxic Release Inventory) facilities in the industry of Transportation Equipment. Also, Sea Ray's TRIs HAP releases make up 98% of Flagler County's TRI HAP releases.

Source: <http://www2.epa.gov/toxics-release-inventory-tri-program> (enter 32136 in the zip code field on the map. Click "find facilities." Click on the Blue balloon where Sea Ray Boats is located. Then, click on the name Sea Ray Boats for the full report).

I urge you to vote against this application and open up discussions on the current high level of industrial waste from Sea Ray and require these to be contained and destroyed.

Sincerely,
Michele Y. Burpeau, Ph.D.
602 South Central Avenue
Flagler Beach, FL 32136

Copies sent to:
nmclaughlin@flaglercounty.org
cericksen@flaglercounty.org
fmeecker@flaglercounty.org
ghanns@flaglercounty.org
brevels@flaglercounty.org

Copy sent to be included in official packet for meeting: glemon@flaglercounty.org

Adam Mengel

From: Cindy Strickland [cindy@ubulaw.com]
Sent: Friday, March 13, 2015 4:25 PM
To: Frank Meeker; Charles Ericksen Jr.; Barbara S. Revels; Nate McLaughlin; George Hanns
Cc: jim@jamesmorrispa.com; Adam Mengel; Albert J. Hadeed; Craig Wall
(craig.wall@searay.com); denbayer@aol.com; Rob Merrell Esq. (rob.merrell@cobbcole.com);
Sid Ansbacher
Subject: March 16, 2015 Commissioner Meeting; Agenda Item No. 21
Attachments: Ltr to Commissioners re 3.16.15 Mtg.pdf
Importance: High

Dear Chairman Meeker and County Commissioners:

Please see the attached letter from Sid Ansbacher, Esq. regarding the above-referenced matter.

We appreciate your consideration in this matter.

Thank you,

Cindy Strickland
Assistant to Frank D. Upchurch III
& Sidney F. Ansbacher
Upchurch, Bailey and Upchurch, P.A.
Post Office Drawer 3007
St. Augustine, Florida 32085-3007
Telephone: (904) 829-9066
Facsimile: (904) 825-4862
Email: cindy@ubulaw.com

UPCHURCH, BAILEY AND UPCHURCH, P.A.

JOHN D. BAILEY, JR.
FRANK D. UPCHURCH III
DONALD W. WALLIS
SIDNEY F. ANSBACHER
KATHERINE GAERTNER JONES
MICHAEL A. SIRAGUSA
STEPHEN A. FAUSTINI
ALLYSON BOYLES CURRIE

ATTORNEYS AT LAW
Established 1925
780 North Ponce de Leon Boulevard
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Please reply to:
Post Office Drawer 3007
St. Augustine, Florida 32085-3007

OF COUNSEL:
TRACY WILSON UPCHURCH
FRANK D. UPCHURCH, SR.
(1894-1986)
HAMILTON D. UPCHURCH
(1925-2008)
FRANK D. UPCHURCH, JR.
(1922-2012)

March 13, 2015

VIA EMAIL DELIVERY

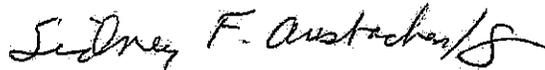
Honorable Frank Meeker, Chairman
and Board of County Commissioners
County of Flagler
1769 E. Moody Boulevard, Building 2
Bunnell, Florida 32110

Re: Monday, March 16, 2015 Board of County Commissioners Meeting;
Agenda Item No. 21

Dear Chairman Meeker;

County staff was kind enough to forward Mr. Morris' letter requesting a modified quasi-judicial style proceeding. Sea Ray objects to converting a legislative transmittal hearing into a quasi-judicial style hearing. We note that any adoption and implementing rezoning would be heard concurrently. At that time, all parties may do whatever appropriate and necessary to protect the record.

Respectfully,



Sidney F. Ansbacher

SFA/cs

cc: Commissioner Charles Erickson, Jr.
Commissioner Barbara S. Revels
Commissioner Nate McLaughlin
Commissioner George Hanns
James S. Morris, Esq.
Craig Wall
Dennis Bayer, Esq.
Al Hadeed, Esq.
Adam Mengel
Rob A. Merrell III, Esq.

Adam Mengel

From: Craig Coffey
Sent: Sunday, March 15, 2015 10:26 PM
To: Sally A. Sherman; Adam Mengel; Helga van Eckert
Subject: FW: Application #2972

FYI, CC

From: George Hanns
Sent: Sunday, March 15, 2015 8:10 PM
To: Albert J. Hadeed; Craig Coffey
Subject: FW: Application #2972

From: Marv Howell [marvhowell@hotmail.com]
Sent: Sunday, March 15, 2015 10:55 AM
To: Nate McLaughlin; Charles Ericksen Jr.; Frank Meeker; George Hanns; Barbara S. Revels
Cc: Gina Lemon
Subject: Application #2972

My name is Marv Howell and I am a resident on the east side of Lambert Ave. directly across from the Future Land Use Amendment and zoning change request. I am a retired Builder and the majority of the homes I built were right here in Flagler County. As such, I understand the importance of economic development and jobs.

My concern is a broader base than that. I am not opposed to the expansion of Sea Ray Boats. I understand their importance and economic contribution to Flagler County. However, I am opposed to the avenue to which this is proposed, through a FLUM amendment and zoning change. A number of residences on Lambert Ave., including those directly abutting this property, purchased in the last 10 years after doing their due diligence recognizing that this property was and is currently zoned Low Density Residential. Now to propose to change the FLUM to High Intensity Commercial Use and or it's companion zoning of C-2 Commercial Shopping Center is not fair or safe for those individuals that relied on the FLUM and zoning of Low Density Residential. These individuals purchased with the least intensive zoning category behind their home and now you are proposing to rezone to the MOST intense commercial zoning category. This category would allow more noise and more pollution in our air. We are concerned for our health, our home values and our future.

There is another option for Sea Ray Boats to expand, and that is to go west rather than south. In doing so, there would be no need to change the current residential zoning that abuts Lambert on the west side to a much more intensive Commercial use. Once the zoning is changed to the most intensive Commercial Use, all principal permitted uses would be permitted regardless of the intent, and not used only for a parking lot. The residential zoning that the residents relied upon when purchasing and building their dream homes should not be changed. It is my understanding, the property directly abutting Sea Ray to the west has an intended commercial use of boat storage under the PUD that was approved years ago. Why not allow Sea Ray to expand in this direction?

Some will argue the fact that this land was once zoned for industrial use, this was always a poor decision for responsible land use. We are suppose to learn from our mistakes and always commit ourselves to do better with this land that we all use and cherish. A denial of this request only changes the direction in which Sea Ray would expand, but an approval is really an end game for all these residents that would have no other alternative but to live with this mistake.

As a resident of Lambert Avenue, I am opposed to the FLUM amendment and rezoning request. There is a better option for Sea Ray to pursue that will not impact the neighbors directly abutting or in close proximity to the FLUM request and high intensity commercial zoning. That is for Sea Ray to expand to the west.

Sincerely,

Marv Howell,

Former owner of Howell Homes and a resident of 1560 Lambert Ave., Flagler Beach<x-apple-data-detectors://0>

Adam Mengel

From: Craig Coffey
Sent: Monday, March 16, 2015 11:34 AM
To: Sally A. Sherman; Adam Mengel; Helga van Eckert
Cc: 'Craig Wall'
Subject: FW: Sea Ray
Attachments: Sea Ray Request.docx

FYI, CC

-----Original Message-----

From: George Hanns
Sent: Monday, March 16, 2015 9:54 AM
To: Albert J. Hadeed; Craig Coffey
Subject: FW: Sea Ray

From: Lubi, Garry [Garry.Lubi@amerisbank.com]
Sent: Monday, March 16, 2015 8:29 AM
To: George Hanns
Subject: Sea Ray

As you might expect, I am also writing to you regarding the Sea Ray proposal in front of you this evening. Attached is a letter I recently wrote and I wanted to share my thoughts as a business leader in our community. I am confident that you will give this strong consideration, and I hope you will support this proposal this evening.

Thanks!

Garry R. Lubi
Ameris Bank | Senior Vice-President, Commercial Banker
181 Cypress Point Parkway | Palm Coast, FL 32164
(D) 386.447.0404, ext. 82244 | (C) 386.569.0643 | (F) 386.447.0106
garry.lubi@amerisbank.com<<mailto:garry.lubi@amerisbank.com>>

Please visit us online at www.amerisbank.com

This e-mail and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to which they are addressed. It is not an offer or acceptance, and it is not intended to be all or part of an agreement. If you are not the intended recipient or the person responsible for delivering the e-mail to the intended recipient, be advised that you have received this e-mail in error and that any review, use, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please notify the sender immediately by return e-mail and delete this e-mail from your system. The sender does not accept liability for any damage caused by any virus transmitted by this e-mail or any errors or omissions in the contents of this message which arise as a result of e-mail transmission.

Sea Ray Request – *The facts support an affirmative vote to allow this zoning change for a number of reasons.*

When you review the facts surrounding this request, including an historical perspective dating back to 1984, the proposal before our County Commission should be one that is supported without hesitation. Over the past 30+ years, Sea Ray has been an outstanding corporate citizen in our community providing quality jobs and volunteerism in various organizations around Flagler County; and a positive steward in meeting and exceeding the environmental requirements put before them on a Federal, State and Local level. Their excellence with safety and efficiencies has been recognized multiple times by regulatory agencies and others, and likewise appreciated by many in our local community. As we (Flagler County) struggled to recover from the “great recession” between 2008 and 2013, Sea Ray was one of our constants in employment opportunities. While going through many of same challenges most companies experienced during this timeframe, Sea Ray remained intact, and once out of the recession became a stronger company as Brunswick consolidated some operations to their Flagler County facility. This growth translated into nearly 700 quality jobs in Flagler County, making Sea Ray among the top employers in our county. Sea Ray also provides a diversification factor in our local tax based that we are striving to improve upon every day which reduces the pressures placed on our residential tax base. We have made great strides in Economic Development over the past 3 to 4 years, and we must remember supporting our quality employers goes a long way in reinforcing a positive image that will encourage other quality employers to consider Flagler County as well.

With all of that said, we have a vocal minority who are trying to make a zoning change to build a parking lot about environmental impact. When you look at the specifics of this request, it is about just that, a change that would allow a parking lot, and perhaps someday an office building with landscape buffers surrounding it. Additionally, the proposed project would provide a transitional buffer from the industrial zoned plant facilities (that were there well before residential homes were constructed nearby) to future planned development. This is important since as one of our Planning and Development Board Members mentioned during the planning board meeting he thought that rezoning the land residential 10 years ago was a mistake, and yet incredulously voted to reject this request.

The facts of this request support our comprehensive land plan’s guiding principles of balance. Balance of social, economic, and environmental factors. I encourage the County Commission to support this request within this context, and enable Sea Ray to build the necessary parking they need for employee safety and to increase operating efficiency, along with the ability to construct quality office space if needed at some point in the future. Thank you!

Garry Lubi

Palm Coast Resident and Flagler County Business Leader

Adam Mengel

From: Craig Coffey
Sent: Monday, March 16, 2015 11:35 AM
To: Sally A. Sherman; Adam Mengel; Helga van Eckert
Cc: 'Craig Wall'
Subject: FW: Sea Ray expansion

FYI, CC

-----Original Message-----

From: George Hanns
Sent: Monday, March 16, 2015 9:35 AM
To: Albert J. Hadeed; Craig Coffey
Subject: FW: Sea Ray expansion

From: Richard Palmer [rpalmer23@cfl.rr.com]
Sent: Sunday, March 15, 2015 8:24 PM
To: Barbara S. Revels
Cc: Nate McLaughlin; Charles Ericksen Jr.; Frank Meeker; George Hanns
Subject: Sea Ray expansion

Dear Flagler County Commissioners,

My name is Maranda Palmer and I reside at 646 Lambert Ave my husband and I just built a new home on this street. We have three young beautiful children who play outside every day. I have attached a very important article that outlines the severe health risks that they are faced with by being exposed to styrene. The factual information is sourced by the Agency For Toxic Substances & Disease Registry (ATSDR), and the Centers for Disease Control (CDC).

<http://www.cleano2forkids.org/healthrisks.php>

Being a protective, caring parent I'm particularly concerned with the fact that children are at a greater risk than adults. I would like to think that money/business would not come before the health and safety of my children. Please consider the health hazard information outlining the acute effects, Chronic effects, reproductive /developmental effects and last but not least cancer risks.

This has never just been about a parking lot it's about a company wanting to expand. This has been well known and confirmed by employees on the inside. I was told over a year ago from a very reliable source that they wanted to expand. I called Sea-Ray with my concerns considering we were going to be building our home and was told that they were unaware of this and they had no plans to expand. However, I find it peculiar that their own employees seem to know more than they do. I would think at least they would need to sign a binding legal agreement that the 24 acres would never be used for anything other than a parking lot and that the current parking lot never be developed in the near future and failure to do so would mean their wishes wouldn't be granted because one could conclude that they have other ulterior motives. The prospect of Sea Ray expanding would mean even more toxic Styrene in the air at a very hazardous toxic rate effecting not only Lambert but all of Flagler Beach.

Please take in consideration the factual information on these very concerning health effects before you decide on this very important environmental issue. Last but not least, has the

County had any outside testing done to measure and reveal what the parts per million (ppb), are being released into the air? If not then this certainly should be made a stipulation of any agreement and the health and safety of nearby residents must always triumph over monetary gain. Considering we can smell the styrene according to the EPA the odor threshold would have to be at least 320 ppb which according to the EPA is already 5 times greater than the 60ppb standard considered safe for kids.

Kindest Regards,

Maranda Palmer

Adam Mengel

From: Craig Coffey
Sent: Monday, March 16, 2015 2:03 PM
To: 'Kate Stangle'; Adam Mengel; Helga van Eckert
Subject: FW: Board of County Commissioners - March 16, 2015 Agenda Item No. 21
Attachments: SKMBT_C28015031613590.pdf

FYI, CC

From: jim@jamesmorrispa.com [<mailto:jim@jamesmorrispa.com>]
Sent: Monday, March 16, 2015 1:59 PM
To: Frank Meeker; Charles Ericksen Jr.; Barbara S. Revels; Nate McLaughlin; George Hanns
Cc: Craig Coffey; Albert J. Hadeed; Sally A. Sherman; Christie L. Mayer; Julie Murphy; sfansbacher@ubulaw.org
Subject: Board of County Commissioners - March 16, 2015 Agenda Item No. 21

Please see attached letter.

Thank you.

Jim

REAL ESTATE • ADMINISTRATIVE • ZONING LAW
JAMES S. MORRIS, P.A.
Post Office Box 291687
Port Orange, Florida 32129
750 Oak Heights Court, Suite 304
Port Orange, Florida 32127
O. (386) 310-8785 C. (386) 871-8841 F (386) 310-8783

JAMES S. MORRIS
ATTORNEY AND COUNSELOR AT LAW

March 16, 2015

Honorable Frank Meeker, Chairman
and Board of County Commissioners
County of Flagler
1769 Moody E. Boulevard, Building 2
Bunnell, FL 32110

TRANSMITTED VIA EMAIL

***Re: Monday, March 16, 2015 Board of County Commissioners Meeting;
Agenda Item No. 21***

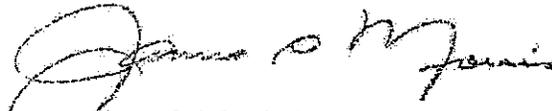
Dear Chairman Meeker and County Commissioners:

I represent Concerned Citizens that reside on Lambert Avenue (Concerned Citizens of Lambert Avenue). The residents of Lambert Avenue that I represent will be particularly impacted by The Wall Project or Sea Ray's request otherwise known as Agenda Item No. 21.

Accordingly, I will appear on behalf of the group I represent in opposition to the Sea Ray request.

Respectfully submitted,

JAMES S. MORRIS, P.A.



James S. Morris, Esq.

JSM/kf

JAMES S. MORRIS, P.A. ♦ P.O. BOX 291687 ♦ PORT ORANGE, FL 32129
750 OAK HEIGHTS COURT, UNIT 304 ♦ PORT ORANGE, FL 32127
386-310-8784 ♦ 386-310-8783 FAX ♦ JIM@JAMESMORRISPA.COM

Adam Mengel

From: Christie L. Mayer
Sent: Monday, March 16, 2015 2:58 PM
To: Adam Mengel; 'Kate Stangle'
Subject: FW: March 16, 2015 Board of County Commissioners- Agenda Item No. 21
Attachments: SKMBT_C28015031615040.pdf

From: jim@jamesmorrispa.com [<mailto:jim@jamesmorrispa.com>]
Sent: Monday, March 16, 2015 2:57 PM
To: Frank Meeker; Charles Ericksen Jr.; Barbara S. Revels; Nate McLaughlin; George Hanns
Cc: Craig Coffey; Albert J. Hadeed; Sally A. Sherman; Christie L. Mayer; Julie Murphy; Luci Dance
Subject: March 16, 2015 Board of County Commissioners- Agenda Item No. 21

Please see the attached letter.

James Morris, Esquire

REAL ESTATE • ADMINISTRATIVE • ZONING LAW

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JAMES S. MORRIS
ATTORNEY AND COUNSELOR AT LAW

March 16, 2015

Honorable Frank Meeker, Chairman
and Board of County Commissioners
County of Flagler
1769 Moody E. Boulevard, Building 2
Bunnell, FL 32110

TRANSMITTED VIA EMAIL

**Re: Monday, March 16, 2015 Board of County Commissioners Meeting;
Agenda Item No. 21**

Dear Chairman Meeker and County Commissioners:

I have reviewed Mr. Ansbacher's objection to my request for a hearing procedure that would allow a fair opportunity for all participants interested in a legislative proceeding. Chapter 163 requires that all parties be given a reasonable opportunity to participate. If the current rules are to apply to anyone, then they must apply to one and all, including Sea Ray. Pursuant to the, "Flagler County Board of County Commissioners' Rules of Procedure", Section 3, Appearance Before the Commission:

Persons desiring to address the Commission on a matter which is scheduled as a General Business or Public Hearing Item, may do so during the public comment segment of the item...

- a) After being recognized, the person should... unless further time is granted by the Chair, limit comments to three (3) minutes;

The rule does not make an exception for an applicant or a representative of an applicant. Under the rule, an entity or an individual is a "person".

The Board Rules allow the Chairman to waive the rules and establish a means to have a fair proceeding and allow the Commission to hear and allow all of the Commission's constituents to be heard. Respectfully Chairman and Members of the Commission, in response to Mr. Ansbacher's letter, I renew my request. Please consider allowing for a hearing where everyone can be heard.

On another matter raised in Mr. Ansbacher's letter, it should be pointed out that the Comprehensive Plan, via Objective 2, Policy 2.2 requires:

JAMES S. MORRIS, P.A. ♦ P.O. BOX 291687 ♦ PORT ORANGE, FL 32129
750 OAK HEIGHTS COURT, UNIT 304 ♦ PORT ORANGE, FL 32127
386-310-8784 ♦ 386-310-8783 FAX ♦ JIM@JAMESMORRISPA.COM

Objective 2: Flagler County shall eliminate or reduce uses of land within the County which are inconsistent with community character or desired future land uses.

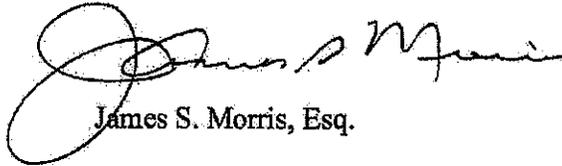
Policy 2.2: The Planning Department shall maintain consistency between the Land Development Code and the Comprehensive Plan by the following means:

1. **Parcels being considered for amendment to the land use map shall be concurrently evaluated for the most appropriate zoning district..** (emphasis added)

Sea Ray's request is certainly "being considered" for amendment. Yet, as I understand Mr. Mengel's report, no particular zone has been named or evaluated. Accordingly, the land use proposed is before the Commission in violation of the Comprehensive Plan.

Respectfully submitted,

JAMES S. MORRIS, P.A.



James S. Morris, Esq.

JSM/kw
Cc:

Adam Mengel

From: Christie L. Mayer
Sent: Monday, March 16, 2015 3:10 PM
To: COMMISSIONERS
Cc: Sally A. Sherman; Craig Coffey; Adam Mengel; 'Kate Stangle'; Albert J. Hadeed
Subject: clarification of county odor ordinance
Attachments: odor ordinance clarification 031615.pdf

Commissioners –

Please see the attached memo with clarification of the County's Industrial Odor Standard. As always, Mr. Coffey is here to answer any questions you may have on this item.

Thank you

Christie L. Mayer, CPS/CAP
Exec. Admin. Assist. to County Administrator
1769 E. Moody Blvd., Bldg. 2
Bunnell, FL 32110
Phone (386) 313-4094



Administration
1769 E. Moody Blvd Bldg 2
Bunnell, FL 32110



**FLAGLER
COUNTY**
FLORIDA

www.flaglercounty.org
Phone: (386)313-4001
Fax: (386)313-4101

DATE: March 16, 2015
TO: Board of County Commissioner
THRU: Craig Coffey, County Administrator *CMC*
FROM: Adam Mengel, Planning Director *AM*
SUBJECT: Clarification of County's Industrial Odor Standard

Commissioners several of you have been asked about the County's industrial odor standards (attached). This brief staff memo may help clarify this issue.

How does the County's odor standards in 3.03.18 G apply to Sea Ray? And specifically how do they apply to its application tonight?

The short answer is that the odor standards don't apply to its present facility or the expansion of land use and facilities contemplated tonight. However it would apply to the extent that Sea Ray physically erects new structures that omit manufacturing odors. The new facility would be required to be in compliance. However, the existing facilities would remain grandfathered.

Sea Ray was operational in 1984 and was otherwise a legal, conforming use. The initial odor ordinance came about in 1989. The 1989 ordinance was later revised after 2000 to reflect the current language. The latest ordinance came about as part of a visioning process for the County, during which the then residents of Lambert Avenue requested such an ordinance. Some were upset with Sea Ray at the time, but perhaps what worried them more was the idea of expansion, which was being discussed by the property owner to the west in the form of another boat manufacturer. Sea Ray, our County Attorney (then privately) and many others participated in this crafting of the current ordinance along with the Lambert Avenue residents.

In the new ordinance, Sea Ray was grandfathered for all existing operations from its existing structures. For purposes of our ordinance, Sea Ray became an existing, nonconforming use of land for the odor portion of their otherwise still legal operation. Specifically in the ordinance 3.03.18 G3, they are also allowed expansions unrelated to odor such as office space, storage buildings, and other non-odor type activities such as parking.

Charles Ericksen, Jr. District 1	Frank Meeker District 2	Barbara Revels District 3	Nate McLaughlin District 4	George Hanns District 5
--	-----------------------------------	-------------------------------------	--------------------------------------	-----------------------------------

Side yard:

Interior lot: Fifty (50) feet, when adjacent to residential zoning districts or uses; ten (10) feet when adjacent to nonresidential zoning districts or uses.

- (c) Maximum building height: Forty (40) feet and no more than three (3) stories.
- E. *Off-street parking and loading requirements.* Off-street parking and loading space meeting the requirements of section 3.06.04 shall be constructed.
- F. *Site development plan requirements.*
 - 1. A site development plan meeting the requirements of Appendix B is required. Lots or parcels of five (5) acres or more require site plan approval by the planning board.
 - 2. Lots or parcels less than five (5) acres require site plan review by the technical review committee.
- Fa. *Site development plan requirements in the A1A Scenic Corridor.* A site development plan as per the requirements of Appendix B (Site Development Plan Review) of the Flagler County Land Development Code, a sign plan, landscaping plan, and building elevations in conformance with the regulations of the A1A Scenic Corridor shall be required for simultaneous review. The site development plan, with all proposed improvements, shall illustrate a tree survey of all index trees on the site both to be removed or to remain.

(Ord. No. 92-03, § 3, 3-30-92; Ord. No. 93-11, § 1, 7-19-93; Ord. No. 95-06, § 4, 8-21-95; Ord. No. 01-26, § B, 12-17-01; Ord. No. 04-11, § 3, 8-16-04)

3.03.18. - I—Industrial district.



- A. *Purpose and intent.* This district is designed to encourage the grouping of industrial establishments at strategic locations in the County so that the economic base can be expanded, services and facilities provided, and incompatible mixing of land uses avoided.
- B. *Permitted principal uses and structures.* In the I, industrial district, no premises shall be used except for the following industrial uses and their customary accessory uses or structures:
 - 1. Any industrial, office, commercial or related use or structure, provided applicable county standards are met.
- C. *Permitted special exceptions.*
 - 1. One (1) detached single-family dwelling consisting of a minimum of six hundred (600) square feet of living area, on the same site as that of a permitted use, which dwelling shall be occupied exclusively by a superintendent and his family, by a caretaker and his family or by a watchman or custodian and his family.
- D. *Dimensional requirements.*

▲ Scroll to Top

1. Minimum lot size:
 - Area: Twenty thousand (20,000) square feet.
 - Width: One hundred (100) feet.
2. Minimum setback requirements for structures:
 - Front yard: Thirty (30) feet.
 - Rear yard: Twenty (20) feet.
 - Side yard:
 - Interior lot: Twenty (20) feet ;b3l; Abutting any street: Thirty (30) feet.

(The minimum required side or rear yards shall be fifty (50) feet when they abut a residential classification.)
3. Maximum building height: Sixty-five (65) feet.
4. Minimum pervious coverage: Thirty (30) percent.
- E. *Off-street parking and loading requirements.* Off-street parking and loading space meeting the requirements of section 3.06.04 shall be constructed.
- F. *Site development plan requirements.*
 1. A site development plan meeting the requirements of Appendix B is required. Lots or parcels of five (5) acres or more require site plan approval by the planning board.
 2. Lots or parcels less than five (5) acres require site plan review by the technical review committee.
- G. *Industrial performance standards.*
 1. *Purpose and intent.* The purpose and intent of the industrial performance standards is to provide reasonable measures to protect residential, business districts, and public property from the potentially negative impacts of odors, fumes, smoke, noise, heat, glare, vibration, soot and dust which may be associated with industrial uses.
 2. *General provisions.* The following performance standards address a series of potential nuisances or possible sources of pollution or other public health, safety, and welfare concerns. All measurements shall be enforced at the property lines, unless otherwise specified. No part of any industrial zone and no improvement thereon shall be used or allowed to be used at any time for the manufacture, storage, distribution or sale of any product or the furnishing of any service, in a manner which is inconsistent with the requirements of this ordinance. No activity shall be carried on which may be or may become dangerous to public health, safety, or welfare which increases the fire insurance rate for adjoining or adjacent property, or which is illegal.
 3. *Applicability.* Any new building, structure or tract of land, developed or constructed, or any new use of land shall be used for, any permitted principal use, permitted special exception, or accessory use in any land zoned I Industrial district shall comply with all of the performance standards set forth

in this section. If any existing, nonconforming use of land is extended, expanded or enlarged, the performance standards relating to odor shall apply only with respect to such extended, expanded, or enlarged portion or use of land. With respect to such extensions, expansions, or enlargements, compliance with the odor standards of this ordinance shall be based on a measurement using a thirty-minute average. The application of the performance standards relating to odor to an existing, nonconforming use of land shall not apply to the erection of new storage, office or administrative structures or the installation of equipment that will reduce emissions, provided that such erection or installation is not accompanied by an expansion or enlargement of industrial production capacity.

4. *Determination of violations relating to odor.* The performance standards relating to odor shall be enforced using the civil citation system as provided by Chapter 9, Article III of the Flagler County Code except to the extent amended herein. The board of county commissioners shall determine by resolution the monetary fines for the first, second and third violations. To determine if a violation has occurred, the code enforcement officer shall assess the existence of an odor at the property line of the industrial entity. If the officer detects an odor, the officer shall notify the industrial entity. The entity shall admit or deny that it is violating the performance standards and may provide the officer with any information or data in support of its position. If the violation is denied and the officer continues to reasonably believe that an odor is being emitted from the entity, the officer shall cause the odor to be measured at the property line in accordance with the odor standards herein. If a violation is found, the officer shall issue a civil citation. After an entity has received three (3) citations, the officer shall refer the next following violation(s), if within twelve (12) months of the first violation, for judicial enforcement by the county of the performance standards. The county shall seek to enjoin the violation by the offending industrial entity as a public nuisance. Three (3) citations, followed by another violation determination, if all are within twelve (12) months, shall constitute a public nuisance per se for purposes of enforcing these odor performance standards. In such judicial enforcement, the county will pursue compliance under the other remedies authorized by the County Code.
5. The purpose and intent of the industrial performance standards is to provide reasonable measures to protect residential and business districts from the potentially negative impacts of noise, glare, and vibration which may be associated with industrial uses.
6. *Noise provisions.*
 - (a) No industry shall emit any source of sound in such a manner as to create a sound level which exceeds the limits prescribed below for more than ten (10) percent of any measurement period. The measurement period shall not be less than ten (10) minutes. Sound levels shall be measured in "dBA," which means the composite abbreviation for the A-weighted sound level and the unit of sound level, the decibel.

▲ Scroll to Top