

**ADMINISTRATION COMMISSION
AGENDA**

January 17, 2023

1. Approval of the minutes of the meeting held on August 23, 2022.

View meeting transcript at: www.myflorida.com/myflorida/cabinet/mart.html

Supporting Materials:

Transcript and errata sheet.

2. Consideration of a Draft Final Order prepared in accordance with the direction of the Commission given at the August 23, 2022, Cabinet meeting in the proceeding of William J. Semmer and Joanne E. Semmer (Petitioners) v. Lee County (Respondent) and Southern Comfort Storage, LLC, (Intervenor). (DOAH Case No. 20-3273GM) (AC Case No. ACC-21-001).

Supporting Materials:

Draft Final Order. (To be distributed separately.)

3. Consideration of a Recommended Order issued by the Division of Administrative Hearings (DOAH) in the Robin Cartwright (Petitioner) v. City of Stuart (Respondent) proceeding. (DOAH Case No. 21-2718GM), (AC Case No. ACC-22-001). Deferred from the August 23, 2022, Cabinet meeting.

The Recommended Order in the above proceeding is before the Administration Commission for entry of a final order pursuant to Section 163.3184(5)(d), Florida Statutes. The issue in this case is whether the City of Stuart's Comprehensive Plan Future Land Use Map (FLUM Amendment) adopted by Ordinance 2466-2021 on August 9, 2021, is "in compliance," within the meaning of section 163.3184(1)(b), Florida Statutes.

During the August 23, 2022, Cabinet meeting, the matter was introduced by staff and the Commission heard from counsel for the parties and also heard public comment. After a brief discussion, the Commission moved and seconded the deferral of consideration of the Recommended Order to a future Cabinet meeting. Accordingly, the Recommended Order is before the Commission for further consideration.

Supporting Materials:

Distributed with the August 23, 2022, agenda.

AC
ITEM #1

In Re: Florida Cabinet Meeting

Florida Cabinet Meeting

August 23, 2022

PHIPPS REPORTING

Raising the Bar!

STATE OF FLORIDA

IN RE: MEETING OF THE GOVERNOR AND CABINET

CABINET MEMBERS: GOVERNOR RON DESANTIS
ATTORNEY GENERAL ASHLEY MOODY
CHIEF FINANCIAL OFFICER JIMMY PATRONIS
COMMISSIONER AGRICULTURE NIKKI FRIED

DATE: Tuesday, August 23, 2022

TIME: Commenced at 9:00 a.m.
Concluded at 11:44 a.m.

LOCATION: Cabinet Meeting Room
Lower Level, The Capitol
Tallahassee, FL

Stenographically Reported by:

Angie Adler, RPR

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1 P R O C E E D I N G S

2 GOVERNOR DESANTIS: Okay. Good morning and
3 welcome to the August 23rd meeting of the Governor
4 and Cabinet. I'd like to first welcome Peter
5 Boulware to give our invocation.

6 (Whereupon, the invocation was given.)

7 GOVERNOR DESANTIS: All right. Thank you.
8 CFO Patronis, would you like to introduce your
9 guest who will lead us in the Pledge of Allegiance.

10 MR. PATRONIS: Thank you, Governor and Cabinet
11 and friends here joined today. I'd like to
12 introduce Kayla Larossi. She is shadowing me
13 today. I did this in my first term and I thought,
14 you know what, this is a great opportunity for a
15 young, budding leader in her school to see a
16 firsthand driver's seat of the Florida Cabinet.
17 She's going to learn about the Florida Cabinet and
18 what it takes to serve Floridians. Kayla, if you'd
19 lead us in the pledge.

20 (Whereupon, the Pledge of Allegiance was
21 given.)

22 (Recognitions and Resolutions were heard and
23 presented.)

24 * * * * *

25

1 ADMINISTRATION COMMISSION

2 Mark Buckles

3 GOVERNOR DESANTIS: We now have Ad Com.

4 MR. BUCKLES: Okay. We have three items today
5 for Ad Com.

6 Item 1:

7 MR. BUCKLES: The first item is request for
8 approval of the minutes of the meeting held on
9 March 29, 2022.

10 GOVERNOR DESANTIS: All right. I move to
11 approve. Is there a second?

12 MS. FRIED: Second.

13 GOVERNOR DESANTIS: No objection. The motion
14 carries.

15 Item 2:

16 MR. BUCKLES: Thank you. The next two items
17 are consideration of Comprehensive Plan Amendments.
18 The first one, Item 2, is the case AC Case Number
19 21-001. Today the Commission has before it the
20 recommended order in the case of William J. Semmer
21 and Joanne Semmer versus Lee County, Florida and
22 Southern Comfort Storage. This is a challenge to
23 the Lee County Comprehensive Plan Amendment adopted
24 by County Ordinance 20-07.

25 The amendment changes the Future Land Use Map,

1 otherwise known as the FLUM designation, for a
2 7.5 acre property, eight adjoining lots on San
3 Carlos Island.

4 The purpose of today's agenda item is for the
5 Commission to consider the administrative law
6 judge's recommended order, the parties' arguments,
7 the public comment and then to discuss and
8 potentially vote on final action.

9 After voting, the Commission may vote on a
10 motion to direct staff to draft and circulate a
11 final order to your offices consistent with the
12 vote and to present the final order for
13 consideration at the next meeting of the
14 Commission, if that's what you decide to do.

15 The Commission is not being asked to pass
16 judgment on the policy merits of the plan
17 amendment. The limited role here is to simply
18 determine whether the ALJ made the correct legal
19 recommendation under Florida law.

20 The petitioners in this case are represented
21 by Terrell Arline, respondent is represented by
22 Amanda Swindle, and the intervener is represented
23 by Russell Schropp.

24 A little background, a DOA challenge was filed
25 in July of 2020 alleging internal inconsistency,

1 failure to be based on relevant and appropriate
2 data and analysis and the increase of density in
3 the coastal high hazard area.

4 After a final hearing, an ALJ entered a
5 recommended order determining the amendment was not
6 in compliance with Chapter 163 Florida Statutes.
7 The plan amendment creates a central urban category
8 that encourages mixed use development and would
9 allow a maximum of 113 residential units.

10 So as to the standards of review, a legal
11 conclusion of an ALJ regarding plan amendment
12 consistency is an interpretation of law and is
13 subject to the fairly debatable standard. An
14 amendment shall be determined to be in compliance
15 with Chapter 163 if the local government's
16 determination is fairly debatable.

17 In addition, the Commission should reject or
18 modify the ALJ's findings of fact if it determines
19 that they are not based on competent, substantial
20 evidence or the proceedings did not comply with the
21 essential requirements of law.

22 The ALJ found the petitioners demonstrated the
23 amendment is inconsistent with Section 163.3178,
24 Sub 8, Sub A, which provides state standards for
25 increased density in the coastal high hazard area.

1 The ALJ concluded the plan was not in compliance
2 with Florida law.

3 The parties filed their exceptions in March of
4 2021. One proposed order was submitted by the
5 county and the interveners.

6 So we'll now get to the argument. The parties
7 will now have a chance to argue to the Commission.
8 They'll have ten minutes each. There'll be two
9 minutes of rebuttal, followed by a Q&A. I'll keep
10 track of the time, targeting about eight minutes
11 for that. And, lastly, members of the public will
12 be allowed to speak for two minutes.

13 The county will speak first, followed by the
14 interveners and the petitioners. Please limit your
15 comments to the evidence in the record. We'll have
16 county come up first.

17 MS. SWINDLE: Good morning, esteemed Cabinet
18 members, Commissioner Fried, Chief Patronis,
19 General Moody, Governor DeSantis. My name is
20 Amanda Swindle and I serve as senior assistant
21 county attorney in Lee County, Florida and I have
22 the privilege of representing the county today.

23 I have with me from the county attorney's
24 office my colleague Michael Jacob and Joseph Adams,
25 as well as the county's chief planner Mikki

1 Rozdolski, and I'm going to ask Mikki to pass out
2 some materials for the Cabinet members that serve
3 as the joint exhibits for the county and the
4 landowner in this case.

5 While Mikki's doing that, let me, first of
6 all, just speak on behalf of --

7 GOVERNOR DESANTIS: Thank you.

8 MR. TAYLOR: -- everybody from Lee County when
9 I say thank you so much for the Cabinet's time and
10 attention to this matter today. It's obviously an
11 issue that's very important to Lee County, but
12 really it's an issue of statewide concern because
13 ultimately if the ALJ's recommendation is adopted
14 in this case, it wouldn't just apply to Lee County,
15 it would apply to all 45 of Florida's counties that
16 are within the coastal high hazard area.

17 So as Mark Buckles summarized, we are here
18 today because an administrative law judge has made
19 a finding of noncompliance regarding the county's
20 amendment of its Comprehensive Plan.

21 Under the first tab of your materials, you
22 will see some aerials of the proposed project. In
23 the first aerial outlined in red, you can see it's
24 seven and a half acres on San Carlos Island in
25 unincorporated Lee County.

1 Historically, San Carlos Island served to
2 support the commercial fishing and shrimping
3 industry that was thriving on the island, but since
4 that time, market conditions have changed and that
5 industry is not really as economically viable as it
6 once was.

7 If you look at the second aerial, you will see
8 the current uses on San Carlos Island include light
9 industrial uses, marine related uses and a
10 substantial amount of residential mobile homes and,
11 obviously, mobile homes are not ideal for an island
12 in the coastal high hazard area, so it is within
13 the vision of Lee County that this area be
14 redeveloped as a mixed use kind of area with
15 residential, resort hotels and marine dependent
16 recreational uses.

17 The property owners in this case made a
18 request to the county to rezone and redevelop their
19 property as a mixed use project that would include
20 a residential component, and this is in line with
21 other approvals that the county has given recently
22 for San Carlos Island, as you can see on the third
23 aerial in your tab.

24 So in order for the property owner to -- to
25 see his vision accomplished for the property, he

1 needed the county to amend its comprehensive plan
2 to change the future land use category for that --
3 for that property. In order to do that, the Board
4 of County Commissioners had to make certain
5 findings, including that the proposed amendment was
6 consistent with our other goals and policies within
7 the Lee plan, but also that it was in compliance
8 with certain statutory requirements and that's why
9 we're here today, because the administrative law
10 judge has questioned that determination on the part
11 of the county.

12 So before I go into the merits of the ALJ's
13 interpretation, I just want to take a moment to
14 comment on the standard of review in this case. As
15 Mark correctly stated, Chapter 163 provides for the
16 fairly debatable standard on the county's
17 determination of compliance. The legal standard,
18 and basically what it means is if a reasonable
19 person could have come to the same conclusion that
20 the county did in this case, that the county's
21 determination should be upheld, and that makes
22 sense because comprehensive plan amendments are
23 legislative actions and the legislative actions by
24 our elected board in Lee County shouldn't be
25 lightly overturned by an administrative law judge.

1 So with that deference in mind to the county,
2 I would ask you to turn to Tab 2 of your materials.
3 We have a copy of Florida Statute 163-3178, and the
4 third of that statute, we've highlighted Subsection
5 8A for you.

6 Again, this was the administrative law judge's
7 sole finding of noncompliance regarding the plan.

8 The way Subsection 8A is drafted is such that
9 a comprehensive plan amendment shall be found in
10 compliance if one of three options is met. We know
11 it's one of three because it says the word or
12 there.

13 So the first two options have to do with a
14 county meeting certain required evacuation times.
15 Option 1 is a 16 hour out of county evacuation time
16 and option 2 is a 12 hour time to shelter
17 evacuation time.

18 As stipulated by all the parties in this case,
19 Lee County is unable to meet one or two, and it's
20 not even close. The regional evacuation study
21 available to the ALJ at the time had the counties
22 out of county evacuation time for a Category 5
23 storm at 96 hours, not 16, 96 hours. It is a long
24 way off. And if you take just a quick peek under
25 Tab 3 of your materials, you will see the clearance

1 times for all of the counties within the southwest
2 region, and unfortunately we are all in the exact
3 same predicament, a 96 hour out of county
4 evacuation time. And if you take a look at the
5 regional evacuation studies for all the regions,
6 what you would find is that out of the 45 counties
7 within Florida's coastal high hazard area, only
8 nine of those counties can meet subparagraphs 1 or
9 2. Eighty of the counties within the coastal high
10 hazard area are unable to meet Paragraph 1 or 2.

11 So thank goodness there's an option 3, right,
12 because otherwise, developers in these counties
13 would essentially be held hostage, unable to
14 develop or redevelop their property until the
15 counties can somehow magically meet these
16 evacuation times. and I say magic because, quite
17 frankly, that's what it would take to get the
18 county from a 96 hour evacuation time down to 16
19 hours. I'm not creative enough to come up with
20 another solution.

21 So the legislature, in their wisdom, provided
22 the ability for property owners to provide
23 mitigation for the impacts of their development and
24 the amount of that mitigation is capped at the
25 amount that's reasonably attributable to the

1 impacts of the development. That's how the county
2 has interpreted the statute. That's how the county
3 has applied this statute and, to my knowledge, it
4 is the only way the statute has been interpreted
5 and implied until this ALJ's unique interpretation.

6 So if you take at look at the ALJ's
7 interpretation, it's basically this: If a county
8 is unable to meet Subparagraphs 1 or 2,
9 Subparagraph 3 isn't available because the county
10 would have -- that amount of mitigation would have
11 to bring the entire county's backlog into
12 compliance, so the idea that we would require a
13 property owner to satisfy this long-existing
14 evacuation backlog is antithetical to the
15 principles of land use law that I'm familiar with,
16 which start with a basis of fundamental respect for
17 private property.

18 So again, I think the reading of this statute
19 is fairly clear. If a county doesn't meet option 1
20 or option 2, option 3 is available for mitigation
21 and that amount of mitigation is capped at the
22 amount attributable to the development.

23 Again, I think this is a very clear
24 interpretation of the statute, but even if you
25 think that the statute if ambiguous in some way,

1 even if you think the ALJ's interpretation has some
2 merit, the statute requires you to uphold the
3 county's finding of compliance as long as that
4 finding is reasonable, could it have been reached
5 by a reasonable person and I think that's the case
6 because this provision was added to the statute in
7 2006, and since that time, the state has approved
8 numerous comprehensive plan amendments that
9 increase density in the coastal high hazard area,
10 and as long as those impacts are mitigated, those
11 plan amendments are approved.

12 To accept the ALJ's interpretation of this
13 statute would be catastrophic to the kind of smart
14 coastal growth that we need in Florida to
15 accommodate our growing population.

16 So in conclusion, the county would just ask
17 that you reject the ALJ's conclusions of law as
18 articulated in our joint exceptions and adopt the
19 joint proposed recommended order. If you have any
20 questions, I'd be more than happy to answer them.

21 GOVERNOR DESANTIS: Anybody?

22 (No response.)

23 GOVERNOR DESANTIS: Okay. Thank you. Next.

24 MR. BUCKLES: The intervenor.

25 MR. SCHROPP: Morning, Governor DeSantis,

1 Chief Patronis, General Moody and Commissioner
2 Fried. For your record, my name is Russell
3 Schropp. I'm an attorney with the Henderson
4 Franklin law firm in Fort Myers, and I'm here today
5 on behalf of the intervenor Southern Comfort
6 Storage, LLC. Southern Comfort Storage was the
7 applicant for the plan amendment down below that is
8 the subject of this proceeding and is the
9 intervenor in this proceeding as well.

10 As you know by now from the county's
11 presentation, the ALJ basically determined that my
12 client would need to remedy and mitigate for the
13 entire deficit and hurricane evacuation times that
14 is present in Lee County in order to have this plan
15 amendment found in compliance.

16 It is our position that state law actually
17 requires only that we agree to mitigate the impacts
18 of our development in order to be found in
19 compliance, and I would not that there is no
20 dispute in the record below that the developer, my
21 client, is actually going to do this and mitigate
22 the impacts of his proposed development either
23 through the provision of on-site shelter space or
24 through the donation of a fee in lieu of shelter
25 space to the county so that they can increase

1 shelter space elsewhere.

2 But by interpreting the statute as requiring
3 the developer to mitigate the county's entire
4 backlog, we would respectfully submit that the ALJ
5 erred, as a matter of law, for a number of reasons,
6 in addition to those urged by the county and I
7 would note that this was an issue that was not even
8 presented to the ALJ or discussed or briefed or
9 argued before the ALJ down below.

10 The first of the reasons that the ALJ's
11 interpretation best(sic) is that it basically
12 renders meaningless a whole subsection of the
13 Florida statutes under Section 163.31788A and that
14 is Subsection 3. I believe that's Tab 2 in the
15 materials that the county presented to you. This
16 section provides three options for addressing
17 mitigation and they are separated by an or, as the
18 county attorney indicated, indicating that you can
19 either do one or two or three.

20 The ALJ's interpretation basically says that
21 in order to meet option 3, you have to either do
22 option 1 or 2, and that clearly, we think -- feel,
23 is error because the legislature must have intended
24 for Subsection 3 to have some sort of independent
25 meaning other than to meet Subsections 1 or 2. We

1 submit that the ALJ's order renders meaningless
2 Subsection 3 as part of the statutory scheme.

3 The second reason the ALJ's interpretation
4 should be rejected is that it creates direct
5 conflict not only with the statute internally, but
6 also with established case law and Florida law and
7 federal law, for that matter. The ALJ's
8 interpretation creates conflict with the third
9 sentence in Subsection 3, and you have it before
10 you, but it basically reads, Required mitigation
11 may not exceed the amount required for a developer
12 to accommodate impacts reasonably attributable to
13 development. Clearly, by requiring the plan
14 amendment to address not only its impacts, but
15 also the impacts of prior development, the ALJ's
16 order contradicts this express limitation in
17 Subsection 3. Statutory interpretations are
18 required to avoid these conflicts.

19 Additionally, the sentence limiting the
20 developer's mitigation is entirely consistent with
21 both state and federal law as well as state
22 statutory law that require mitigation for the
23 impacts of new development, but prohibits
24 mitigation for deficits caused by prior mitigation.
25 We've cited case law in our proposed -- or actually

1 in our exceptions to the recommended order and it
2 includes both Florida Supreme Court decisions,
3 primarily the case from the City of Dunedin back in
4 1976 as well as federal case law from the U.S.
5 Supreme Court, the Nollan and Dolan decisions that
6 support this principle.

7 And if this case law wasn't specific enough,
8 there's also Florida Statute 70.45 which defines --
9 and that's included in your materials in Tab 4, and
10 it defines a term called prohibited exactions as
11 one that is not roughly proportionate to the
12 impacts of the proposed use of real property, and
13 the statute goes on to provide a cause of action
14 for any local -- for any governmental entity that
15 imposes such a prohibited exaction. These
16 conflicts can be avoided, they should be avoided by
17 the interpretation that the county urges.

18 And the third and final reason that I'll
19 mention for finding that the ALJ's interpretation
20 should fail is, quite frankly, it's the simplest
21 argument that I have and that is that it's simply a
22 plain reading of the statute. If you look at
23 Tab 2, at the beginning of Section 163.31788A,
24 which you have in front of you, the very first
25 sentence of that statute reads, A proposed

1 Comprehensive Plan Amendment shall be found in
2 compliance with state coastal high hazard
3 provisions if one of the following three options
4 are addressed. Clearly, this sentence requires an
5 in-compliance finding if one of the three
6 conditions is met, but it does not conversely
7 require that a not-in-compliance finding be reached
8 if the three options are not met.

9 I would respectfully submit that the ALJ
10 simply missed the purpose of the statute and that
11 is that it provides a safe harbor for a plan
12 amendment that is able to meet Subsection 1 or 2 or
13 3. Even if it -- even if our plan amendment did
14 not address either 1 or 2 or 3, a not-in-compliance
15 determination would not be mandated under this
16 plain reading of the statute.

17 In conclusion, the only basis for the ALJ's
18 not-in-compliance determination is her
19 interpretation of Section 163.31788A. This is a
20 conclusion of law and can be overruled by another
21 interpretation if that interpretation is as or more
22 reasonable interpretation reached by the ALJ. In
23 this regard, we would again respectfully suggest
24 that the interpretation of the statute urged by the
25 county and the intervenor is more reasonable than

1 that proposed by the ALJ in the recommended order
2 and it comports not only with statutory law but
3 also with case law that has been established
4 previously.

5 We would -- we would respectfully request that
6 our exceptions to the recommended order be granted
7 and that a final order be entered consistent with
8 the proposed final order that the county and the
9 intervenors have submitted to you. With that, I
10 stand available for any questions.

11 GOVERNOR DESANTIS: Anybody?

12 (No response.)

13 GOVERNOR DESANTIS: All right. Thank you,
14 sir.

15 MR. SCHROPP: Thank you.

16 MR. BUCKLES: We have the petitioner up and I
17 have a handout he wants me to bring.

18 GOVERNOR DESANTIS: Okay.

19 MR. ARLINE: Good morning, Governor and
20 Cabinet. It's a pleasure to be here. My name is
21 Terrell Arline. I'm an attorney. I represent
22 Joanne Semmer who's here with me and her brother
23 William Semmer who unfortunately, his business is
24 in San Carlos, couldn't be here today.

25 I've passed out some materials that are going

1 to be -- that explain our presentation here. I
2 intend to speak first, basically hit the legal
3 arguments and then Miss Semmer will have some
4 things to say and some documents that she's passed
5 out.

6 My clients challenge the plan amendment
7 adopted by Lee County, and Mr. Semmer owns
8 property, it's industrial use for shipping use and
9 marine industry, directly adjacent to the site.
10 Mrs. Semmer operates a business across the street.
11 They've operated businesses in San Carlos since the
12 '60s. The amendment changed the land use on a
13 parcel of land from industrial, which it had always
14 been, to basically allow for condominiums,
15 commercial and a marina.

16 For the record, my client does not oppose the
17 amendment that created the marina. The problem
18 that we're presenting is the increased density, the
19 real estate -- increased density of the residential
20 development in a class 5 hurricane evacuation
21 clearance area, so it's not an increased density
22 anywhere in Lee County. It's an increased density
23 in the area that gets inundated by a class 5
24 hurricane, which is in this case, I think the
25 evidence was over 20 feet.

1 So they had a full administrative hearing
2 before Judge Van Wyk and the judge did not uphold
3 every issue that they raised, but as you heard, she
4 did agree with their allegations that are in the,
5 actually in the petition and in their proposed
6 recommended order, that the amendment violates the
7 section of the Statute 163-31788A that deals with
8 hurricane evacuation clearance times because the
9 amendment didn't maintain those -- those numbers.
10 That is the issue, maintained. You have to read
11 that term, read the statute and understand that the
12 legislature has said that those hurricane
13 evacuation clearance times have got to be
14 maintained if you're going to increase density in a
15 coastal hazard area, so that word maintained is
16 very important here.

17 She -- the judge essentially ruled in favor of
18 protecting people's health and safety during a
19 hurricane on San Carlos Island and she ruled it
20 because the existing evac time was 96 hours, that's
21 four days in Lee County, that you could not add
22 additional density in the Cat 5 area on San Carlos
23 Island.

24 So this matter involves statutory
25 interpretation of the law that limits the

1 government's ability to approve a plan amendment
2 and increase residential density in the coastal
3 hazard area where a Cat 5 storm would flood the
4 land. It's very important law. Versions of it
5 have been on the books for many years and it's been
6 applied in this instance to often reject plan
7 amendments that increase density in the coastal
8 hazard area, but I think this is the first time
9 this issue's been brought and litigated, brought to
10 the attention of the administration commission. I
11 think that's probably true. I've been doing this
12 for a long time and so this is an important case
13 for you.

14 So I've handed out copies of the provision,
15 okay, 163.31788A, and I have highlighted the areas.
16 The developer's attorney said all you have to do is
17 1 or 2 or 3. Doesn't say that. The statute says
18 that the proposed plan amendment will be in
19 compliance if, one, the adopted level of service
20 for out of county evacuation is maintained or, 2,
21 the 12 hour evacuation time to shelter is
22 maintained or, 3, and read the introductory
23 sentence, appropriate mitigation is provided that
24 that will satisfy Subparagraph 1 or Subparagraph 2,
25 so you only get 3 if you satisfy 1 or 2. It's not

1 1 or 2 or 3. If you're going to do 3, you gotta
2 have appropriate mitigation that will satisfy
3 Paragraphs 1 or 2. That's what the statute says.

4 It does say, in the second -- third sentence,
5 required mitigation may not exceed the amount
6 required for a developer to accommodate impacts
7 reasonably attributable to development. I think
8 what that means is local government can't make them
9 pay more than what their development would entail,
10 but at the end of the day, that mitigation has
11 gotta meet 1 or 2, so if they're like two hours
12 beyond the hurricane evacuation clearance times,
13 then they could mitigate for those two hours, but
14 the developer, they've gotta get to the two hours.
15 The county's gotta get to the 2 hours and meet 1 or
16 2, so that's essentially what the statute says.

17 The developer admits that there's no dispute
18 that the county doesn't meet Subparagraphs 1 or 2
19 even prior to the plan amendment. That was in
20 their exceptions. They say that it -- they agree
21 that they cannot maintain the evacuation clearance
22 times, so is that a -- it's not a valid way to
23 interpret the statute, just Subparagraph 3 in
24 isolation, to say that, you know, you can -- you
25 can mitigate, but you don't have to maintain. You

1 ignore the term maintain? You ignore the word
2 satisfy? No.

3 I mean sometimes when you've got this issue
4 about what the law means, you know, you look at
5 legislative history, and I found -- yesterday, I
6 went and looked up the house bill. It was adopted
7 in 2006, House Bill 1359 which I passed out. The
8 staff analysis on Page 5 says this. This is how
9 the staff analysis describes this bill in 2006.

10 The bill provides proposed plan amendment must
11 be in compliance with the state coastal hazard
12 standards if adopted level of service for out of
13 county hurricane evacuation is maintained or 12
14 hour evacuation time to shelter is maintained and
15 there's sufficient shelter space available or --
16 and this is important -- or appropriate mitigation
17 will ensure that the level of service for out of
18 county hurricane evacuation clearance time's
19 maintained or mitigation will ensure that the 12
20 hour evacuation time to shelter is maintained and
21 there's sufficient shelter time. That's the
22 legislative history, so you've got what the statute
23 says and this is what, you know, what the staff's
24 analysis was when they were looking at it, so the
25 terms mitigation shall -- will ensure supports our

1 position and analysis of the statute.

2 Also, there's harm. If you adopt their
3 position and say we can just mitigate for our
4 project and we don't have to comply with hurricane
5 evacuation clearance times, there's harm to that.
6 People are put in harm's way. More people are
7 on -- in the coastal high hazard area, Cat 5 area
8 that have to be evacuated and you already know you
9 can't evacuate what you got.

10 So I mean there's a public safety issue here
11 that you're wrestling with, too. I mean they talk
12 about -- the county mentioned the catastrophic to
13 smart coastal growth, and the developer, you know,
14 said, you can't require us to mitigate for more
15 than our development's impacts. Well, those are
16 arguments, you know, to support the development in
17 coastal high hazard area, but the statute says you
18 shouldn't increase density in the coastal high
19 hazard area because it can kill people. It can
20 cause people's property that live there in
21 residential developments to flood and it makes it
22 more difficult for them to evacuate.

23 So I know that you're struggling with a --
24 with a complex issue here, but I think you can come
25 down on our side with the statutory interpretation

1 and with, you know, the public policy that's behind
2 that argument.

3 So now Ms. Semmer will say a few things and
4 we'll be available for questions later.

5 GOVERNOR DESANTIS: Okay.

6 MS. SEMMER: Thank you for having us and I'll
7 try to make this quick, but first, for your
8 information, Southern Comfort, LLC does not own the
9 property. It was sold to Bay Harbor Marina
10 Village, LLC, a limited liability company, which is
11 owned by Corona Property Holdings. It sold for
12 \$18,000,000, and on Facebook, it says it was sold
13 as shovel ready.

14 Two different zoning hearing officers, Laura
15 Bellflower and Donna Marie Collins, rejected the
16 project and stated in their reports that the
17 developer could not meet the Lee County comp plan
18 or the Florida Statute 163 required for a level of
19 service evacuation on a level 5 hurricane, and
20 Statute 163.3171 refers to the sea, lake, overland
21 surge of a storm surge on slosh, and in your
22 packet, you'll see the information for Bay Harbor
23 Marina Village, in your handout, and the property
24 is located in an evacuation Zone A. It states, A
25 Category 5 hurricane could produce over a 25 foot

1 surge height.

2 And, also, please find a copy of a letter from
3 the adjacent Town of Fort Myers Beach, Estero
4 Island, which requires residents to evacuate on San
5 Carlos Boulevard across San Carlos Island. The
6 town objects to the increase in development due to
7 the traffic conditions, including hurricane
8 evacuation.

9 And please find a report by Transportation
10 Consultants, Incorporated for Compass Rose Marina,
11 also known as Bay Harbor Marina Village,
12 documenting an additional 3,253 daily two-way trips
13 on Main Street and San Carlos Boulevard. Florida
14 DOT documents 27,000 cars a day pass through San
15 Carlos Island on San Carlos Boulevard during season
16 and this would increase the traffic by more than 10
17 percent.

18 My brother Bill Semmer and I have been on San
19 Carlos Island for over 50 years.

20 I'm sorry?

21 MR. BUCKLES: You got a little bit more time,
22 but wrap it up.

23 MR. TAYLOR: I am. I'm talking fast. We've
24 been there over 50 years. I came in '66 and my
25 brother came in 1967 after his tour in Vietnam. He

1 currently owns 23 properties on San Carlos Island
2 that surround Bay Harbor Marina Village property.
3 He operates seven businesses in construction and
4 commercial and industrial uses in areas of the
5 working waterfront.

6 I own my house 140 feet from the project and
7 I operate three businesses, including marine
8 construction, waterfront permitting and consulting.
9 I'm chairman at San Carlos Island Redevelopment
10 Corporation, The Lighting District, The Fort Myers
11 Beach Mosquito Control District and also president
12 of the local Marine Science Center and the Oil
13 Spill Co-op.

14 We support and encourage the appropriate
15 development on San Carlos Island working
16 waterfront. This is not an appropriate location
17 for a 100 foot high condo the size of a football
18 field. And I just want you to know if you should
19 agree with the developer, the consequences of your
20 decision will put existing and new residents in
21 harm's way. I know for a fact that there are other
22 coastal developers all watching this hearing
23 closely before they decide their next step.

24 And thank you and God bless and thank you for
25 the service to the state of Florida. Thank you.

1 MR. BUCKLES: Okay. We have an opportunity
2 for the county to make -- or the intervenor to make
3 a few minutes of rebuttal.

4 MR. SCHROPP: Thank you, Governor and Cabinet.
5 I'll be brief just quickly in rebuttal to Ms.
6 Semmer's assertion regarding the sale of the
7 property. Yes, the property sold. That is not in
8 the record. That occurred after the trial down
9 below, but my client Southern Comfort Storage did
10 retain an interest in the property.

11 With regard to Mr. Arline's assertion that
12 this issue was actually raised by petitioner that
13 down below in the petition and in the recommended
14 order filed by the petitioner below, the actual
15 documents submitted by the petitioner actually
16 agree with our interpretation.

17 In the petition, the petitioner alleged that
18 it was not in compliance with the statute because
19 it does not include sufficient mitigation for the
20 increase in hurricane evacuation time caused by the
21 plan amendment, not that we didn't meet the county
22 standards, the overall standards within the county.

23 Again, in the recommended order, the amendment
24 is inconsistent because it fails to address
25 hurricane impacts attributable to the increased

1 density from the plan amendment, so the petitioner
2 basically asserted what we're asserting which is we
3 only have to mitigate the impacts of our actual
4 development.

5 And the last point I would make with regard to
6 Mr. Arline's argument that we could somehow
7 voluntarily agree to mitigate the county's deficit
8 and therefore get approval for our plan amendment,
9 there really is no legal difference between
10 requiring a developer to mitigate for the county's
11 existing deficit as part of the permit approval or
12 the plan amendment approval and -- or telling the
13 developer that he can voluntarily mitigate for the
14 county's deficit, but if he doesn't do it
15 voluntarily, we're not going to approve your plan
16 amendment. There's legally no difference in that
17 and that is essentially the case of the Koontz
18 versus St. James River Water Management District
19 which went to the U.S. Supreme Court.

20 With that, I'll turn it back over to the
21 county for any rebuttal that they may have. Thank
22 you very much.

23 GOVERNOR DESANTIS: Okay.

24 MS. SWINDLE: Thank you again. You heard from
25 Ms. Semmer, one of our residents, and she's clearly

1 very passionate about San Carlos Island, which we
2 appreciate as a county, but again, to read the
3 statute in the way that the administrative law
4 judge has would essentially hold property owners
5 within the coastal high hazard area hostage until
6 certain evacuation times can be met and I think
7 what I've demonstrated here is those evacuation
8 times cannot be met, not in Lee County, not in the
9 entire southwest region.

10 In fact, the entire southern peninsula and a
11 good portion of the panhandle is way outside of
12 those mandatory evacuation times. We're talking
13 80 percent of the coastal high hazard area would be
14 unable to be developed or redeveloped if this
15 recommended order is adopted.

16 So again, I would just say that simply cannot
17 have been what the legislature intended when they
18 adopted this statute and it can't be the result
19 that is allowed to happen by allowing an
20 administrative law judge to essentially override
21 the determination by the Board of County
22 Commissioners in what is essentially a legislative
23 action.

24 So again, thank you so much for your time.

25 GOVERNOR DESANTIS: Okay.

1 MR. ARLINE: I just want to say thank you for
2 your time and attention to this and, you know, an
3 argument that they're presumed to be correct, it
4 might be true for facts, but when you're talking
5 about what the statute is and what the law is, you,
6 as administration commission, you interpret the
7 statute. You make those -- those findings and what
8 the law means and that's what you're doing here
9 today and we would urge you to accept the judge's
10 recommended order. Thank you.

11 MR. BUCKLES: And we set aside some time for
12 Q&A, if you have any direct questions of the
13 attorneys, then we'll go to public comment.

14 GOVERNOR DESANTIS: Anybody?

15 MS. FRIED: I do to the county and thanks for
16 being here today. I have some questions.
17 Obviously, you were talking about some other
18 counties that have the same, similar situations of
19 extremely high evacuation times. I'm assuming
20 you've spoken to some of them during the course of
21 this petition. Have you seen any other types of
22 development that's come in there that has been
23 approved and has gone in front of an administrative
24 law judge in the previous or is this the first case
25 that we are seeing this situation under.

1 MS. SWINDLE: So to answer your first
2 question, yes, there have -- the county has
3 approved other comprehensive plan amendments in the
4 coastal high hazard area that do have the effect of
5 increasing residential density. Now, those
6 particular amendments weren't challenged, so they
7 didn't go before an administrative law judge, but
8 in the first tab of your binder, on the third page,
9 you can see outlines of recent development
10 approvals that the county has -- has made on San
11 Carlos Island, including Number 5 which is a pretty
12 significant ebbside project. It's a 450 unit hotel
13 and 270 unit multi-family and, again, it's a mixed
14 use project that is in line with the vision of the
15 county.

16 So, yes, the county has adopted comprehensive
17 plan amendments that do have the effect of
18 potentially increasing that density and those plan
19 amendments were reviewed by the state planning
20 agency and were approved.

21 MS. FRIED: Thank you.

22 ATTORNEY GENERAL MOODY: I have a question.

23 GOVERNOR DESANTIS: Yes.

24 ATTORNEY GENERAL MOODY: I agree. I think
25 that the judge misinterpreted the law here. You

1 submit that the county and the property owners came
2 to some sort of agreement on how you would mitigate
3 any additional risk from this amendment and can you
4 tell the Cabinet a little bit more about that?

5 MS. SWINDLE: Absolutely. So this case is a
6 little strange because ultimately the approval was
7 secured through a mediated settlement agreement.
8 The property owners in this question had filed a
9 70.51 action, so there was a mediated settlement
10 agreement between the county and the property owner
11 and part of that settlement agreement required a
12 binding agreement that the property owner would
13 mitigate the impacts of the development.

14 Now, we don't know exactly what those impacts
15 will be until a development order is actually
16 sought. Then we will know exactly what's being
17 built and we can measure the amount of that
18 mitigation, and the mitigation would come in the
19 form of either the donation of land, the
20 construction of shelter space or a payment of a fee
21 in lieu of so that the county could take those
22 actions.

23 And just as a side point, the project would
24 also require the payment of pretty substantial
25 impact fees that would help with necessary

1 infrastructure improvements that would hopefully
2 eventually improve those evacuation times.

3 ATTORNEY GENERAL MOODY: And I do hear the
4 concern and the understanding that we've got to
5 make sure that there are shelters in place and that
6 we can -- and provide protection, but the statute
7 in terms of only requiring mitigation that doesn't
8 exceed the amount required for a developer to
9 accommodate the impacts reasonably attributed to
10 the development, I think that's pretty clear.

11 When I read that, though, and then I look at
12 the order from the ALJ, the ALJ says the proposed
13 plan amendment should remedy the county's existing
14 deficiencies. She also states in her recommended
15 order, however, that the statute does not require
16 the developer to build shelters, make
17 transportation improvements, contribute land or
18 make payments to reduce the county's existing
19 deficit concerning evacuation time or shelter
20 space. How do you suggest we reconcile those two
21 seemingly counter-statements by the ALJ?

22 MS. SWINDLE: I agree that the ALJ's
23 recommended order was confusing, particularly when
24 it came to that interpretation of that section.

25 So my reading of Subparagraph 3 is very

1 simple. Subparagraph 3 provides that a developer
2 can mitigate if options 1 or 2 can't be satisfied.
3 The second sentence of Subparagraph 3 tells you
4 what form the mitigation can come in, payment, land
5 donation, et cetera. The third sentence, most
6 importantly, caps the amount that we can require
7 from the developer at the amount reasonably
8 attributable to the impact.

9 So again, I don't know what the number -- what
10 the amount is that would bring the county from a
11 96 hour evacuation time down to 16, but whatever
12 that number is, we could come up with it, but the
13 statute then caps that amount at whatever's
14 reasonably attributable to the development, so to
15 me, that's the reasonable reading of that statute.

16 MS. FRIED: I just have one follow-up. So you
17 said it's 96 hours now for evacuation. Has there
18 been an assessment of how much more time will be
19 added to that before this project was built?

20 MS. SWINDLE: There was, actually. In the
21 DOAH hearing, there was quite a bit of discussion
22 of it. It's in the seconds. It's like a number of
23 seconds that it would change, and one of the
24 arguments that we did make is that, and
25 particularly the property owner made is that impact

1 is so de minimus, that perhaps the mitigation
2 wouldn't even be required, and there's other
3 administrative commission cases that kind of go
4 along with that.

5 GOVERNOR DESANTIS: Okay. Anybody else have
6 any questions? Do we have any questions for any of
7 the other counsel?

8 MR. BUCKLES: Okay. We set aside a little
9 time for public comment if anyone wants to speak.

10 GOVERNOR DESANTIS: All right. Does the
11 Cabinet have anything to say?

12 ATTORNEY GENERAL MOODY: I would just follow
13 up on that last statement by the county. If you're
14 looking at times like that with your existing
15 issues and evacuation, you're going to need to
16 mitigate. That's not a question. So that last
17 statement, I don't think anyone in this room would
18 believe to be true.

19 MS. FRIED: And I just want to add, too, like
20 obviously, you know, this statute was put into
21 place for a specific reason and that was to make
22 sure that people are able to evacuate during a
23 Cat 5 and so I think that for any of our counties
24 that are looking at development on these coastal
25 communities, we have to do some serious work

1 because if we're spending 96 hours trying to
2 evacuate at a Cat 5, that is a -- that is putting
3 life in danger for sure and, obviously, this
4 statute was put in place in 2006 to try to mitigate
5 some of that and for the counties that are on the
6 coastal communities to start looking at
7 comprehensive plans of how to get to, eventually
8 get down to that 16 hours.

9 But I also do not believe that the ALJ was in
10 the right in her interpretation of the statute.

11 MR. BUCKLES: Okay. If you're ready, we can
12 proceed to the voting. There are three options.
13 The commission could adopt, by majority vote, an
14 alternative final order with substituted findings
15 of fact and conclusions of law which would find the
16 plan amendment to be in compliance with Chapter
17 163. An option like the next one would direct
18 staff to draft a circulated final order consistent
19 with the vote to present the order for
20 consideration at the next meeting.

21 Next, the commission could adopt, by majority
22 vote, the ALJ's recommended order which would
23 affirm the ALJ's recommendation that it's not in
24 compliance and direct the county to rescind the
25 amendments and specify remedial actions.

1 Lastly, the commission could take the case
2 under advisement. So I turn it over to the
3 commission.

4 GOVERNOR DESANTIS: Great. So I think what
5 the county has argued is reasonable and I think
6 we're just supposed to side with that in terms of
7 an interpretation of law. I think that's how we're
8 supposed to do it. I think petitioners, while, you
9 know, actually did a good job, that doesn't seem to
10 be how this law has been interpreted in Florida,
11 you know, up to this point and so I will vote for
12 option 1. Any seconds on that?

13 MR. PATRONIS: Second.

14 ATTORNEY GENERAL MOODY: Second.

15 MS. FRIED: And I agree and I think that on
16 that, Governor, that this was a misinterpretation
17 and could potentially that if we upheld the ALJ's
18 ruling, that this would be a very bad precedence
19 for any future development on the coastal
20 communities and I don't think that's appropriate.

21 GOVERNOR DESANTIS: Okay. So that is -- that
22 is motion carries.

23 Item 3:

24 GOVERNOR DESANTIS: And then we have the next
25 case.

1 MR. BUCKLES: Yes. We have Item 3. This is
2 Administration Commission Case Number 22-001.
3 Today the commission has before it the recommended
4 order in the case of Robin Cartwright versus City
5 of Stuart, Florida. This is a challenge to the
6 City of Stuart's Comprehensive Plan Future Land Use
7 Map Amendment adopted by Ordinance 2466-2021. The
8 amendment in question amends comprehensive plan --
9 the plan by amending an existing future land use to
10 a 49 acre parcel located at 3172 South Kanner
11 Highway in the City of Stuart.

12 The purpose of today's agenda item is for the
13 commission to consider the ALJ's recommended order,
14 the parties' arguments and public comment and then
15 to discuss and potentially vote on final action.

16 After voting, the commission may vote on a
17 motion to direct the staff to draft and circulate a
18 final order to your offices consistent with the
19 vote and present it at the next meeting for
20 adoption, if that's what you decide to do. The
21 commission is not being asked to pass judgment on
22 any policy merits of the plan amendment.

23 The petitioners in the case are represented by
24 Richard Grosso and Shay Ozeri. The respondent is
25 represented by Michael Mortell.

1 Same standard applies. It's the fairly
2 debatable standard. As to findings of fact, the
3 commission should reject or modify the ALJ's
4 findings of fact if it determines that they are not
5 based competent substantial evidence or the
6 proceedings did not comply with the essential
7 requirements of law.

8 The parties will address the conclusions of
9 law and the findings of fact. The city filed 36
10 exceptions to paragraphs in the recommended order
11 and the petitioner filed a response. Proposed
12 orders were submitted by both parties.

13 We'll follow the same format. It will be 10
14 minutes of argument, 2 minutes of rebuttal, time
15 for Q&A and public comment, and I would ask the
16 presenters to please limit your comments to the
17 evidence in the record. First, we have the city.

18 MR. MORTELL: Good morning, Governor and
19 Cabinet and I want to thank you for taking the time
20 to consider our matter today. I know you have a
21 lot of pending issues. My name is Mike Mortell and
22 I'm proud to represent the city of Stuart before
23 you today.

24 The matter that we have before you is a brief
25 history as related to an approximately 49 acre

1 parcel on what's known as Kanner Highway in Stuart,
2 Florida. To the west is a six-lane highway named
3 Kanner Highway. To the east is a four-lane
4 boulevard called Willoughby Boulevard, and on the
5 south end of the parcel and just adjacent to it is
6 an Indian Street which is another thoroughfare in
7 the community.

8 Directly next door to the parcel is a
9 multi-family apartment complex. Adjacent to that
10 other side of the property is a nursery and then a
11 high school. Across the street are government
12 buildings and commercial offices, as well as a
13 water park. Across Kanner Highway is a mobile home
14 development, as well as a four-story apartment
15 complex known as Bridgeview.

16 In this particular incident -- matter, Florida
17 Department of Transportation had recently widened
18 Kanner Highway to a six-lane thoroughfare to lead
19 directly to I-95 from our community.

20 The matter before you is, again, under the
21 fairly debatable standard and that comes up a lot
22 and we talk about fairly debatable and I think
23 everybody knows what fairly debatable is, but if
24 you look it up, fairly debatable says that it's any
25 decision that is subject to controversy or

1 contention or merely open to disputes and questions
2 is, by its nature, fairly debatable.

3 The question before the board today is did the
4 city commission rule in a fairly debatable manner.
5 Was their ruling open to debate or was it just so
6 arbitrarily off base, that they were wrong, but
7 what actually happened at the ALJ level is the
8 administrative law judge, instead of reviewing the
9 case from a standard of what did the commissioners
10 do, she took it upon herself to treat the case as
11 an initial proceeding and she heard the case
12 herself and based it on her interpretation of the
13 facts and evidence as it was presented to her
14 rather than considering what happened before the
15 commission which, for the record, was two
16 eight-hour specially set marathon meetings to
17 uncover every possible public comment, every
18 possible rendition opinion or otherwise.

19 The evidence also showed that the petitioner
20 here today presented her own expert consultant that
21 prepared a report and submitted it to the city
22 commission and they took it into consideration
23 during the initial proceeding and included a
24 whereas clause in the adopting ordinance addressing
25 issues that were raised by her expert as well, but

1 the ALJ's recommended order says that the city
2 didn't provide written findings, when in reality,
3 the city didn't have to provide written findings,
4 but -- or written -- didn't do its own written
5 evaluation of the land.

6 The commission's job wasn't to do the written
7 evaluation. It was to take that information into
8 consideration and they considered the petitioner's
9 report, they considered the landowner's report and
10 they hired their own company, Kimley-Horn, to do a
11 review and analysis as well, but the ALJ ruled
12 based upon just what she wanted to have happen to
13 the land rather than deciding did this commission
14 have a fairly debatable conclusion.

15 In this matter, the property was annexed into
16 the city of Stuart and needed to be assigned a
17 future land use. It wasn't a situation where we
18 were changing a future land use from one to
19 another. It has no future land use at all, so no
20 matter what, the commission has to give it a future
21 land use. Its prior future land use was a county
22 land use that is not in the city's comprehensive
23 plan, so without the assignment of a future land
24 use, it gets no future land use which, in and of
25 itself, violates the comp plan.

1 So the city adopted this ordinance
2 concurrently, approving the amended future land use
3 and also doing a rezoning and master site plan.
4 What happened during the ALJ proceeding was the
5 petitioner was essentially objecting to the master
6 site plan and rezoning and was saying that, well,
7 we're going to do this because it was done at the
8 same time.

9 Multiple times during the hearing, though, I
10 objected and the ALJ judge ruled and said, yes, she
11 agreed with my objection and, in fact, that she
12 could separate the issues and that they would be
13 different and that she was only here on the future
14 land use and that the other issues were not
15 admissible, at which time the petitioner's counsel
16 offered to proffer, but a proffer by its own
17 concept is inadmissible evidence. It's not a basis
18 for a decision because otherwise, you could
19 circumvent any objection because every time someone
20 overrule -- or ruled on an objection, just say,
21 well, I just want to proffer, and you could just
22 put anything you want into a record and it would be
23 admissible.

24 In this case, the petitioner says that it's
25 okay that they submitted the proffer as their

1 proposed order and that the judge adopted evidence
2 from the proffer that she had ruled inadmissible,
3 but it -- but it isn't okay. A proffer is, by its
4 own nature, inadmissible evidence and Florida
5 Statute 120.6A says that the decision should be
6 reversed if there's -- if it's based upon
7 inadmissible evidence or an unfair proceeding and
8 to allow this proceeding to go forward and be based
9 on proffered evidence, in and of itself, is a basis
10 for reversal because it's inadmissible evidence by
11 its very nature and it's unfair because, because it
12 was a proffer, the city didn't offer any additional
13 evidence. It had already been ruled that this
14 evidence was not admissible to a future land use
15 and that it went to the development and zoning
16 side.

17 There was a significant amount of testimony
18 regarding the character of the undeveloped land,
19 and the city of Stuart's development director
20 testified at length about the evaluation that was
21 done for the character, as did third party
22 consultants, as did the environmental reviews.

23 The commission then adopted a whereas clause
24 and said the commission considered and determined
25 that the wetlands existing on the property have

1 been highly disturbed and that the invasive, exotic
2 and nuisance vegetation have reduced the quality of
3 the wetlands and that the wetlands and water
4 surfaces are scattered throughout the property,
5 thereby limiting avoidance and minimization of
6 impacts to the wetlands.

7 The reason for pointing that out to you is
8 that the commission demonstrated it's a fairly
9 debatable standard, demonstrated that they took
10 this information into consideration and added those
11 whereas clause after hearing the petitioner's
12 expert, but the ALJ ruling says that the commission
13 didn't hear any of this stuff and treated the
14 ALJ's -- or the petitioner's expert to be new
15 information during the ALJ proceeding and adopted
16 it and she literally chose experts. She picked
17 this one over the other three that were presented
18 during the hearing.

19 What the city commission did was took all of
20 their information and put it into the entire future
21 land use and considered all of it and made
22 considerations for all of the information. The
23 ALJ's mistake was that she didn't do that. She
24 selected which one she wanted and discarded the
25 others and essentially placed herself as a city

1 commissioner, and instead of letting this be a
2 local decision made by the commission, she turned
3 it into a decision that would be made by the ALJ
4 judge rather than looking at it and saying could
5 the commission have fairly debatable discussions
6 regarding what happened here.

7 Moving forward, she improperly expanded the
8 scope of the proceedings as well because on three
9 different occasions, testimony started going into
10 the development and site plan approval, and I
11 objected to it, and the ALJ judge found that she
12 could distinguish between the future land use
13 evaluation and the site plan approval evaluation,
14 and told the other side we're only going to do
15 future land use and that's we'll go into the
16 proffer area, but when she did her ruling, she had
17 many, many of her findings discussed the
18 development side and discussed the proffered
19 testimony and discussed the part that she already
20 ruled was not part of the proceeding.

21 Moving forward, there are two ways of
22 addressing it. You have a future land use that
23 ends up in an administrative law review and you
24 have the development side that has a circuit court
25 path for review. She expanded the scope of the

1 proceeding and made it so that the administrative
2 law judge is not only doing a full review but is
3 also not treating it as just a presumption that the
4 original panel was correct, but instead it's just
5 starting from scratch and having its own initial
6 hearing on the proceedings.

7 The scope of this proceeding allows any
8 affected person to file a petition and challenge
9 whether the plan or plan amendments are in
10 compliance. The plan amendment or this future land
11 use stands alone. It was a future land use that
12 could be designated to this land with or without
13 the master site plan. Yes, it was done at the same
14 time, but that was just as a matter of convenience,
15 but if the master site plan didn't get developed,
16 the future land use stands alone and isn't -- isn't
17 separated or doesn't depend on the development side
18 of it, but in this particular case, despite her
19 initial corrective evidentiary rulings, in the
20 recommended order, she considered and relied on the
21 evidence and testimony regarding wetland
22 preservation and other natural habitat issues that
23 were directly related to where roads were going to
24 go, where parking lots were going to go and things
25 of that nature, which are clearly related to the

1 future land use.

2 And I'm out of time and I just want to, in
3 closing, just say that the limitation of this
4 matter should be just limited to the future land
5 use and the judge should be looking at it as a
6 fairly debatable standard and not as her decision.
7 Thank you.

8 GOVERNOR DESANTIS: Thank you.

9 MR. GROSSO: Morning, Governor, members of the
10 Cabinet. I'm Richard Grosso, representing Ms.
11 Robin Cartwright.

12 It's frustrating, quite frankly, that we have
13 to come before you on a case like this as if the
14 statute didn't exist. Pretty much everything you
15 were just told is complete misconception of what
16 this law and this process and this case was all
17 about. These complaints that the law judge decided
18 which expert to believe, that's how it works. This
19 law is about when people go before city councils
20 and they make their arguments and presentations and
21 then they make decisions under this law, it
22 provides for a formal administrative hearing where
23 you separate fact from fiction, where people who
24 made claims before in front of city councils have
25 to actually testify in front of a law judge and she

1 decides who's credible, who's not, who has the
2 evidence, who doesn't, like a trial judge does.
3 Your control here is as an appellate court. You're
4 bound by the findings of fact unless there's no
5 evidence whatsoever that supports them.

6 Here's what happened in the case. We went to
7 trial. We put on an environmental expert. We put
8 on a planning expert. The city put on one expert,
9 a planner with no environmental credentials
10 whatsoever. The case involved, the biggest primary
11 issue was, was this land suitable for this really
12 intensive development, that's based on its natural
13 character.

14 We put on an environmental witness, very
15 experienced in this part of the state, who
16 testified and had a report. No, it is not, not at
17 all. It's high quality important habitat. And the
18 study that the city relied on before when it voted
19 to approve this, is horrible, not professionally
20 accepted, doesn't even meet basic professional
21 standards.

22 The person who did that study never showed up
23 in court. The applicant for this project never
24 showed up in court. The only evidence -- she
25 didn't pick between contrary evidence. There was

1 only one set of evidence on the environmental
2 character of this property, our expert, our report.
3 She said it was credible. She said it was right.
4 There was no contrary evidence whatsoever. There's
5 no evidence anywhere in the record to support a
6 claim that this property is suitable for this
7 intensive massive development, nowhere, not a
8 shred. There's no way that can be overturned at
9 this point.

10 On planning issues, our planner testified that
11 the basic requirements, the most fundamental
12 requirements of this law were violated by this --
13 of this proposed land use amendment. The contrary
14 opinions by the city's planner were either found
15 explicitly not credible by our law judge or
16 completely contrary to this statute.

17 This idea that law judges, when they do their
18 jobs and they decide who's credible and who's not
19 and what the facts are and who's not, this idea, I
20 keep hearing now these cases, the law judges making
21 policy, she's usurping the role of -- that's what
22 she does. It's a trial. The judge's -- that's not
23 even a question. That's not a fairly debatable
24 point of law. It's not a fair debate. A city
25 can't come and argue the facts were fairly

1 debatable because we disputed the petitioner's
2 version of the facts. That's not what the law is.

3 Fairly debatable is that once the facts are
4 set and the law judge sets them, then you say, as a
5 matter of law, is it a fair debate that it was an
6 accurate decision? And here's why it's not.

7 The key issue in this case was suitability.
8 The most important thing a land use plan does is
9 base how much stuff you can do on every piece of
10 land based on its basic suitability. And council
11 for the city talked about what was near it and
12 there's highway, et cetera, but this was about
13 what's on the property itself, the habitat value.
14 It's the most fundamental land use element
15 requirement in this law.

16 The city, in its pre-hearing stipulation,
17 said, we don't think we have to comply with that.
18 The city's planner testified, we didn't do that.
19 We think that's stuff for environmental permits, so
20 we simply didn't review the natural character. We
21 didn't make that -- have anything to do with our
22 land use choice. It's not fairly debatable.
23 That's an absolute clear ruling that this forum,
24 the administration commission has upheld lots of
25 times over the years. You cannot do that. There's

1 no fair debate they didn't do it. There's no fair
2 debate the law requires them to do it. They can't
3 win on that issue.

4 That issue alone, this issue, this secondary
5 issue, the city comes and says, well, the law judge
6 also made some side findings that there's these
7 specific habitat preservation requirements in the
8 city's own plan that it violated. Now, she was
9 right about that, too. The city came and
10 adopted -- was unusual the way they did it, but
11 they adopted in one ordinance, the plan amendment,
12 the rezoning and the site plan, and now they've
13 spent the entire time since then pretending that
14 didn't happen and arguing, oh, you should ignore
15 the fact that we approved the development that
16 obliterated all the habitat, preserved none of it,
17 even though our own plan requires certain
18 preservations. They're asking you to ignore that.
19 They asked the law judge to ignore it.

20 She said there's pretty clear precedent on
21 this. Payne versus City of Miami, Third District
22 Court of Appeal. You can't do that. When the
23 whole part and parcel travels together, you handled
24 it that way, city. You adopted it that way. You
25 can't pretend, when we go to hearing, you didn't do

1 it. You can't pretend that's not part of what you
2 adopted, why you were adopting this land use
3 amendment.

4 Now, let me be clear. Even if the city were
5 right about this, they were prejudiced, the law
6 judge reversed herself, they can't win because the
7 basic statutory requirement suitability of the land
8 they admit they didn't do.

9 But even on that issue, that's not how it went
10 down in this case. We raise the issue. The city
11 had an environmental consultant as a potential
12 expert it listed. We were early into the case and
13 the law judge agreed with Mr. Mortell and said,
14 Mr. Grosso, I'm going to go with him on that. I
15 don't think you can get into the details of the
16 site plan.

17 About an hour later, she said, you know, I'm
18 thinking maybe I was wrong about that because
19 there's this case out there that says I should look
20 at it. I want you to brief that case and argue it
21 to me after lunch, and we did. And she said, okay,
22 here's what I'm going to do. Proffer the evidence.
23 The city can cross examine. The city can put on
24 its environmental witness, can speak directly to
25 that issue, can cross examine your witnesses. For

1 whatever reason, the city didn't cross our
2 witnesses on that, didn't ask its environmental
3 consultant to testify, didn't testify at all,
4 completely did not take the opportunity the law
5 judge gave to present that contrary evidence and
6 she said, put in -- put in all your evidence,
7 people, and you argue to me in your proposed
8 orders, then I'll rule, and that's exactly what
9 happened, and she ruled correctly. The law
10 required her to look at that stuff. Again, even if
11 they were right on this, they still lose the case.

12 But I want to make it clear. The city was not
13 blindsided about this issue whatsoever. It chose,
14 for whatever reason, not to have the environmental
15 consultant for the project testify to defend his
16 study, which the law judge found based on our guy's
17 testimony, the only guy who testified, was not a
18 professionally acceptable study.

19 That's how administrative hearings work.
20 That's how facts are found. It is incredibly
21 frustrating for cities to come up here and say
22 fairly debatable means whatever our majority
23 commission voted for, you have to agree with
24 because there was debate, but that's not how it
25 works. Why would we have trials? Why would a

1 citizen like Robin Cartwright have to go through
2 the hassle, the expense, the stress of going to an
3 administrative hearing if the fidelity of that
4 process was just wiped away because everything is a
5 policy decision? What's the nature of the
6 property? How intense is the development?
7 Everything's a policy decision, that argument goes.
8 It's not. The facts on the ground are the facts on
9 the ground based on a trial and we won the trial
10 and they didn't even put up a fight on those
11 issues.

12 And I think you're even going to hear from
13 people in the public hearing. They're going to
14 come and say all these things that aren't part of
15 the record, that have nothing to do with the trial
16 record and ask you to approve it anyway because
17 they want the project, but think about the fidelity
18 to this process, the mockery of the administrative
19 hearing process that happens if these kinds of
20 votes take place, you go to hearing and you win.
21 In fact, the other side hardly puts up a fight.
22 They only put up one -- no environmental witness.
23 We won on the environmental issues. How can you
24 then over turn that based on a fairly debatable?
25 Because it's a policy issue. It's not policy.

1 It's fact.

2 A couple of other points that I would want to
3 make. The maximum build-out. There's a second
4 issue the law judge again, based on the admissions
5 of the city's own planner, the law clearly requires
6 if you're adopting a land use map change that
7 allows all this stuff, you have to analyze, what if
8 all that actually happened, what would be the
9 traffic, what would be the environmental impact, et
10 cetera, and we argued they didn't do that on this
11 case. They only considered one of many development
12 options this land use map change would allow and
13 our evidence was their own admissions, their own
14 traffic study. They admitted it was only based on
15 this one particular project, not based on more
16 intensive projects they could do. It's not
17 debate -- that's a -- that's a fact in the record.
18 It's undisputed. They admitted it. They didn't do
19 the maximum intensity analysis or what was allowed
20 by this future land use map category. That's not a
21 fair debate. The law requires that. They admitted
22 they didn't do it. No, I don't think they admit
23 that didn't do it. Their pleadings to you said
24 they did, but the testimony of the one person they
25 put on the stand acknowledged they didn't. Their

1 own traffic study said, we're only looking at this
2 one project. I don't know how -- you can't change
3 those facts. That's what the record, the clear
4 evidence of this case was all about. And, you
5 know, the city made -- thank you.

6 What I'd like to do, I'd like my client Ms.
7 Cartwright to come on up and make a few words from
8 the heart as a resident who's been through this
9 fight. The final thing I will say is this not a
10 compliance. It's not fairly debatable. You should
11 uphold the law judge's recommended order as your
12 own final order, obliterate the final -- the future
13 land use map change, and if the city wants to try
14 again, then it has to do so in a manner that's
15 consistent with the natural character of this land
16 based on actual evidence. Thank you very much.

17 MS. CARTWRIGHT: Good morning. Thank you for
18 hearing me. Over the last -- Robin Cartwright, by
19 the way. Over the last four years, the city of
20 Stuart has approved a number of ordinances that
21 have combined a future land use map, zoning and
22 site maps. This particular ordinance before you
23 happens to be the most egregious and obvious
24 violation of the city's own comp plan and state
25 statute. As a reminder, they approved the land

1 use, the site map, and the zoning altogether.

2 We've been concerned about this specific project
3 starting in 2019, even though the developer pulled
4 the original application.

5 We've incurred costs in the tens of thousands
6 of dollars, and I say we because this effort has
7 not been funded just by me. There's many in the
8 community who wanted to make sure that we had our
9 day in court. We finally had a chance to be heard
10 by a neutral administrative law judge so she could
11 see the claims made by the city and developer for
12 what they truly were and she was able to separate
13 fact from fiction.

14 The applicant, developer, environmental
15 consultant and land planner didn't participate at
16 all in the DOAH hearing. They provided no experts,
17 but they are here today and I would venture to say
18 that everyone here with the city today has a
19 relationship to or a financial interest in this
20 project, but even if they participated, it would
21 not have changed the outcome of the case.

22 The ALJ agreed with us on every point. It's
23 beyond frustrating that the city keeps fighting us,
24 members of the community, and here they are now
25 trying to get another bite at the apple. The ALJ

1 was very clear. What the city approved was not
2 supported by its own comp plan nor by state
3 statute.

4 I am here on behalf of so many in our little
5 town that you affirm the ALJ's recommendation and
6 her finding of fact. Thank you.

7 MR. BUCKLES: Okay. Rebuttal, the city.

8 MR. MORTELL: First, I want to say that I'm
9 here on behalf of the city. Nobody's here with me
10 and the reason we're here is not for financial
11 purposes. It's to follow the law and the
12 proceedings.

13 And Mr. Grosso talked about this hearing,
14 about what was admissible. I didn't introduce
15 additional evidence because the judge ruled it
16 inadmissible. What the judge ruled was, I have to
17 agree with Mr. Mortell, council for the city. I've
18 done a few of these now where changing zoning and
19 proposed site plan or a master plan was part of the
20 same ordinance as a future land use map change, and
21 I am not authorized to opine or to make findings of
22 fact on whether a change in zoning or whether a
23 site plan map was approved is authorized or
24 approved or consistent with the city's comp plan.
25 That is a whole different proceeding that, as Mr.

1 Mortell has pointed out, can be brought in circuit
2 court, or if brought before me, there's a process
3 in 163 which is not the proceeding we're in today.
4 I understand that there are some arguments about
5 the fact that there's been an approved development
6 or an approved site plan and this is what might be
7 expected to be on the property, but I have to not
8 even think about that or look at that, and that's
9 why I didn't introduce additional site plan.

10 When they talk about things being obliterated,
11 this was a site plan -- or a future land use
12 approval, no development approval. This is just
13 the future land use, so the obliteration is a
14 continuation of this exact misdirection that's
15 taking place.

16 Florida Statute 120.687B and C says that a
17 challenge of an agency action needs to be reversed
18 if it depends on any finding of fact that is not
19 supported by competent substantial evidence. I'll
20 say that again. Any finding of fact that's not
21 supported by that evidence. They admit that the
22 order is based upon the proffered evidence.
23 Proffered evidence is for appellate purposes. It
24 is not for cross examination. In itself, that is
25 not supported competent evidence.

1 And C is it needs to be reversed if the
2 fairness of the proceeding or the correctness to
3 the action may have been impaired by immaterial
4 error and procedure or a failure to follow
5 prescribed procedure.

6 When I was told this stuff was not admissible
7 by the judge's ruling, and I didn't put the
8 evidence on because it wasn't admissible, and then
9 the judge punished the city for not -- for
10 following her ruling and the other side gets to get
11 up before you and say that we somehow failed the
12 system because we followed the law, that is a
13 material unfairness on the city of Stuart. There
14 should not have been any of this proffered evidence
15 in the record, it should not have been used for the
16 final order and it shouldn't be a circumstance
17 where we come, litigate rulings that have already
18 been ruled by the judge to be inadmissible.

19 And I thank you for your time and
20 consideration.

21 MR. GROSSO: That quote was early on in the
22 case. She reversed herself while we were still
23 putting on our case. Told Mr. Mortell cross
24 examine those witnesses on that issue, bring your
25 own witnesses that you've listed on your

1 pre-hearing stipulation on that issue, right.

2 There's no unfairness. That's a real misconception
3 about what happened in this case. Even if somehow
4 you were still to agree with that ruling, there's
5 the other two totally independent reasons why this
6 final order is correct. Even if that were right,
7 and it ain't, this final order has to uphold the
8 recommended order. It does not change the outcome
9 of the case. The facts are clear. The law is very
10 clear. There was no miscarriage of justice. There
11 was no violation of procedure at all. There was no
12 blindside. That's all I have to say about that.

13 Thank you very much.

14 MR. BUCKLES: Okay. We have time for Q&A if
15 you have direct questions for the attorneys.

16 GOVERNOR DESANTIS: Anybody?

17 ATTORNEY GENERAL MOODY: So the petitioner
18 would argue that this Payne case allowed for all of
19 this other evidence that might relate to site plan
20 or zoning to come in and be considered for this
21 plan amendment. What is your position on that?

22 MR. MORTELL: First, the Payne case itself was
23 ruled on in 2010 which was before a 2011 change to
24 the statute and a 2019 change, but if, in fact, the
25 judge had ruled at the trial, Mr. Mortell, the city

1 combined these two things and they're so
2 intertwined and so independent on each other, that
3 we have to go forward and consider them, it would
4 have changed the evidence presentation, but the
5 Payne case was totally different. The future land
6 use and the zoning were both intertwined and
7 dependent on each other and neither one could stand
8 on its own.

9 But in this case, not once, not twice, but
10 three times, the judge had colloquy with counsel
11 and I about this issue and her final ruling is what
12 I just read to you. I don't know where Mr.
13 Grosso's saying she changed her ruling, but look at
14 the transcripts. Her final ruling was, I can
15 distinguish them and I am not authorized to even
16 consider any of that other stuff. If she had said,
17 hey, I can't distinguish it, it's too close,
18 they're too tied together, it would have required
19 me to put on different evidence, but she said to
20 me, I can distinguish them, they are not
21 admissible, do not put on any other evidence, and I
22 relied on that. I relied on the judge's ruling,
23 only to be punished later, essentially, and said,
24 you know, now they can argue whatever they want
25 because proffer means anything you object to, you

1 just -- in the future, just say, oh, I'll just
2 proffer it because that makes it admissible, and
3 that, in itself, it crucifies the rules of evidence
4 and the entire statute.

5 ATTORNEY GENERAL MOODY: And we can debate
6 whether or not that was a good step in the city
7 hearing, all three of these things at one time. I
8 would imagine that all cities and counties are
9 going to start thinking about that in the future
10 and what that causes as a result.

11 MR. MORTELL: Processes --

12 ATTORNEY GENERAL MOODY: But it doesn't change
13 the fact that a judge, that the administrative law
14 judge is limited in what they are considering
15 because there is this circuit court process to deal
16 with the other zoning site plan issues.

17 I have real concerns that by taking in all of
18 that additional evidence and then relying on it, it
19 went well outside the scope of what she was
20 supposed to address. Now, there are ways to remedy
21 that. We can refer it back to the AL judge -- ALJ
22 or we can say that she made incorrect application
23 of the law and -- and reversed the order, but I
24 have a lot of concerns that a lot of information
25 was considered that was way outside the limited

1 scope of this ALJ.

2 GOVERNOR DESANTIS: Any other questions for
3 anybody or comments?

4 (No response.)

5 GOVERNOR DESANTIS: Okay. Thank you.

6 MR. MORTELL: Thank you very much.

7 MR. BUCKLES: We've noticed this for public
8 comment. If anyone would like to speak for two
9 minutes, come on up.

10 MR. MCDONALD: Governor, Cabinet, thank you
11 for allowing me to speak today. My name is Troy
12 McDonald and I'm the vice mayor of Stuart.

13 Last year, the Stuart city commission held two
14 hearings on this matter, each lasting approximately
15 eight hours each. During those hearings, I, along
16 with my fellow commissioners, reviewed surveys,
17 studies and data detailing the character of the
18 undeveloped subject land to this action.

19 During deliberations, the city commission
20 based on evidence provided by the intervenors,
21 environmental expert, and at the following whereas
22 clause, demonstrating our commitment to due
23 process. Whereas, the commission heard testimony
24 and received evidence during the hearing regarding
25 threatened or endangered plant species, as well as

1 wading birds identified on the site, the commission
2 found there was no evidence of any nesting
3 regarding the birds but did include a condition
4 that any threatened or endangered plant species
5 must be protected, and where possible, incorporated
6 into the landscaping pursuant to the city of
7 Stuart's comprehensive plan.

8 At the conclusion of the hearing, I, along
9 with four city commissioners, voted to assign the
10 future land use of special neighborhood district.
11 Assigning land use is a local legislative decision
12 to be made by local elected officials, not an
13 administrative law judge.

14 I came to Tallahassee today to request the
15 administration commission follow the law and defer
16 to locally elected officials where -- who are in
17 the best position and familiar with the subject
18 property.

19 Thank you very much and I very much appreciate
20 all of your service to our state.

21 GOVERNOR DESANTIS: Okay.

22 MR. BUCKLES: All right. Looks like we have
23 one other person for public comment. Come on up.

24 MR. RAYNES: Good morning, Governor, Cabinet
25 members. For the record, my name is Bob Raynes.

1 I'm a lawyer with the Gunster law firm,
2 specializing in the practice of land use law for
3 the past 25 years and I have also had the privilege
4 of representing the applicant throughout this
5 process and I've been a resident of Martin County
6 since 1988, and I believe that this matter never
7 should have come before you today.

8 The petitioner argues that the land use
9 amendment was not appropriate for the subject
10 property, but her arguments are exclusively with
11 respect to the site plan. Based on her arguments,
12 Section 163.3215 is the appropriate forum for this,
13 which is a challenge under the Florida statutes
14 which allows an avenue for the facts of this case
15 which is to provide a method for an aggrieved or an
16 adversely affected party to appeal and challenge
17 the consistency of a development order, not a land
18 use order of matter that's before you today.

19 Appeals for zoning and site plan issues are
20 exclusively reserved for the circuit courts of
21 Florida rather than the DOAH and the administration
22 commission, and although the administrative law
23 judge in this case determined that the site plan
24 issues were squarely outside her jurisdiction
25 during the hearing, she made contrary findings in

1 her recommended order. We respectfully ask the
2 commission to do what the administrative law judge
3 did not do. Follow the law and exercise
4 appropriate jurisdiction.

5 If the commission was to entertain the
6 petition's arguments regarding site planning
7 issues, it would open up a Pandora's box that could
8 create a dangerous precedent of impermissibly
9 expanding the scope of an ALJ's jurisdiction.

10 On behalf of the applicant, we would
11 respectfully request that you reject the
12 administrative law judge recommended order and find
13 that the unanimously approved land use amendment by
14 the city of Stuart be found in compliance.

15 We thank you for your time and consideration.

16 MR. BUCKLES: Okay. Anyone else? Anyone else
17 want to speak?

18 MR. SMITH: Good evening. My name is Jimmy
19 Smith. To the Governor and the panel, I'm the
20 president of NAACP Local Branch 5085 Martin County.
21 I'm a local citizen. I've been living there since
22 1962. I've been in Martin County since it was dirt
23 roads, that same property. I went to Martin County
24 High School and represented most of the communities
25 that there are people that's concerned about the

1 workforce and the land use that can be a benefit
2 for that city. Our city is in crisis now. We are
3 losing our workforce. We're losing people that
4 have the opportunity from our community and all
5 over the city of Stuart that need jobs.

6 There's so much that has been under-served
7 communities, but I ask you today that you consider
8 this. This land use can benefit people. You're
9 the governor and you're the panel that represent
10 the state of Florida. That saying, this is the
11 greatest state that we could ever live in. We look
12 up to you all as leadership.

13 Understand that those that don't have a voice,
14 I'm here for their voice. I was hearing the young
15 lady saying about representing the community. I'm
16 going to tell you I represent the community of all
17 race. There's all races here. I represent all
18 race. No matter what, we stand for all people for
19 the equal opportunity and we believe in the state
20 of Florida. Everybody should have an equal
21 opportunity for a better living.

22 This land use in there, I remember when I went
23 to school at Martin County High, next to it. Oh,
24 my gosh, the land there really needs a great use.
25 And then from there, I remember the dirt road. We

1 walked to school down those same dirt roads and I
2 seen the change of Martin County that, when we talk
3 about traffic, I seen the change. I accept that.
4 We need better -- we need better opportunity for
5 the use of Martin County. Our city need better
6 income so we can be able to have a nice city where
7 our people can love to come and dine and live
8 there.

9 So I listened to all this conversation back
10 and forth, but I just ask you, the panel, to
11 consider. Miss Nikki, I ask you, Mr. Ashley, Mr.
12 Ron DeSantis, Mr. Jimmy, we got the same name, it's
13 a good name, that when you are born and you are
14 there, my mother helped raised her George -- I mean
15 Jeb Bush and the Bushes, worked for here and
16 flower(phonetic) for Secretary of Treasury of the
17 United States, and I look all those things in
18 Martin County and we look up to you, that you will
19 provide and help support what we need and what we
20 are asking for.

21 Thank you for your time. Governor, continue
22 to lead us in the state and I appreciate all of you
23 all for listening. Thanks.

24 GOVERNOR DESANTIS: Thank you. All right. Do
25 we have anyone else?

1 MR. BUCKLES: Looks like we have one more.

2 MS. RICHARDS: Good morning, Governor and
3 Cabinet members. First of all, I'd like to point
4 out that Mr. Smith's comments were definitely about
5 the site plan and about the proposed corporation
6 that wants to be there.

7 My name is Linda K. Richards. I was one of
8 the original intervenors at the city of Stuart.
9 Mr. Mortell had mentioned some stuff about during
10 the -- when the commission was looking at it, that
11 it was Ms. Cartwright's expert, but it was really
12 me as an intervenor with a group of very concerned
13 citizens, that we hired our own environmental
14 consultant and city planner to show that this piece
15 of land, this 50 acres of land has ecological
16 importance to where we are. There's upland scrubs
17 where you can walk and you can see the gopher
18 tortoise holes. You can see them. They're visual.
19 You see the actual tortoise on this 17 acres of
20 upland scrub.

21 There are seven acres of wetlands that are
22 just going to be filled in. They like to say they
23 are disturbed. The law, I believe, is that when
24 you have disturbed wetlands, you're supposed to fix
25 them. You're supposed to remove the exotics and

1 make these wetlands back to what they're supposed
2 to be.

3 This land is also right next to our St. Lucie
4 waterway. It's next to our high school.

5 I've gotten off of all my points here because
6 I've listened to the comments.

7 The future land use of this land was supposed
8 to be low density residential when it was in the --
9 in the county. The city annexed it. It made an
10 enclave because my property is considered in the
11 county, though I can go across here and I'm in the
12 city. We are surrounded by the city, yet we are in
13 the county and we can't even vote for our city
14 commissioners who are voting on these land uses.

15 The discrepancies and omissions that we've
16 found in the environmental reports that were done
17 were egregious. They didn't look during nesting
18 season to see that we do have nesting wading birds
19 in there. They ignored the protected plants and
20 animals that live on this 50 acres and they did
21 this in a one vote. They tied the land use to a
22 site plan to a corporation, which has not been
23 mentioned one here, but if you go back through the
24 city, you will see that the corporation that they
25 want to put there is what they pushed to get this

1 future land use through.

2 I'm asking you to please uphold the ALJ's
3 findings and recommended order. Thank you.

4 MR. BUCKLES: Okay. Just a reminder, the
5 commission should only consider the evidence in the
6 record.

7 I'll give you the three options for voting now
8 before your discussion. The commission could
9 adopt, by majority vote, an alternative final order
10 with substituted findings of fact and conclusions
11 of law which would find the plan amendment to be in
12 compliance with Chapter 163 of Florida Statutes.
13 This option, like the next one, would direct staff
14 to draft and circulate a final order consistent
15 with the vote to present for consideration at the
16 next meeting, if that's what you decide.

17 Number two, next, the commission could adopt,
18 by majority vote, the ALJ's recommended order which
19 would affirm the ALJ's recommendation that the
20 amendment is not in compliance with Chapter 163 and
21 direct the city to rescind the amendment and
22 specify remedial actions to be taken.

23 And last, if you choose, you could defer this
24 and consider it at a future meeting, take it under
25 advisement. And I'll turn it over to the

1 commission.

2 GOVERNOR DESANTIS: Does anybody have anything
3 to say for discussion?

4 ATTORNEY GENERAL MOODY: I'll kick it off. I
5 would just say, you know, there's a -- there was
6 very specific rule that the ALJ was meant to serve
7 and that was to determine whether or not the
8 proposed amendment was in compliance with the plan
9 and whether or not it was supported by the data,
10 and I think it's a big mistake when you start
11 addressing a lot of things all at once which might
12 have to be reviewed in different ways because what
13 it does is it mucks up what we end up looking at
14 and what the ALJ ends up looking up.

15 So our purpose here is to determine whether or
16 not the ALJ order was correct and I believe because
17 she made so many findings that were relevant, maybe
18 to the site plan or the zoning issues, but took
19 them into consideration in her order as it related
20 just to whether the plan amendment was in
21 compliance, I think that was incorrect. I think
22 that was a misapplication of what she was supposed
23 to do as an ALJ under the law and so we've gotta
24 remedy that.

25 And I hear the concerns, some of the other

1 concerns that were presented today and I'm so
2 inspired and appreciate people coming here and
3 traveling to Tallahassee to talk about those things
4 which, again, can and may be argued in zoning and
5 site plan issues outside of this plan amendment,
6 very limited scope of what we're addressing.

7 So I would submit and I would like to hear
8 from you, Governor, and the other Cabinet members,
9 your proposal to remedy what I believe was an order
10 that went outside the bounds of that ALJ and it
11 needs to only address whether the plan was in
12 compliance, which I believe, based on evidence that
13 was presented and should have been relied upon, it
14 was, so we can either send it back to have the ALJ
15 consider the limited amount of evidence that should
16 have been considered and make a ruling and
17 recommendation to us again or we can reverse. I
18 think that if you narrow the scope of evidence
19 considered, that we can find that it was in
20 compliance.

21 GOVERNOR DESANTIS: Anybody else? So I -- my
22 lawyers have some additional things they're just
23 looking at on this, so I would move just to
24 Option 3, take it under advisement. I appreciated
25 the presentation. There's a couple of questions

1 that I had that they're going to run down for us
2 and so I would move to take it under advisement and
3 then we will render a decision at a later date.

4 MS. FRIED: And I'm okay with that and I think
5 I agree with the Attorney General that we need to
6 make that if it goes back to the ALJ, that it's
7 limited in scope of what actually she's allowed to.
8 I mean she's allowed to do whatever she wants, but,
9 you know, what -- we advise her on reviewing the
10 things that needed to have been presented into this
11 case and doesn't go outside the scope of it
12 because, again, it sets very bad precedence if they
13 continue to go outside the scope of what should be
14 presented in reviewing the amendments.

15 GOVERNOR DESANTIS: Okay. So Option 3.

16 And that concludes today's hearing. So
17 thanks, everyone, for participating.

18 (Thereupon, the foregoing proceedings
19 concluded at 11:44 a.m.)

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COURT CERTIFICATE

STATE OF FLORIDA
COUNTY OF PALM BEACH

I, ANGIE ADLER, Registered Professional
Reporter, certify that I was authorized to and did
stenographically report the foregoing proceedings
and that the transcript is a true and complete
record of my stenographic notes.

Dated this 10th day of October, 2022.



ANGIE ADLER, RPR

ERRATA SHEET

Meeting of the Governor and Cabinet, Administration Commission

Meeting Date: August 23, 2022

Page	Line	Error or Change	Reason for Change
81	16	Insert “the” before “county”	Correction to reflect actual testimony.
85	4	Insert “page” after “third”	Correction to reflect actual testimony.
85	15	Insert “1” after “Option”	Correction to reflect actual testimony.
85	23	Insert “hours” after “16”	Correction to reflect actual testimony.
86	9	Insert “percent” after “Eighty”	Correction to reflect actual testimony.
89	19	Change “not” to “note”	Correction to reflect actual testimony.
99	22	Change “statute” to “staff”	Correction to reflect actual testimony.
100	21	Insert “to harm them potentially and” after “and”	Correction to reflect actual testimony.
113	17	Change “An” to “That”	Correction to reflect actual testimony.
114	22	Insert “my” after “is”	Correction to reflect actual testimony.
118	18	Insert “,” after “rendition”	Correct punctuation.
121	5	Change “120.6A” to “120.68”	Corrects statutory reference.
126	3	Change “control” to “role”	Correction to reflect actual testimony.
127	14	Insert “expressed” after “opinions”	Correction to reflect actual testimony.
128	25	Change “cannot” to “can’t not”	Correction to reflect actual testimony.
129	2	Insert “It’s not debatable.” after “it.”	Correction to reflect actual testimony.
130	10	Change “raise” to “raised”	Correction to reflect actual testimony.
133	19	Change “or” to “of”	Correction to reflect actual testimony.
135	24	Insert “in front of you” after “now”	Correction to reflect actual testimony.

140	2	Change "independent" to "dependent"	Correction to reflect actual testimony.
141	23	Change "reversed" to "reverse"	Correction to reflect actual testimony.
149	23	Change "one" to "once"	Correction to reflect actual testimony.
151	14	Change "up." to "at."	Correction to reflect actual testimony.

**AC
ITEM #2**

**To be distributed
separately.**

**AC
ITEM #3**

**Distributed with the
8/23/22 Agenda.**