

# **TIDES MILLENNIUM OVERLAY**

## **REQUESTED DRAFT AMENDMENT INTO THE PINELLAS COUNTY COMPREHENSIVE PLAN**

**JULY 11, 2019**

### **TRANSMITTE LETTER TO RENAE VINCENT**

<b>OVERLAY PROCESS SUMMARY -</b>	<b>ADDENDUM I</b>
<b>DRAFT OVERLAY ORDINANCE PROPOSAL -</b>	<b>ADDENDUM II</b>
<b>COMP PLAN POLICY SUMMARY -</b>	<b>ADDENDUM III</b>
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**AERIAL VIEW INTO BOCA CIEGA BAY**

**SAVE THE TIDES, INC.**

# SAVE THE TIDES, INC.

*A not-for-profit corporation established to act on behalf of the Greater Tides-Millennium Neighborhoods to preserve and protect our area under the guidance of the Pinellas County Adopted Comprehensive Plan.*

*Edmund Methfessel, President* Phone :727-433-4350

*Ronald Stephens, Vice President and Secretary* Phone :727-415-5133

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## **RE: Tides Millennium Area Overlay Transmittal Letter**

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**Renea Vincent, AICP**

**July 11, 2019**

Pinellas County Planning Director

Pinellas Planning Department

310 Court Street

Clearwater Florida 33756

*Dear Renea,*

*As the County Comp Plan anticipates, the Plan Overlay Purpose is "to enable unincorporated communities to better participate in planning for their future, by identifying a specific community boundary, by developing a local vision, and by establishing policies that the Board would use in decision-making and planning that affects their community's future."*

*The TIDE leadership group had four years ago a straight forward request that was formulated with staff input and this transmittal will reconstruct the actions. **NOW**, our goal is to move on to the Board of County Commissioners and work with the "New" Administrator and your planning staff to accomplish a Neighborhoods Overlay adoption for the Tides-Millennium Area into the Pinellas Comprehensive Plan.*

*This letter is to transmit a set of documents for a new filing of an Overlay process begun some 4 years ago and not processed by the then planning staff lead Gordon Beardsley, under direction of Jake Stowers, Assistant County Administrator. NOTE Mr. Beardsley retired and the Overlay was not pursued by staff and the TIDES Group now wants to work with you, to accomplish the purpose of Overlays to bring Comp Planning focus to neighborhood wishing to enhance or protect itself under the Comp Plan.*

### **OVERLAY PLAN PROCESS**

*The Overlay Plan Process is attached as ADDENDUM No.1 and it presents the neighborhoods effort to implement the Overlay process consistent with the process presented in the county Planning Website. NOTE an attached Time Line of the Process.*

### **TIDES MILLENNIUM OVERLAY**

*The TIDES MILLENNIUM OVERLAY draft policy document is presented in ADDENDUM No. 2 and constitutes the Vision and Goals and Objectives of the Tides Neighborhood Organization.*

### **POLICY MODEL FOR USE BY ALL PARTIES OF INTEREST**

*The Draft Ordinance has a set of where-as introductions with one unique element of the package, which includes a compendium of the adopted plan policies of the Pinellas County Comp Plan by element that present the adopted policy areas that should be foremost in protecting the interests of the Neighborhood. The said plan policy supporting document is presented in ADDENDUM No. 3 and can be part of the record in what format is most appropriate.*

### **CONFLICT OVER A GENERIC OR SPECIFIC OVERLAY**

*The Final Overlay Product attached herewith has modifications that were sent to Gordon Beardsley in the Spring of 2016. Mr. Beardsley's last comments are in ADDENDUM No. 4 and our thoughts on his positions are clearly stated. Staff in this protracted Overlay 2-3 year process made interpretations of county policy that are not consistent with the Comp Plan. We stopped interaction. Staff changed and we are now requesting to restart the process as an Overlay Plan Amendment for the Millennium Tides Neighborhoods. We want the BCC to be "in the loop" from the beginning. We are open to any version that protects the neighborhood and addresses critical importance of Open Space preservation.*

### **BCC and LPA ENGAGEMENT**

*We therefore request that the Overlay as proposed be reopened for amendment to the Comprehensive Plan with meaningful wording and intention by the Planning Staff, the Board of County Commissioners and the "New" Administration to implement the adopted Pinellas County Comprehensive Plan to protect the Tides Millennium Neighborhood. This is a BELL WEATHER Issue that will have impacts countywide. We would hope that our District County Commissioner, Kathleen Peters, of District Six, would be an advocate for the establishment of a Tides-Millennium Overlay into the Pinellas County Comp Plan and the BCC Majority would raise to the Open Space Issue.*

### **AREAS OF PROCESS CONCERN**

*There are three areas of concern form the historical TIDES discussions and planning*

that we would like to establish early on for process clarity as follows:

**One.** Plan amendments are **Legislative** and allow Legislative contact and are accomplished in a “Fairly Debatable” status that is not considered Quasi-Judicial requiring no ex parte-contact. Simply we can talk to our elected representatives. (see legal memo and West Report Attached).

**Two.** The linking of comp plans and zoning are not at play in the overlay process and therefore, we can review and discuss the breadth of potential impacts the TIDES-Neighborhood may face and not have county staff avoid key policy questions because they like the procedural history to be followed, which means we cannot discuss issues that are defined in a site planning process until there is a site plan. This history puts the community which is concerned about traffic, flooding, wetland management, emergency management and a host of flood plain management and quality of life issues deferred when the issues have direct impact resulting from Comp Plan Amendment Process. We put all issues of concern on the table for the Overlay Planning Process.

**Three.** Pinellas County Comprehensive Plan for Parks, Recreation and Open Space has specific actions that have **not** been accomplished and they severely impact the quality of life in Pinellas by not accomplishing a study defined in the adopted plan to guide the complex issues of privately held lands for Recreation Open Space Land Use Designations.

The Wording is as follows:

Objective: Policy:

Pinellas County shall continue to provide a system of regional resource- based County parks and environmental lands to adequately meet the needs of Pinellas County residents through the Year 2025.

Objective 1.50

Pinellas County **shall maintain a minimum level of service standard of 14.0 acres of parks and environmental lands, in combination, for every 1,000 residents** within the County through the Year 2025.

Objective: 1.5

In recognition of the limited amount of available open space remaining within the County, **Pinellas County shall prohibit the conversion of dedicated recreation/open space land uses, and encourage the retention of non-dedicated recreation/open space land uses.**

Policy 1.5.1

**By December 2012, Pinellas County will evaluate whether additional policies, regulations, and/or incentives are required to support the retention of recreation/open space land use designations on golf course properties, small parks and other similarly designated privately-owned open space properties.**

*There should be no action reducing Open Space Lands without accomplishing the adopted plan required studies. We request the BCC overcome the Planning staff objection to using the direct policy wording of the Plan to establish clarity and the clear intent of the protective wording of the plan. Simply, don't start the path of **Open Space loss** that would impact thousands of acres of Open Space inventory that creates the 14 Acres/ 1000 population level of service (LOS) standard for Pinellas County Open Space.*

#### **REVIEW AND PROGRAMMING NEXT STEPS**

*We would like to see our concern become part of the workshop discussed in the BCC meeting of June 18 Board meeting. The agenda of that workshop should acknowledge the adopted policy wording calling for a special study of private lands and Golf Course countywide conditions.*

#### **BUILD AN HISTORIC OVERVIEW OF THE OVERLAY NEIGHBORHOOD**

*The Tides Area has a deep 40 year plus history of protection of the neighborhood. We would like to see the actions of the 1980's BCC rezoning of the area to address the preservation of Open Space uses defining the minimal underlying zoning of the Open Space Areas be collected and placed in the record of the Open Space discussions.*

#### **OVERLAY HISTORY TASKS AND DATES**

*Vice President and Secretary calendar of events for the TIDES-MILLENNEAL Overlay*

#### **PROGRAMMING NEEDS FOR NEXT STEPS**

*Renea, we would respectfully request if you and your staff to respond and document the following:*

- 1. Acknowledgment of Receipt of Overlay request*
- 2. Define Steps and Schedule for Process*
- 3. Set up action for the 2012 Open Space Study not accomplished-*
- 4. Define plan update process for Future of Pinellas Private Open Space Lands*
- 5. Schedule comprehensive plan status review for the Adopted Plan with the Tides Leadership group and their representatives*
- 6. Assign Overlay Staff to be responsible to BCC and TIDES Neighborhood*

#### **CLOSING CONCERNS**

*We recognize that the efforts requested fall on a schedule that will need to program time and effort to accomplish. The Board of Commissioners in their Meeting of June 18<sup>th</sup> specifically discussed the need for action based on the representatives that appeared before them. We would request being included in any meeting that is a follow up to the BCC discussion.*

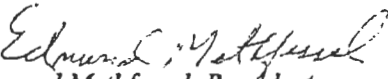


*We are also putting county leadership in contact on this request by copy electronically and in paper form. We are requesting this be a Comp Plan Amendment matter and therefore be Legislative in nature.*

*Also we have re-engaged our original advisors for Legal and Planning process. They are Mr. William J. Kimpton Esq. Attorney (727-733-7500) and Richard E. Gehring, Planner (727-480-7684)*

*Thank you for your attention.*

**SAVE THE TIDES, INC.**

  
Edmund Methfessel, President

**Copies Emailed and Sent To:**

Karen Seel, Commissioner, Chairman of the Board of County Commissioners – District 5  
Janet Long, Commissioner-District 1  
Pat Gerard, Commissioner –District 2  
Charlie Justice, Commissioner- District 3  
Dave Eggers, Commissioners- District 4  
Kathleen Peters, Commissioner- District 6  
Kenneth Welch, Commissioner- District 7  
Barry Burton, Pinellas County Administrator  
Jake Stowers, Assistant Pinellas County Administrator  
Whit Blanton, FAICP, Executive Director, Forward Pinellas  
Linda Fisher, AICP Principal Planner, Countywide Plan Admin. Forward Pinellas  
Ronald Stephens, Vice Pres. and Secretary, Save the Tides, Inc.  
William J. Kimpton, Esq. Attorney  
Richard E. Gehring, Strategic Planning

## TIDES OVERLAY REQUEST GENERAL TIME LINE

- 1/7/2014 Taylor Morrison **Withdrew** TIDES development plan from the County
- 1/9/2014 William Kimpton writes letter to Larry Arrington and Gordon Beardsley telling them both our next Planning step was to **request a Community Overlay**
- 4/17/2014 TIDES Inc. sends **Letter to our Community of Associations** in neighborhood-Bay Hill. Oakhurst Shores, Canterbury Chase
- 4/23/2014 Nora Busby, President, Save Our Local Wet Lands, sends **letter to Gordon Beardsley** document and endorse our Community Overlay Plan
- 4/30/2014 **First meeting** with Gordon Beardsley on our Community Overlay Plan
- 9/19/2014 **First Draft** of The Tides-Millennium Community Overlay format
- 11/21/2014 Ed Methfessel **meeting with Elizabeth Freeman, Planning Div. Mgr.** to discuss our Community Overlay
- 5/13/2015 **Memorandum to Gordon Beardsley** and Liz Freeman-On our Tides Neighborhood Overlay Planning Policy Proposal
- 5/31/2015 Letter to our Communities **asking for approval** for our Community Overlay  
(We received 97% Approval in Main neighborhood and 78-79% approval in Canterbury Chase and Oakhurst shores)
- 1/19/2016 Met at Tom Beckwith's as **TIDES Leadership** to discuss overlay plan documents
- 4/20/2016 Sent **letter to Mr. Marc Curtis, V.P.** Owned Real Estate for Wells Fargo telling him that we have been developing an Overlay Plan for the Tides for the past 18 months. (Requested by Gordon Beardsley)
- 4/07/2016 Joint meeting of Tides Leadership, Planning Staff lead by Gordon Beardsley. **Staff Developed 8** comments basically summarized as "You cant Get here for There", I'm retiring, good by.
- 5/ 2016 Tides Leadership made effort to contact County Leadership, No Resolution. Gordon Beardsley retired passing package to Renea Vincent, Planning Director & Scott Swearngen, Section Manager.
- 4/22/2019 Subsequently asked new Planning Director Vincent to become familiar with TIDES Overlay File
- 6/17/2019 TIDES Leadership Decides to reactivate OVELAY package with County.

# ADDENDUM NO. I

## TIDES COMMUNITY OVERLAY PROCESS

This Overlay development program used the process defined in the Comprehensive Plan web site to program the TIDES Action Plan for this overlay proposal. The County process for overlays presents the following as a guide to community Overlays.

**We have annotated this direction to clarify the spirit and intentions of the Tides Millennium planning process to meet the guidelines presented by Pinellas County. It also can show areas of needed action to complete the goal of having a Tides Overlay in the Pinellas County Comprehensive Plan**

- The **COMMUNITY** must initiate the process for developing and establishing a community overlay.
  - This has been done with the following resolutions and letters of support, which have been provided to Pinellas County:
    - Resolutions from: Bay Ridge Terrace Civic Association, Canterbury Chase HOA, Oakhurst Shores Civic Association
    - Letters of support from Representative Kathleen M. Peters and the Seminole Chamber of Commerce
    - Updates to resolutions and documented meeting by Tides Area Home Owner Associations.
    - We are not aware of any gaps? We will take any required action for additional documentation of community support to the Overlay process?
- Representatives of the Community will provide Pinellas County with an initial proposed BOUNDARY and NAME for the community overlay with the rationale for the proposed boundaries.
  - The Tides Millennium area included in the proposed overlay boundary must represent a contiguous geographic area and comprise a cohesive neighborhood or group of neighborhoods.
- County staff will review the proposed boundary and provide comments to the community on whether modifications should be made.
  - County Planning Comment or problems with Area for Overlay has been limited to only including Unincorporated Areas in the defined boundary. The proposed ordinance is limited to the Unincorporated area,.
- The **COMMUNITY** must establish the process and procedures that will be used to accomplish this community/county joint effort.
  - Resolutions Identify Core Group and the TIDES management group has and will continually present, update and monitor the Overlay Plan and process to maintain the quality of life for the Community.



- For example:
  - Decide who will be the CORE GROUP that will organize and coordinate the community overlay initiative.
    - Resolutions Identify Core Group
  - Determine how the community, property and business owners will be involved in developing the overlay and how information will be communicated to the community, property and business owners. This communication will also need to provide for information to flow back from the community to the core group.
    - Resolutions Identify Community Groups
  - Decide on the process that will be used to determine the level of community support for drafts and the final community overlay before submitting it for action by the BCC. This process will need to include how to gauge the support of major property owners such as the Tides Golf Course and the Millennium Park (Pinellas County).
    - Resolutions Identify Community Groups
- Using this process, draft a COMMUNITY VISION and provide the draft to County staff to review. See Proposed VISION Statement in Ordinance Form excerpt below:

***TIDES-MILLENNIUM COMMUNITY VISION** is of a beautiful, unique, environmentally sensitive and predominately family-oriented and nature focused residential area in the unincorporated area of South Coastal Pinellas County. The Community Overlay Planning Area borders the Boca Ciega Bay to the west, 74<sup>th</sup> Ave N to the north, 113<sup>th</sup> street to the east and 54<sup>th</sup> Ave. N. to the south. The geographic boundary of the overlay is located in the unincorporated area of Seminole and the policies of this area will be controlling only for the Unincorporated area (unless the City of Seminole or the Pinellas Planning Council should amend their Comprehensive Plans).*

*The area is predominately comprised of single-family homes with minimal institutional use. Large public accessible Non-Residential uses are Open Space Recreation Uses in the form of the counties coastal **Millennium Park**, a major environmental and bird observation amenity and the **TIDES Golf Course**, a historically active course with significant play. The area also includes offshore Islands, which have Coastal Preservation Land Use designations. All other non-residential uses are community institutional uses for church and community service functions. It is critical to this vision to understand that a neighborhood has its identity from the key assets of the area and the Tides Golf Course and Millennium Park are an indispensable part of this coastal community due to the environmental and natural green space protections they provide to various forms of wildlife, and as well from recreational use thereby directly adding to the quality of life for the residents of this community and visitors from the surrounding South County Coastal region.*

*This area is known for its quiet, scenic neighborhoods of unique residential coastal communities with limited public and semi public uses providing a safe and fun place to live and raise a family. The travel patterns of the area are predominantly on the boundaries and not though the community. Residents and guests walk the streets with pets and children and the only traffic impacts occur when the community gathers to pray or play.*

Then, develop draft objectives, policies and strategies that support this vision and provide these to the County for review and comment (you can refer to other visions and policies from other

communities if necessary for guidance, or meet with county staff as necessary to discuss). (Proposing Structure addresses the TIDES Area needs and is built on framework of East Lake Tarpon Overlay and is presented in Ordinance form)

**Note: STAFF INPUT CEASED AT THE RETIREMENT OF GORDON BEARDSLEY IN SPRING OF 2016**

- The County review would be conducted at the staff level, and staff may decide to discuss the draft proposal with the BCC if policy-level direction is needed before moving forward to preparing a final proposal.
  - Define When Desired to RECONVENE with Staff. Please advise us on this request.
  - We have made multiple submittal efforts to the Planning staff.
  - With this revised package and our TIDES history we should also present “one on one” to each commissioner as a interaction to brief the Commission and gain any insights they have to the TIDES area and its importance to the County.
  - We would like to recognize former Commissioner Barbara Sheen Todd for her support to the TIDES Group and the Neighborhood. We would welcome her endorsement and support to the BCC.
  
- Drafting the vision and the objectives, policies and strategies could be accomplished together rather than breaking it into two steps, depending upon how the process progresses and the dynamics of the community meetings.
  
- The Core Group submits the final proposed vision statement along with objectives, policies and strategies to the Community to determine if there is local support. Document an ACTION LIST of what has been done with the Neighborhood Parties to discuss or review and comment on policies. We will resend resolutions if needed.
  
- If the response is positive, the Community would transmit them to the County to start the process for review and adoption as part of the Pinellas County Comprehensive Plan (These approvals by resolution are in the Overlay record. Mr. Ron Stephens is VP and Secretary and he can supply additional copies of documentation as needed.)

The transmittal to the County **must document the level of support and the process that was used** to gauge the level of support. After transmittal to the County, the following steps would be taken:

**NEXT STEPS**

1. County staff would consider the proposal at a public meeting of the Planning Review Committee.  
*See Historic Time Line Attached – Work stopped at staff level- No PRC action*
2. A public hearing would be conducted by the Pinellas County Local Planning Agency, which would make a recommendation to the BCC on the proposed community overlay.  
*Await new schedule from Pinellas Planning Director*
3. The BCC would conduct a transmittal public hearing and, if the BCC agrees to proceed with the proposed amendment, transmit it to the Florida Department of Economic Opportunity and other state/regional agencies for review and comment.  
*Await new schedule from Pinellas Planning Director*

4. The BCC would conduct a second public hearing after receiving comments and take final action on the proposed Comprehensive Plan amendment to establish the community overlay.

Await new schedule from Pinellas Planning Director

5. If approved by the BCC, the Pinellas County Comprehensive Plan would be officially updated with the adopted vision, goals, objectives and policies.

Target dates in Staff Discussion and promote to BCC to support setting such dates.

Note: If requested, County staff is available to provide guidance to the Core Group and community in developing the overlay and, as time and workload allows, is available to attend community meetings associated with developing the overlay.

#### **TIDES NEEDED ACTION:**

1. Agree to formal schedule with Staff TO DO list from above process.
2. Would the County Commission, Staff/ Administration or LPA entertain a formal presentation? WE ARE AVAILABLE.

## ADDENDUM NO. II

### ORDINANCE FORMAT POLICY DOCUMENT

The Following Outline has been built on the East Lake Overlay Model and concludes with a Comprehensive Plan Policy Framework that is critical to the future of the Tides Community Neighborhood.

East Lake Overlay has the most aggressive adopted Overlay Policy Structure. Below is a draft version for discussion in an Ordinance format. While built on the East Lake ordinance structure, the content presents the TIDES Millennial Overlay draft Policy Document

#### ORDINANCE DRAFT

AN ORDINANCE OF THE COUNTY OF PINELLAS, AMENDING THE FUTURE LAND USE AND QUALITY COMMUNITIES ELEMENT OF THE PINELLAS COUNTY COMPREHENSIVE PLAN TO ADOPT TIDES-MILLENNIUM COMMUNITY OVERLAY PLAN; PROVIDING FOR OTHER MODIFICATIONS THAT MAY ARISE FROM REVIEW OF THIS ORDINANCE AT 'THE PUBLIC HEARING AND/OR WITH OTHER RESPONSIBLE PARTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR LOCATION OF RECORDS; ESTABLISHING AN EFFECTIVE DATE.

**WHEREAS**, Section 163, Part III Florida Statutes, establishes the Local Government Comprehensive Planning and Land Development Act; and

**WHEREAS**, Pinellas County adopted its Comprehensive Plan on August 8, 1989, and significantly amended the Plan on March 18, 2008, based on the adopted Evaluation and Appraisal Report and following review by the State Department of Community Affairs; and

**WHEREAS**, in 2008 the Comprehensive Plan was also amended to provide for the development and application of Community Overlays as a means of recognizing distinct communities in Pinellas County; and

**WHEREAS**, the Board of County Commissioners determined that Community Overlays allow citizens to better participate in planning for their future, as well as enabling the Board of County Commissioners to understand and better plan for a community by recognizing and understanding its existing and desired characteristics and features; and

**WHEREAS**, the Crystal Beach Community Overlay, the East Lake Tarpon Community Overlay, Alderman Rural Residential Community, the Tierra Verde

Community and the Ozona Community all requested, and were recognized with, a Community Overlay by the Board of County Commissioners; and

**WHEREAS**, the TIDES-MILLENNIUM COMMUNITY OVERLAY PLAN area has been subjected to major LAND USE & REZONING requests and it is the wish of the COMMUNITY to insert into the OVERLAY planning policy the “Pinellas Comprehensive Plan Policy Framework” flowing from the structure of the PLANNING TO STAY ELEMENT as the best set of real applied COMPREHENSIVE POLCY PLAN recommendations, and that such policy recommendations would be relevant and should be ***applied to any future land use plan amendment proposing to modify any Land Use Area of the TIDES overlay area***; and

**WHEREAS**, the TIDES-MILLENNIUM COMMUNITY OVERLAY PLAN (Supported by Mutual Neighborhood Resolutions) has requested, following a collaborative community process that included public meetings, news articles and presentations, to have the TIDES-MILLENNIUM COMMUNITY OVERLAY PLAN recognized in the Pinellas County Comprehensive Plan by adoption of a Community Overlay; and

**WHEREAS**, the recommendations from the Pinellas County Local Planning Agency have been received and considered; and

**WHEREAS**, Ordinance No. xx-xx

## **SECTION I: PURPOSE AND INTENT**

The purpose of this amendment is to add the **TIDES-MILLENNIUM COMMUNITY** Vision, Objective 1.22 and associated Policies 1.22.1, 1.22.2, 1.22.3, 1.22.4, 1.22.5, 1.22.6, 1.22.7, and 1.22.8, and Objective 1.23 and associated Policies 1.23.1 and 1.23.2 to the Future Land Use and Quality Communities Element of the Pinellas County Comprehensive Plan, and to adopt a Community Overlay for the **TIDES-MILLENNIUM COMMUNITY** that defines the boundary of, and recognizes the distinctive character of this local community. Renumbering is provided for as needed.

**SECTION 11: THE FUTURE LAND USE AND QUALITY COMMUNITIES ELEMENT OF THE PINELLAS COUNTY COMPREHENSIVE PLAN IS AMENDED BY ADDING THE TIDES-MILLENNIUM COMMUNITY OVERLAY PLAN VISION, OBJECTIVE 1.xx AND ASSOCIATED POLICIES 1.xx.1, 1.xx.2, 1.xx.3, 1.xx.4, 1.xx.5, 1.xx.6, 1.xx.7, and 1.xx.8, AND OBJECTIVE 1.xx AND ASSOCIATED POLICIES 1.xx.1 AND 1.xx.2 AS FOLLOWS:**

## VISION:

**TIDES-MILLENNIUM COMMUNITY** is a beautiful, unique, environmentally sensitive and predominately family-oriented and nature focused residential area in the unincorporated area of South Coastal Pinellas County. The Community Overlay Planning Area borders the Boca Ciega Bay to the west, 74<sup>th</sup> Ave N to the north, 113<sup>th</sup> street to the east and 54<sup>th</sup> Ave. N. to the south. The geographic boundary of the overlay is located in the unincorporated area of Seminole and the policies of this area will be controlling only for the Unincorporated area (unless the City of Seminole or the Pinellas Planning Council should amend their Comprehensive Plans).

The area is predominately comprised of single-family homes with minimal institutional use. Large public accessible Non-Residential uses are Open Space Recreation Uses in the form of the counties coastal **Millennium Park**, a major environmental and bird observation amenity and the **TIDES Golf Course**, a historically active course with significant play. The area also includes offshore Islands, which have Coastal Preservation Land Use designations. All other non-residential uses are community institutional uses for church and community service functions. It is critical to this vision to understand that a neighborhood has its identity from the key assets of the area and the Tides Golf Course and Millennium Park are an indispensable part of this coastal community due to the environmental and natural green space protections they provide to various forms of wildlife, and as well from recreational use thereby directly adding to the quality of life for the residents of this community and visitors from the surrounding South County Coastal region.

This area is known for its quiet, scenic neighborhoods of unique residential coastal communities with limited public and semi public uses providing a safe and fun place to live and raise a family. The travel patterns of the area are predominantly on the boundaries and not through the community. Residents and guests walk the streets with pets and children and the only traffic impacts occur when the community gathers to pray or play.

## TIDES-MILLENNIUM COMMUNITY OVERLAY

**LAND USE** - Objective 1.xx: The Board of County Commissioners will utilize a community overlay to define TIDES-MILLENNIUM Community Plan as a cohesive community and ***their decisions will support the local vision, community character and natural environment.*** Mainly recreational and semi public uses support the single-family lot residential character of the community. Maintaining the community's quality of life through the preservation of, low density residential character, protected coastal Islands and Flood Plains with expansive park and open spaces are to be protected before any regulatory changes or increased densities with traffic corridor intensification or internal flow modifications are considered.



Policy 1.xx.1: Land use, zoning and conditional use decisions by Pinellas County that affect neighborhood properties in the TIDES-MILLENNIUM Community planning area should be compatible with the established residential development pattern and active and passive open space recreation areas, allow for recreational birding, fishing and water activities consistent with the character of the TIDES-MILLENNIUM Community, and/or enhance the viability of community cultural facilities that serve the community and thereby the stability of the neighborhood.

Policy 1.xx.2: The quality of life and the residential character of the TIDES-MILLENNIUM Community will be protected by retaining all open space acreage on the Future Land Use Map (FLUM) for public use and access that serve the local county residents and visitors, by supporting local park and recreation, by Golf Course facility based recreation and community cultural gathering places, and by protecting the natural bay coastal environment and extensive flood plain areas that define- the coastal character of the community. The Tides Millennium Community will be protected by recognizing the fact that Pinellas County is a "built-out County" and that preserving the limited "green space" in the area of The Tides Millennium Community is of prime importance, supported by the Recreation Open Space Cultural Facilities Plan.

Policy 1.xx.3: All future development in TIDES-MILLENNIUM Community should be **compatible** with the community and fit within the community's characteristic land use types, density, height, and scale, especially the preservation of park, coastal flood plain and facility based Open Space recreation (Golf Course) land use categories. The boundaries within this overlay as well as the natural boundaries to the west will be preserved and enhanced as they provide environmental and resource-based recreation functions dependent on these scenic lands and the coastal regulation structure of the county protecting the coastal eco-system.

Policy 1.xx.4: Pinellas County will consider the residential and scenic uses of TIDES-MILLENNIUM Community when making land use, coastal modifications with fill, zoning and/or conditional use decisions in the community so as to preserve the recreation open space areas that helps define the quality of life in the overlay area. The Board of County Commissioners will recognize The Tides Golf Course for its historically integral part of the community as one of the oldest golf courses in Pinellas County as well as acknowledge the positive economic and tourism benefits that such uses that grow good will has created for Pinellas County over the years and was the guiding force for the 1985 BCC initiated downzoning of the Tides Course to protect the intent of the adopted Comprehensive Plan.

Policy 1.xx.5: Pinellas County will work to enhance strong communications between the County and TIDES-MILLENNIUM Community businesses, cultural

uses and engage residents, to share information of pending action that may impact the neighborhood.

Policy 1.xx.6: The natural areas within TIDES-MILLENNIUM Community will be protected or enhanced, as they provide coastal protection and resource-based recreation functions for the residents who choose to live near these scenic lands and visitors to Pinellas County for recreational golf. *(Could we insert wording to consider the new 'Open Space' zoning categories as they could help protect the intent of the FLUM)*

Policy 1.xx.7: Land use, zoning, conditional use and project development decisions by Pinellas County and other agencies will place a priority on the protection of natural land resources, Boca Ceiga Bay and estuary flood plain habitats and dependent species.

*NOTE MADE 8 INTO TWO Policy Points*

Policy 1.xx.8: The County will strive to **maintain the coastal and flood plain protection** designations within TIDES-MILLENNIUM Community and the Boca Ciega Bay area.

Policy 1.xx.9: Promote the continuation Ridge/ Duhme Road Scenic Corridor policy and consider this residential-oriented scenic corridor designation when evaluating land use and zoning changes within the corridors in the TIDES-MILLENNIUM Community area.

**Capital Improvement Plan-** Objective 1.xx: **Identify and prioritize infrastructure improvements** necessary to maintain public safety and quality of life of TIDES-MILLENNIUM Community.

Policy 1.xx.1: Pinellas County will identify infrastructure improvements that support the Vision for TIDES-MILLENNIUM Community and include them within the Capital Improvements Element of the Pinellas County Comprehensive Plan and/or in other applicable implementing plans or programs, if financially feasible.

Policy 1.xx.2: In determining priorities for infrastructure improvements especially in modifications to coastal floodplains and storm surge protection, Pinellas County will not worsen coastal residential risk or expand residential high hazard evacuation conditions but will consider input from the community.

SECTION III: THE FUTURE LAND USE MAP SERIES OF THE FUTURE LAND USE AND QUALITY COMMUNITIES ELEMENT OF THE PINELLAS COUNTY COMPREHENSIVE PLAN IS **AMENDED BY ADDING THE TIDES-MILLENNIUM COMMUNITY OVERLAY**, AS DEPICTED IN EXHIBIT A OF THIS ORDINANCE.

SECTION IV: OBJECTIVE 1.xx AND POLICIES 1.xx.1 AND 1.xx.2 OF THE FUTURE LAND USE AND QUALITY COMMUNITIES ELEMENT OF THE

PINELLAS COUNTY COMPREHENSIVE PLAN ARE RE-NUMBERED TO READ AS FOLLOWS: (Outside and in Overlay Area)

Objective 1.xx Pinellas County shall continue to pursue an overall beautification program for landscaping the County's roadway corridors including Duhme Road and shall provide funds for implementing this program.

Policy 1.xx.1 Pinellas County shall continue implementation of a landscaping program for County Parks, such as the Millennium Park, and the public rights-of-way and along the arterial and collector roadways of the County. This program shall use native and drought-tolerant trees and plants where feasible.

Policy 1.xx.2 Pinellas County's overall beautification program shall further other applicable objectives and policies of the Comprehensive Plan as they relate to such goals as water conservation and the use of native and drought-tolerant vegetation.

Policy 1.xx.3: The Tides Millennium Community respects law enforcement and holds law, order, and public safety in high regard. Neighborhood Watch and Emergency Preparedness events will be planned to educate and coordinate these activities with Pinellas County officials to foster a closer relationship.

Policy 1.xx.4: The Tides Millennium Community, to increase awareness of the Pinellas County residential code will plan educational events on this topic with Pinellas County officials.

**The TIDES Millennium Neighborhoods respectfully request the consideration of this draft and will work the Commission on modifications that are in keeping with the desired Neighborhood Overlay Support of the Pinellas County Comprehensive Plan**

**DRAFT OVERLAY POLICY**

**END**

## ADDENDUM NO. III

### SUPPORTING COMPREHENSIVE PLAN POLICY

SUPPORTING WEREAS No. 6 the TIDES MILLENIUM COMMUNITY requests a form of recognition be placed in the Overlay plan document as direct text or as an Appendix, so as to present the intricate supporting policies of the County Comprehensive Plan. This structure should be generic in that we have attempted to remove specific project references and make a policy summary guiding to any Overlay plan amendment proposal.

Such a presentation structure will:

1. Support the Tides Overlay Policies
2. Provide the benefiting Tides Overlay Citizens the understanding of Comprehensive Plan Policy support for the Overlay Plan and Process
3. Present a coherent review basis for any Overlay Area plan change proposal, and
4. Inform any party proposing a plan change the Plan Policies that support the TIDES MILLENIUM COMMUNITY OVERLAY.

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### COMPREHENSIVE PLAN OVERLAY POLICY SUPPORTING DOCUMENT:

#### LAND USE

##### INTRODUCTION AND OVERVIEW

Any Tides Millennium Overlay Area proposed land use change recommendation to the LPA shall have a comparative analysis of the goals, objectives, and policies of the Comprehensive Plan and present a context to review the details of the any proposed development.

The process shall include the following:

1. There must be agreement going beyond land use and zoning questions, to address impact issues that usually are taken up when zoning and land use issues are to be resolved. Especially uses that impact environmental, transportation, and coastal modifications impacting wetland and floodplain areas.
2. There are several policy questions which require a careful weighing of pros and cons in an effort to arrive at decisions that achieve the best overall expression of the public interest both to the Overlay area and the surrounding County areas which could have impacts countywide.
3. The role of the county planning staff is to assist the impacted overlay community with a process presenting professional perspectives to produce decisions that result in the most sustainable outcomes.
4. Of special importance is any request to amend the Future Land Use Map and Zoning Atlas that impact the islands, currently designated as *Preservation* with AL zoning, or the submerged lands in Boca Ciega Bay.
5. There are in the Overlay area properties that are currently subject to special exception granted as early as 1969 to allow use of a golf course. Also the approvals for Institutional



uses which may be amended and would impact or remove the special exceptions as approved.

6. Be cognoscente of historical policy efforts and that in 1985, a zoning amendment (Z-3468) was initiated by the County Planning Director to amend the zoning on the upland portion of the TIDES golf course property to *A-E, Agricultural Estate*, and to *AL, Aquatic Lands* on the islands and the submerged portion of the property located in Boca Ciega Bay. Future Land Use Map followed, reflecting the final recreation/open space purpose of the golf course. This is why the A-E zoning was applied to the property in 1985. This method of applying low density residential zoning categories under a Recreation/Open Space land use designation is not unusual (note that Boca Ciega Millennium Park carries the same zoning). In 2009, Pinellas County developed and adopted two new zoning districts for specific use on recreation and open space properties, **intending to gradually process amendments to County parklands and open space as time allowed.** The TIDES overlay area would respectfully like to be considered for application of the new districts to provide stability to the overlay area.
7. The importance of County's 187 acre Boca Ciega Millennium Park. This large Park, comprised of pine flatwoods, coastal oak hammock, mangrove swamp, salt marsh, bay head and wetlands, is recognized by the Florida Fish and Wildlife Conservation Commission as a "Great Florida Birding Trail" and also is recognized by the Florida Native Plant Society for its use of all-native landscaping. The Park is also the location of several important fossil finds. These unique asset strengths should elevate the importance of the Millennium Park area to the county.
8. The predominant southern edge of the Overlay area is coastal fringe characterized by mangroves, wetlands and salt marsh leading in to Boca Ciega Bay. Elevations increase significantly from the south to the north; and the existing residential development north of the golf course overlooks the Club House and Golf Course expanse below.

#### COMPREHENSIVE PLAN MAJOR SUPPORTIVE POLICY

The foremost consideration (as required by State law), is whether the any proposal for plan change is ultimately found to be consistent with the County's adopted Comprehensive Plan. At its most fundamental, staff must review any proposal against the policies in the Comprehensive Plan discouraging conversion of open space to other uses.

County's sustainability principles adopted in the Comprehensive Plan, as well as the goals, objectives and policies of several Elements of the Plan, including the *Recreation, Open Space and Culture Element*, the *Natural Resource Conservation and Management Element*, and the *Coastal Management Element*. Staff also has drawn from the *Recreation, Open Space and Culture System Master Plan* adopted by the Board in 2005; the purpose of that Plan is to develop a long-range (15-year) vision toward the provision of the quality facilities and experiences required by county residents – with the goal of creating a more livable and sustainable place to live, work and raise a family.

Seven major initiatives are identified in the ROCS Master Plan, which are designed to recognize the unique challenges of a highly urbanized, redevelopment-oriented county. They are:

1. Leading the Development of Outstanding Countywide Systems □
2. Increasing Protection of Regional Parks and Environmental Lands □
3. Strengthening Connections to the Water □
4. Providing an 'Urban Level' of Facility-Based Recreation in Unincorporated Areas

5. Promoting the Arts, Culture and Historic Preservation

6. Injecting Life, Color and Energy into Regional Parks and Environmental Lands

7. Promoting a Sustainability Ethic in Pinellas County

This planning effort laid the groundwork for major changes to the Comprehensive Plan in 2008, including the incorporation of specific policy language regarding conversion of recreation and open space lands (specifically referencing golf courses), concern over the impact of permanent loss of open spaces in a highly urbanized county, and the need to ensure adequate protection of the County's extensive system of regional resource-based parks and environmental lands from the threats of encroachment by incompatible uses. The initiatives in **bold** are particularly relevant to any proposed plan amendment proposal.

The **Recreation, Open Space and Culture Element** of the Comprehensive Plan (p. 16-3) acknowledges the following: "...the County is at a critical time. A large open space can look quite attractive, to both the private developer and the public developer, when there are a myriad of competing wants and needs – but very few areas are left to accommodate those wants and needs. Where can the County put a sports field or a community center? Where can the County put the fire station? Where can the high tech manufacturer expand his or her business? Where can the County put affordable housing? Where can the County increase density? Where can the road project go? The list is exhaustive. But there is one fundamental point that must be interjected into the scramble to find enough land for everybody – once open spaces and natural areas begin to get nibbled away, they will inevitably be lost, plain and simple, and they will not be coming back."

Moreover, the **Recreation, Open Space and Culture Element** acknowledges (p.16-4) that "parks and environmental lands are also impacted by what goes on around them," and "the management of the uses around the parks and environmental lands can be as important as management of what is inside, and informed citizens can perhaps be the best advocates for an 'ecosystem' approach based on the premise that contributory lands do not stop at the park or environmental land fence".

**Objective 1.4** of the **Recreation, Open Space and Culture Element** requires Pinellas County to "protect its open spaces and scenic vistas for their contributions to quality of life." Policy 1.4.3 states that "Pinellas County will encourage and incentivize the retention and reestablishment of open vistas, where appropriate, with particular emphasis on coastal areas and lands surrounding parks and environmental lands."

Much of the value of the golf course to wildlife is likely attributable to the complex interactions among the open space, the adjacent resource-based regional park and Boca Ciega Bay. **Policy 2.1.3** of the **Natural Resource Conservation and Management Element** requires that "the type, intensity and location of development be correlated inversely with important ecosystems and native wildlife species existing on each site." **Policy 3.1.2** further requires that Pinellas County "consider the impact of land use and zoning decisions...on environmental lands and resource-based parks, so that decisions do not inadvertently conflict with approved management plans or best management practices." In this Overlay Area Policy structure, the relationships between the park, the golf course, and the Bay provide a valuable ecosystem function in this part of the County.

**Goal 3** of the **Future Land Use and Quality Communities Element** requires a "balanced relationship between the natural environment and development," while **Objective 3.1** requires "application of the land development code [which includes zoning] in a manner that ensures compatibility between the Future Land Use Map, existing environmental conditions and constraints..."



**Objective 1.5** of the **Recreation, Open Space and Culture Element** is particularly significant to this review and states that *"in recognition of the limited amount of available open spaces remaining within the County, Pinellas County shall prohibit the conversion of dedicated recreation/open space land uses, and encourage the retention of non-dedicated recreation/open space lands."*

The initiative (from the 2005 Master Plan) to promote a sustainability ethic in planning and decision-making regarding recreation and open space lands provides the background to this Objective. In fact, the **Recreation, Open Space and Culture Element** (p. 16-9) states, *"Now, with the large land acquisitions completed, and a strong land management program in place, where does that leave Pinellas County?"*

*"Both the visual and environmental impact on the County as a whole needs to be considered should private golf courses gradually be replaced by development. The impact would be dramatic. In Pinellas County, golf courses often serve as major greenway connectors. One needs only to look at a land use map to see their functional relationship to existing environmental and preservation lands. Clearly, the preservation of recreation/open space land for a recreation or open space purpose (whether a golf course or not) is vital to a sustainable future (p 16-10)."*

Goal 4 and Objective 4.2 of the **Recreation, Open Space and Culture Element** support the provision of facility-based recreation opportunities by the private sector. In this case, the existing golf course, while under private ownership, serves a facility-based public recreation purpose for the golfing public and is accessible by the public.

Planning Sector 9 contains several regional County parks (Boca Ciega Millennium, Lake Seminole, Walsingham and War Veteran's) and other privately-owned golf courses. That there must be a compelling and beneficial reason to amend the Future Land Use Map and Zoning Atlas. The Comprehensive Plan, founded on the ethic of sustainability, requires any proposed amendment demonstrate an environmental, economic and community (social) value that outweighs the environmental, economic and community value of retaining the existing 96 acre tract as *Recreation/Open Space*. This is a critical question when the **Planning to Stay Element** of the Comprehensive Plan requires that the "ethic of sustainability" be "fundamental to every county policy, decision and plan." Principle 3 of **Planning to Stay** requires that *"the long term impacts of each policy decision will be evaluated to ensure that it does not compromise a sustainable future."*

Together, the park, the bay and the golf course constitute an ecological totality that promotes natural and social harmony and balance; i.e. a measure of sustainability. In sum, the sustainability of any proposed post-development scenario must be compared with the present ecological condition.

The Pinellas County Comprehensive Plan identifies the southern edge of the Tides Overlay area as being located in the coastal storm area (CSA) and the hurricane vulnerability zone. Since any property greater than 5 acres in size, would require a determination the exact location of the CSA, which would correspond at this location to the coastal high-hazard area (CHHA). NOTE this is the area expected to be inundated from a category one hurricane as reflected in the most recent *Regional Evacuation Study, Storm Tide Atlas* (Map 6).

**Objective 1.3** of the **Coastal Management Element** states that *"Pinellas County shall restrict development within the coastal storm area, and shall direct population concentrations out of the coastal storm area,"* The County has an existing public shelter deficit for evacuation levels D and E and in order to help address this deficiency **Policy 1.5.5** encourages alternatives to traditional public sheltering.

It should be noted, however, that under the current *Recreation/Open Space* land use designation, which has been in place on the Future Land Use Map for Hurricane Evacuation and Shelter,

Coastal Storm Area and 100 Year Floodplain close to 40 years, residential development is not allowed. Also there is ongoing Sea Level rise studies by the State, the Region and federal agencies that will be providing additional risk assessment issues which should be considered as relevant data to any amendment process affecting this coastal area.

A large portion of the TIDES Coastal area is also located within the 100-year floodplain (Map 7). Goal 6 of the **Natural Resource Conservation and Management Element** requires that floodplains be managed to "*maintain or enhance water quality, plant and animal diversity, and aquatic productivity, to protect natural flood storage value and purpose, and to protect the public and minimize property damage.*"

Policy 6.1.12 requires that during any site plan review process, assurances be provided that floodplain functions will not be adversely impacted by a development proposal. The current use of areas as a Park or a Golf Course has resulted in minimal development within the floodplain, with all structures being located out of the 100-year floodplain. This significantly limits any future flood damage in the area since only the golf course itself would sustain damage during a flood event. (Note: Comp plan Oriented Boca Ciega Bay has been listed by the Florida Department of Environmental Protection (FDEP) as being impaired for mercury; however, it does meet dissolved oxygen and nutrient standards as well as chlorophyll and seagrass targets.

The existing TIDES Area *Recreation/Open Space* land use designation does not permit residential development, and effectively "over-rides" the A-E, Agricultural Estate zoning designation underneath.

The existing *Recreation/Open Space* designation is also compatible with the neighborhood. In fact, it can be argued that it is *more* compatible as it generates less of a neighborhood traffic impact and it serves to preserve the scenic vista and does not disrupt the open spaces currently availed by wildlife.

The **Planning to Stay Element** (under "Sustain a Quality Urban Community and Promote Strong Neighborhoods and Diverse Housing Opportunities" – Principle 5) and Policy 1.2.4 of the **Future Land Use and Quality Communities Element** specifically recognize that successful neighborhoods are central to quality of life, and that redevelopment and infill must be compatible with, and support, the viability of existing neighborhoods.

The Millennium Park and the Tides golf course over the past four decades have come to be a defining feature of the community even though the golf course is not part of a master planned community.

Policy 1.17.2 states that Pinellas County will "...make decisions ...*that do not detract from the established community identity...*" The Board of County Commissioners' action in 1985 reflected this commitment.

Any proposed amendment must appreciate the full impact of any increase in traffic within an established neighborhood it may be necessary to consider not just the technical assessment of the impacts on level of service but also the relative magnitude of the changes with respect to the established existing traffic conditions.

As mentioned earlier, the Comprehensive Plan expresses the need to consider the potential impacts on County parks and environmental lands when evaluating proposed development adjacent to these resources.

Also research and consider Pinellas County Staff wildlife surveys which have observed a variety of foraging activities (by Roseate Spoonbills and American Wood storks, which are species of special concern, and by other non-listed wading birds, ducks and shorebirds). Bald Eagles were

also observed in the area prior to nesting season, although no active nesting is currently occurring on the site. Resident species observed using the coastal area properties as their primary habitat included songbirds, native aquatic turtles, river otters, and other small mammals.

The adjacent Boca Ciega Millennium Park harbors a wide variety of animals (including migratory bird species, songbirds, native mammals, and snakes) and plants. Boca Ciega Bay, which is an Outstanding Florida Water and state-designated aquatic preserve, serves as habitat for the Florida manatee.

Evaluate any change that would reduce open habitat available for wildlife utilization and generate negative impacts on the adjacent park ecology and habitat where any change areas about these resources. County Code would require removal of species such as Brazilian Pepper, the site is still heavily used by wildlife in its current condition.

Any proposal that would impact the loss of large areas of contiguous open space is significant in a built-out County. While not all the coastal areas of the overlay area are public parks, the Tides Golf Course is open to and accessible to the general public (rather than being purely a membership club). It provides access to golfing for the community and visitors alike. While operating as a golf course, its location adjacent to open water and to a resource-based county park has allowed it to contribute to the local coastal ecosystem in a way that is complementary to its surroundings and contributory to wildlife species.

The floodplain along the coast is typically designated as a reflection of susceptibility to coastal inundation. Additionally, there are a variety of soils onsite (Matlacha, St. Augustine, Immokalee, Myakka, Kesson and Urban Land).

#### **Complementary Policies of the Comprehensive Plan-**

The following excerpts from the **Comprehensive Plan** complement policies in the **Recreation, Open Space and Culture Element** and reinforce the purpose and value of retaining open space, floodplains, and wildlife habitat as those areas that are assets to the TIDES Overlay Area:

**Goal 2** of the **Natural Resource Conservation and Management Element** states that: *"Pinellas County will conserve, protect, restore and appropriately manage its natural systems and living resources to ensure the highest environmental quality possible."*

**Objective 2.1** requires that *"Pinellas County shall continue to implement management programs for the conservation of natural ecosystems and species of conservation concern (inclusive of native vegetative communities, terrestrial, marine, estuarine and aquatic ecosystems, and native wildlife species)."* **Policy 2.1.3.** states that *"Pinellas County shall continue to require that the type, intensity and location of development be correlated inversely with important ecosystems and native wildlife species existing on each site"*.

**Policy 3.1.2.** of the **Natural Resource Conservation and Management Element** requires Pinellas County to *"...consider the impact of land use and zoning decisions, and site plan decisions, on environmental lands and resource-based parks, so that decisions do not inadvertently conflict with approved management plans or best management practices."*

**Objective 6.2** of the **Natural Resource Conservation and Management Element** requires Pinellas County to *"...continue to maintain, and enhance where possible, the current balance of living resources in the floodplains of the County,"* while **Policy 6.2.1.** requires that the County *"...shall continue to prohibit dredging and filling or other development activities having significant long-term impacts on the ecological or hydrological function of the floodplains, except in cases clearly in the public interest."*



**Goal 4** of the **Coastal Management Element** states that *"land use designations and decisions in the Coastal Planning Area shall be consistent with the Future Land Use and Quality Communities Element .... and compatible with protection of the County's natural and historic resources, reflecting the need for long-term sustainability, continued economic vitality and consideration for the vulnerability of the county's coastal location."*

The Comprehensive Plan requires that proposals for change be viewed against the concepts, principles and policies of sustainability. The consequences of an amendment are to be considered to be long-lasting and far-reaching; the impact is local and it is regional. Any proposed change may in fact affect the Overlay local community, but also the larger open space inventory of the County and a regional environmental system. Any amendment change could be precedent-setting, and has the potential to become cumulative.

It is a concern that a precedent may be set by any conversion of large open space tracts that are recognized in the Comprehensive Plan (see Table 15 of the **Recreation, Open Space and Culture Element**) as contributory to the open space/green space network of the County. Should conversion rather than preservation of open space become customary, staff ventures that the cumulative result would be a negative impact to the natural environment of the County as a whole, leading to eventual undesirable economic and community consequences.

**From an economic perspective**, Policy 1.6.4. of the **Economic Element** states that *"redevelopment and urban infill projects shall be compatible with established neighborhoods and community character,"* and Policy 1.7.5. states that *"Pinellas County will promote and support local parks, recreation and cultural amenities, environmental lands, entertainment establishments, and retail goods and service providers as important quality of life components and workforce and business attractors."*

The **Planning to Stay Element** (p. 2-7) points out that *"the variety and quality of options afforded both residents and visitors for spending their leisure time can have a distinct impact on how people and businesses evaluate a community,"* and recognizes that *"the quality of life in Pinellas County and the metro area is in no small way measured by the community's investment in, and support for, the arts, culture, and leisure time activities."*

The **Planning to Stay Element** notes especially (p. 2-7) that *"of critical importance to the quality of life in Pinellas County and the region...is that the area's waters, beaches, and remaining open spaces remain available to the public and of sufficient quality to make public access worthwhile."* Principle 4 (from the *Governing Principles for a Sustainable Future* section of the **Planning to Stay Element**), under "Maintain a Competitive Edge by Promoting a Sustainable Economy" recognizes that *"a healthy environment supports healthy citizens and is integral to the long-term sustainability of the local economy"*.

There is undoubtedly a tangible economic benefit accruable to New Development being made possible in an established area such as the Tides Overlay area but, it is not clear that the specific gain offsets the loss of, and therefore economic value of, an irreplaceable asset in the County's open space inventory – particularly when that overall inventory is considered essential to local quality of life and serves as an amenity for the broader public.

**From a community perspective**, the scenic vista of a golf course has been a part of the community for almost four decades, and in fact the location of the golf course adjacent to Boca Ciega Bay, and the topographic elevations associated with the course, have afforded a unique vista for neighbors and the golfing public alike. That vista is accessible to the public from several street ends and the northern end of the course near the clubhouse. The opportunity to enjoy unobstructed scenery and vistas cannot be underestimated in a built out county.

As referenced earlier, the **Recreation, Open Space and Culture Element** states that *"both the visual and environmental impact on the County as a whole needs to be considered should private*

*golf courses gradually be replaced by development. The impact would be dramatic. In Pinellas County, golf courses often serve as major greenway connectors. One needs only to look at a land use map to see their functional relationship to existing environmental and preservation lands. Clearly, the preservation of recreation/open space land for a recreation or open space purpose (whether a golf course or not) is vital to a sustainable future."*

Fundamentally, any staff review or any amendment should be concerned that private (or public for that matter) Recreation/Open Space lands must not become generally viewed as "vacant" and developable land in our built-out County.

The policy direction placed into the Comprehensive Plan in 2008 was in response to this concern. It should also be recognized that the introduction of residential densities in an area where no population density has previously been permitted is incompatible with the County's objective to direct population concentrations away from vulnerable areas. With a flood insurance crisis and associated extreme weather and sea level rise concerns looming in the County, it should be difficult to support the introduction of population density into a coastal area such as the Tide Overlay area where residential development has not been permitted for 40 years.

Other relevant principles, goals, objectives and policies of the adopted Pinellas County Comprehensive Plan are included below.

#### **PLANNING TO STAY ELEMENT:**

The Ethic of Sustainability is Fundamental to Every County Policy, Decision and Plan

**Principle 1:** Sustainability is fundamental to every County policy, plan and decision, to ensure that our actions today do not compromise the quality of our future.

**Principle 3:** The long-term impacts of each policy decision will be evaluated to ensure that it does not compromise a sustainable future.

Sustain a Quality Urban Community and Promote Strong Neighborhoods and Diverse Housing Opportunities

**Principle 5:** Pinellas County recognizes that successful neighborhoods are central to the quality of life in Pinellas County. Therefore, redevelopment and urban infill should not compromise the integrity and viability of existing residential neighborhoods.

Protect and Enhance our Natural and Cultural Heritage

**Principle 1:** Pinellas County will continue its program, in cooperation with other local governments, agencies, and interested citizens, to establish an interconnected system of greenways and blueways throughout the County that includes public parks, natural systems, waterways, river and creek corridors, waterfront and shoreline properties, pedestrian/bicycle trails, and other open space areas. Making these open space and natural areas accessible to the public enables residents and visitors to experience nature within the urban environment.

#### **FUTURE LAND USE AND QUALITY COMMUNITIES ELEMENT:**

**GOAL 1:** The pattern of land use in Pinellas County shall provide a variety of urban environments to meet the needs of a diverse population and the local economy, conserve and limit demands on natural and economic resources to ensure sustainable built and natural environments, be in the overall public interest, and effectively serve the community and environmental needs of the population.

**1.2.3. Policy:** Plan designations on the Future Land Use Map shall be compatible with the natural environment, support facilities and services, and the land uses in the surrounding area.

**1.2.4. Policy:** Recognizing that successful neighborhoods are central to the quality of life in Pinellas County, redevelopment and urban infill development should be compatible with and support the integrity and viability of existing residential neighborhoods.

**1.17.2. Policy:** Consistent with the purpose and intent of the Comprehensive Plan, Section 134-82(c) of the Land Development Code, Pinellas County shall make decisions, both unincorporated and countywide, that do not detract from the established community identity and social support structure but, instead, serve to preserve and enhance that identity and structure.

**GOAL 3:** Pinellas County's Plan shall promote a balanced relationship between the natural environment and development.

**3.1. Objective:** The Pinellas County Land Development Code shall be applied in a manner that ensures compatibility between the Future Land Use Map, existing environmental conditions and constraints, as well as environmental management goals.

**3.2. Objective:** Pinellas County shall continue its proactive program for managing the impacts of development upon the County's natural resources (including wetlands, uplands, and the marine environment), and shall continue to ensure that these resources are successfully integrated into the urban environment such that the overall function and viability of these areas is maintained, or where practical, enhanced or restored.

**4.3.1. Policy:** In order to limit the exposure of residents and property to coastal hazards and not increase existing and planned demands on hurricane evacuation corridors and public shelters, the population density and development intensity within the coastal planning area shall be consistent with Objective 3.1 of the Coastal Management Element and the supporting policies.

**NATURAL RESOURCE CONSERVATION AND MANAGEMENT ELEMENT** □ **GOAL 2:** Pinellas County will conserve, protect, restore and appropriately manage its natural systems and living resources to ensure the highest environmental quality possible.

**2.1. Objective:** Pinellas County shall continue to implement management programs for the conservation of natural ecosystems and species of conservation concern (inclusive of native vegetative communities, terrestrial, marine, estuarine and aquatic ecosystems, and native wildlife species).

**2.1.2. Policy:** Pinellas County shall continue to enforce existing ordinances that protect and conserve native ecosystems and wildlife habitat, including habitat for species of conservation concern, from destruction by development activities.

**2.1.3. Policy:** Pinellas County shall continue to require that the type, intensity and location of development be correlated inversely with important ecosystems and native wildlife species existing on each site.

**3.1.2. Policy:** Pinellas County will consider the impact of land use and zoning decisions, and site plan decisions, on environmental lands and resource-based parks, so that decisions do not inadvertently conflict with approved management plans or best management practices.

**GOAL 6:** Pinellas County will preserve, protect, restore and manage the natural resources of its floodplains to maintain or enhance water quality, plant and animal diversity, and aquatic productivity, to protect the flood storage value and purpose, and to protect the public and minimize property damage.



**6.1. Objective:** Pinellas County shall continue to protect floodplains, flood ways, and all other natural areas having functional hydrological characteristics in order to minimize adverse impacts on the natural system, public safety and investment, and floodplain function and purpose.

**6.1.11. Policy:** A reduction in floodplain storage as a result of development or redevelopment activity will require comparable compensation.

**6.1.12. Policy:** As a part of the site plan review, for any project located within the floodplain, the development applicant will be required to provide adequate information to the County that demonstrates that floodplain functions will not be adversely impacted by the development, that adjacent properties will not be adversely affected, that the project is not inconsistent with an approved watershed plan, and that the offsite stormwater conveyance system will be able to accommodate flows from the project site.

**6.2. Objective:** Pinellas County shall continue to maintain, and enhance where possible, the current balance of living resources in the floodplains of the County.

**6.2.1. Policy:** The County shall continue to prohibit dredging and filling or other development activities having significant long-term impacts on the ecological or hydrological function of the floodplains, except in cases clearly in the public interest.

**6.2.6. Policy:** Wetlands and floodplains shall continue to be preserved through such means as a Preservation designation on the Future Land Use Map, and shall be protected as flood storage and conveyance systems, as well as wildlife and vegetative habitat.

**7.2.7. Policy:** Redevelopment activities within the unincorporated County will contribute to the overall environmental improvement of the local and regional watershed.

**COASTAL MANAGEMENT ELEMENT** **1.3. Objective:** Pinellas County shall restrict development within the coastal storm area, and shall direct population concentrations out of the coastal storm area.

**GOAL 4:** Land use designations and decisions in the coastal planning area shall be consistent with the Future Land Use and Quality Communities Element of this Comprehensive Plan and compatible with protection of the County's natural and historic resources, reflecting the need for long-term sustainability, continued economic vitality and consideration of the vulnerability of the County's coastal location.

**4.1. Objective:** The County shall give priority to water-dependent and water-related land uses in the coastal planning area, in a manner consistent with its goals of long-term sustainability, continued economic vitality, the preservation of recreational and commercial working waterfronts, and the protection of coastal and marine habitats and species.

**RECREATION, OPEN SPACE AND CULTURE ELEMENT** **1.4. Objective:** Pinellas County will protect its open spaces and scenic vistas for their contributions to quality of life.

**1.4.1. Policy:** Pinellas County shall continue to pursue incentives, enforce existing ordinances, and consider new regulations that require the provision of open space areas and retention of open vistas, where appropriate.

**1.4.3. Policy:** Pinellas County will encourage and incentivize the retention and re-establishment of open vistas, where appropriate, with particular emphasis on coastal areas and lands surrounding parks and environmental lands.

**1.5. Objective:** In recognition of the limited amount of available open space remaining within the

County, Pinellas County shall prohibit the conversion of dedicated recreation/open space land uses, and encourage the retention of non-dedicated recreation/open space land uses.

**GOAL 4:** To make urban levels of facility-based recreation more accessible to unincorporated residents when opportunities arise through financially-feasible strategies and beneficial partnerships.

**GOAL 6:** To practice and promote a sustainability ethic, ensuring that ecological limits and environmental impacts are considered in all decisions and designed affecting cultural, recreation and open space planning, and that all decisions and projects contribute incrementally to achieving and sustaining social equity, economic prosperity and a quality community for current and future residents.

#### **SURFACE WATER MANAGEMENT ELEMENT**

**GOAL 1:** Surface waters shall be managed to provide flood protection for the citizens of Pinellas County, to preserve and enhance the water quality of receiving water bodies, and for the purposes of natural resource protection, enhancement, and restoration, plant and wildlife diversity, and estuarine productivity.

**1.1.10. Policy:** Each stormwater management project design shall include an evaluation of the feasibility of, and give preference to, natural versus designed alternatives, or a combination thereof, where practical.

**1.8. Objective:** The surface waters of Pinellas County will be managed to preserve and enhance the water quality of receiving water bodies, and to protect, enhance and restore natural resources, plant and wildlife diversity and estuarine productivity.

**1.8.1. Policy:** Wetlands and floodplains shall continue to be preserved (e.g., by designating them as Preservation on the Future Land Use Map) and will be protected as conveyance systems, as wildlife and vegetative habitat, and as natural storage.

#### **ECONOMIC ELEMENT**

**1.7.5. Policy:** Pinellas County will promote and support local parks, recreation and cultural amenities, environmental lands, entertainment establishments, and retail goods and service providers as important quality of life components and workforce and business attractors.

*This concludes a policy summary of the Comprehensive Plan as it should be applied to any substantive amendment in the Tides Millenniums Overlay Area.*

#### **COMMENT**

*For any proposed amendment that moves beyond guiding policy areas presented above can be expanded addressing such comprehensive plan policy analysis areas needed.*

*This Document will present a supportive list of plan policies which protect the OVERLAY Neighborhood. We recognize this is "BELTS and "SUSPENDERS", but we fear staff historic actions in land use amendments declaring "Consistency" and "Compatibility" with the Plan in a broad brush statement that will encourage the loss of Community Neighborhood protections.*

## ADDENDUM NO. IV

### Staff Non Support of TIDES MELLENIUM OVERLAY

#### County Position From TIDES/Planning Meeting of April 7<sup>th</sup> 2016

The County Planning Staff recognized by **Gordon Beardsley** as the follow-on Staff to TIDES Overlay Process (Some involved to date)

**Jake Stowers**, Strategic Planning Administration

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**Renea Vincent**, Pinellas County Planning Director

PH: [727 464-8200](tel:7274648200).

email: [rvincent@pinellascounty.org](mailto:rvincent@pinellascounty.org)

**Scott Swearngen**, Planning Section Manager,

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email: [sswearngen@pinellascounty.org](mailto:sswearngen@pinellascounty.org).

TIDES Representatives met with Rene and Jake on our continued desire to establish an Overlay. We discussed Gordon's Response that were inconsistent with our last meeting were he represented a desire to move forward with a list of "tweaks". But that effort only caused us to fall back 12 months and not achieve support for the Tides OVERLAY Policy.

Comments (**RED**) by Gordon Beardsley that stopped the process:

**1. The Planning Department along with staff from the County Attorney's Office have reviewed the revised modifications to the proposed objectives and policies for the Tides-Millennium Community Overlay that were made after our meeting with you and community representatives on April 7th.**

**TIDES –**

**ACCOMPLISHED REVIEW BUT WITH NO SUPPORTIVE CONSENSUS!**

**2. In summary, the proposed objectives and policies, as modified, continue to require the retention and preservation of all open space acreage on the Future Land Use Map (FLUM) within the proposed Community Overlay, and more specifically that the open space acreage (some of which is under private ownership) be retained for public use and access that serves local residents.**

**TIDES – PER EVERY TIDES PROPOSAL " retention and preservation of all open space acreage " IS A PRIMARY OBJECTIVE OF THE OVERLAY. THE COUNTY HAS FAILED TO ACCOMPLISH ITS GOLF COURSE OPEN SPACE ANALYSIS AND DEVELOP A STRATEGY AS PROPOSED IN THE ADOPTED**



PLAN AND THE TIDES NEIGHBORHOOD IS LEFT TO ADVANCE THE ISSUE WITH OUT A COMPREHENSIVE STRATEGY AS DEFEINED IN THE COMP PLAN.

3. As noted in comments provided by the Planning Department in June 2015 and in March 2016, a proposed Community Overlay should address the broader community and not focus on retaining or preserving the current FLUM designation on a specific property – i.e. the Tides Golf Course.

TIDES – PER TIDES EVERY PROPOSAL “retention and preservation of all open space acreage ” IS A PRIMARY OBLECTIVE OF THE OVERLAY.

4. As noted in our prior comments, it is current County policy to encourage, not require, the retention of non-dedicated recreation/open space land uses (such as the Tides Golf Course).

TIDES – STAFF IGNORES THE LEADING POLICY SENTENCE. “Shall prohibit the conversion” (See below)

SELECTS POLICY “to encourage”, ADDS “not require”.

We find this position lacking in plan intended protection and lacks the many forms of “dedication”. (not defined in definitions)

1.Recreation Open Space Land Use Designation is “Dedicated” by decades of FLUM.

2. Existing Recreation Open Space designations have no allowable density.

3. Dedication of public open space recreational use occurred by Special Exception decades ago, creating public access to a recreation resource.

4.The special exception runs with the land and establishes a dedicated recreational open space use for the property and general public welfare.

5. The TIDES neighborhood has a record of Prior BCC initiated rezonings to protect established open space and protect the dedication(see record).

6. Property has been historically maintained and managed as a golf course open to the public, and it is further encumbered by designations for 100 and 500 year flood zone, Coastal High Hazard, designated drainage waterways, Jurisdictional Wetlands, Coastal Mangroves, Wild Life Habitat, Abutting Environmental Millennium Park.

Since the term “dedicated” is not defined in the Plain the TIDES community considers it a “dedicated use” and the historic owners have benefited from the Special Exception and the Recreation Open Space Land use activity.

STAFF ALSO DOES NOT RECOGNIZE THAT THE COUNTY HAS NOT DONE THE REQUIRED OPEN SPACE STUDY. NOTE THE COMP PLAN RECREATION OPEN SPACE POLICY STATES:

Objective:1.5

In recognition of the limited amount of available open space remaining within the County, Pinellas County shall prohibit the conversion of dedicated recreation/open space land uses, and encourage the retention of non-dedicated recreation/open space land uses.

By December 2012, Pinellas County will evaluate whether additional policies, regulations, and/or incentives are required to support the retention of recreation/open space land use designations on golf course properties, small parks and other similarly designated privately-owned open space properties.

**NOTE:** The comprehensive set of Open Space policies apply. Comp Plan Policy calls for STOPPING THE LOSS OF OPEN SPACE. The Golf Course use was established by Special Exception for decades is a “dedicated” public access recreation use by the property and the Special Exception.

**BCC NEEDS TO DIRECT STAFF TO PROTECT OPEN SPACE! THE RECOGNIZED PINELLAS 30,000 OPEN SPACE ACRES ARE A MIXTURE OF MANY PUBLIC AGENCY LANDS (generally not “dedicated” to the County) AND PRIVATE HOLDINGS THAT ALL HAVE PROTECTIVE FLUM STATUS. NOTE: OVER 5000 ACRES (16.6%) ARE IN PRIVATE OWNERSHIP.**

5. Some of the proposed Overlay policies, therefore, overstep the parameters established by the Board of County Commissioners for evaluating the future of recreation/open space acreage in unincorporated Pinellas County.

**TIDES – WE WILL NEED TO CALL FOR THE BCC TO AGGRESSIVELY DEFINE AND IMPLEMENT THE ADOPTED PLAN, OR ALLOW PINELLAS TO LOSE UP TO 16% OF OPEN SPACE LANDS.**

***SPECIAL NOTE: AN EARLIER STAFF 70+ page RECOMMENDATION OF DENIAL ON THE SUBJECT PROPERTY WAS NEVER CIRCULATED BECAUSE OF WITHDRAWAL BY THE APPLICANT. THE DOCUMENT CLEARLY DEFINES THE COMPLEXITY OPEN SPACE ISSUES.***

6. While we recognize the importance the community places on existing open space as shaping the community’s character, a community overlay must be consistent with the broad policy framework established in the Comprehensive Plan.

**TIDES – THE COMPREHENSIVE PLAN HAS THOUSANDS OF ACRES OF PRIVATE GOLF COURSES (some 17 Unincorporated). IS IT THE COUNTY POLICY TO NOT PROTECT THE OPEN SPACE RESOURCES? THE OPEN SPACE PLAN STUDY (NOT ACCOMPLISHED) SHOULD DEFINE THE PUBLIC AND PRIVATE OPTIONS TO MAINTAIN PINELLAS “LOS” IN OPEN SPACE.**

7. While there are other changes to the objectives and policies that County staff would recommend, the concern discussed above remains the primary reason the Planning Department cannot support the proposal as currently drafted.

**TIDES – THE PLANNING STAFF “CANNOT SUPPORT THE PROPOSAL”. WE NEED BCC DIRECTION AFTER YEARS OF EFFORT WITH NO STAFF**



**CONSENSUS. THIS MEANS PINELLAS NEIGHBORHOODS WITH OPEN SPACE ASSETS (MAINLY GOLF COURSES) DO NOT HAVE TANGIBLE PROTECTION THROUGH THE ADOPTED COMP PLAN.**

8. As I mentioned earlier, I am retiring and my last day in the office is May 6th (today). Any future correspondence regarding the proposed Overlay should be directed to Renea Vincent, Pinellas County Planning Director, at [rvincent@pinellascounty.org](mailto:rvincent@pinellascounty.org) or Scott Swearengen, Planning Section Manager, at [sswearengen@pinellascounty.org](mailto:sswearengen@pinellascounty.org). They can both be reached at [727 464-8200](tel:7274648200).

**TIDES –**

**GIVEN THIS OVERLAY POSITION BY THE PLANNING STAFF, THE NEXT STEP IS TO GO DIRECTLY TO THE BOARD of COMMISSIONERS & ADMINISTRATION.**

**We have been patiently working with the Planning Department presenting draft after draft to them, along with multiple HOA Resolutions for the Overlay Plan.**



## ADDENDUM NO. V

### **Legal Review of the Controlling Florida Law on Legislative Status of Comprehensive Plan Amendments**

**The Overlay requested by Applicant seeks an amendment to the Comprehensive Plan, which is legislative and not Quasi-Judicial.**

The action sought by the Applicant is legislative and subject to the "fairly debatable" standard of review. This should not change, irrespective of any actual or contemplated action by the property owner to seek rezoning as part of any proposed development plan.

The Applicant and its supporters, affected communities, and neighborhoods wish to be able to speak freely to their elected representatives freely and not to be locked out by any claim that this action or any forthcoming development driven actions by others convert the matter to being Quasi-Judicial, or through association with a Quasi-Judicial action subverts the Applicant and others from continuing to pursue their Legislative efforts.

The applicable law on this topic is set forth in the Florida Supreme Court decision of Martin County vs Yusem (690 So.2d 1288) of March 27, 1977.

A copy of the Yusem case is attached. This case remains the law in the State of Florida through the date hereof.

W. Kimpton, Esq.

KeyCite Yellow Flag - Negative Treatment  
Distinguished by Town of Ponce Inlet v. Pacetta, LLC, Fla.App. 5 Dist.,  
May 20, 2011

690 So.2d 1288  
Supreme Court of Florida.

MARTIN COUNTY, Petitioner,  
v.  
Melvyn R. YUSEM, Respondent.

No. 87078.  
|  
March 27, 1997.

### Synopsis

Landowner brought action challenging county's denial of proposed rezoning of his property. The Circuit Court, Martin County, Robert Makemson, J., ruled in favor of landowner. County appealed. The Fourth District Court of Appeal, 664 So.2d 976, reversed and certified question. The Supreme Court, Wells, J., held that amendments to comprehensive land use plans are legislative decisions that are subject to "fairly debatable" standard of review.

Approved in part; quashed and remanded in part.

West Headnotes (3)

<sup>[1]</sup> **Zoning and Planning**  
↔ Modification or amendment; rezoning

Amendments to comprehensive land use plans are legislative decisions that are subject to "fairly debatable" standard of review, even when amendments to plans are being sought as part of rezoning application in respect to only one piece of property. West's F.S.A. § 163.3184.

27 Cases that cite this headnote

<sup>[2]</sup> **Zoning and Planning**  
↔ Exhaustion of administrative remedies;

primary jurisdiction

Landowner was not required to exhaust administrative remedies prior to filing judicial action to challenge county's decision to deny requested amendment to comprehensive land use plan. West's F.S.A. §§ 120.52(1)(c), 163.3184.

20 Cases that cite this headnote

<sup>[3]</sup> **Zoning and Planning**  
↔ Regulations in general

"Fairly debatable" standard of review is a highly deferential standard requiring approval of land use planning action if reasonable persons could differ as to its propriety.

18 Cases that cite this headnote

### Attorneys and Law Firms

\*1289 Robert D. Guthrie, Martin County Attorney and Gary K. Oldehoff, Assistant County Attorney, Stuart, for Petitioner.

Thomas E. Warner and Tim B. Wright of Warner, Fox, Seeley, Dungey & Sweet, P.A., Stuart, for Respondent.

Thomas G. Pelham and Shaw P. Stiller of Apgar & Pelham, Tallahassee; and Jane Hayman, Deputy General Counsel, Florida League of Cities, Inc., Tallahassee, for Florida League of Cities, Inc., Amicus Curiae.

Sherry Spiers, Assistant General Counsel, and Terrell K. Arline, Legal Director, Tallahassee, for Department of Community Affairs and 1000 Friends of Florida, Inc., Amici Curiae.

Lonnie N. Groot and Robert A. McMillan, Sanford; and Donna L. McIntosh of Stenstrom, McIntosh, Colbert, Whigham & Simmons, P.A., Sanford, for Seminole County and Seminole County Council of Local Governments, Amici Curiae.

John J. Copelan, Jr., Broward County Attorney; and Anthony C. Musto and Tamara A. McNierney, Assistant County Attorneys, Fort Lauderdale, for Broward County, Amicus Curiae.

Robert A. Ginsburg, Dade County Attorney; and Joni Armstrong Coffey and Robert L. Krawcheck, Assistant County Attorneys, Miami, for Metropolitan Dade County, Amicus Curiae.

Michael L. Rosen, Executive Director, Florida Legal Foundation, Inc., Tallahassee, for Florida Legal Foundation, Inc., Amicus Curiae.

James S. Burling and Stephen E. Abraham, Sacramento, CA, for Pacific Legal Foundation, Amicus Curiae.

### Opinion

WELLS, Justice.

We have for review a decision addressing the following question certified to be of great public importance:

CAN A REZONING DECISION WHICH HAS LIMITED IMPACT UNDER *SNYDER*, BUT DOES REQUIRE AN AMENDMENT OF THE COMPREHENSIVE LAND USE PLAN, STILL BE A QUASI-JUDICIAL DECISION SUBJECT TO STRICT SCRUTINY REVIEW?

*Martin County v. Yusem*, 664 So.2d 976, 982 (Fla. 4th DCA 1995) (on motions for rehearing and certification). We have jurisdiction. Art. V, § 3(b)(4), Fla. Const. We answer the certified question in the negative and hold that amendments to a comprehensive land use plan which was adopted pursuant to chapter 163, Florida Statutes, are legislative decisions subject to the "fairly debatable" standard of review. Accordingly, we quash in part the decision of the district court to the extent that it is inconsistent with the following analysis. In reaching our conclusion, we have been greatly aided by Judge Pariente's well-reasoned dissenting opinion. We approve in part the district court's decision to the extent that it permitted Yusem to file a new application for amendment without prejudice and remand to the trial court for consideration of claims which have not been considered.

Melvyn Yusem owns fifty-four acres of land in Martin County. In 1982, Martin County (County) adopted by ordinance a comprehensive plan for land use planning in the county. Subsequently, in 1990, the County replaced its earlier plan by adopting a comprehensive land use plan (Plan) pursuant to the 1985 Local Government Comprehensive Planning Act. See generally § 163.3184, Fla. Stat. (1985). Under the Plan, Yusem's fifty-four acres are part of a \*1290 900-acre tract which was included within the Plan's Primary Urban Service District (PUSD). Although up to two units per acre were allowed in the PUSD under the Plan, the future land use map, a component of the Plan, restricted this 900-acre tract to only one residential unit per two acres. See § 163.3177(6)(a), Fla. Stat. (1989).

Yusem requested an amendment to the future land use map for his property from "Rural Density," which allows development of .5 units per acre, to "Estate Density," which allows development of up to two units per acre. In conjunction with this amendment, Yusem requested a rezoning of his property from "A-1" (agricultural) to "Planned Unit Development" (residential).<sup>1</sup>

Yusem advocated adoption of the proposal at a hearing before the Martin County Board of County Commissioners (Board). After considering the different arguments on the proposal, a majority of the Board, by a vote of three to two, voted to begin the amendment-adoption process by transmitting a copy of the complete proposed amendment to the Department of Community Affairs (Department). See § 163.3184, Fla. Stat. (1989).<sup>2</sup> The Department analyzed the data and analysis received and recommended that the County either abandon the amendment or revise the data and analysis to demonstrate that the proposed amendment is a logical extension of a more intensive land use in the nearby area.

Thereafter, the Board held another hearing on the proposed amendment. Other than the Department's report, no new evidence was presented. Rather than resubmitting the proposal with data and analysis supporting it, the Board voted three to two to deny Yusem's proposal.

Yusem then sought relief in the circuit court. Yusem first filed a petition for certiorari but voluntarily dismissed it, choosing instead to file a complaint for declaratory and injunctive relief. In finding in Yusem's favor, the trial court relied upon *Snyder v. Board of County Commissioners*, 595 So.2d 65 (Fla. 5th DCA 1991) (*Snyder I*), quashed, 627 So.2d 469 (Fla. 1993). The trial court noted that *Snyder I* involved a rezoning question;

however, it found the basic rationale of that case to apply in the plan-amendment context. The trial court then found that when a planning decision has an impact on a limited number of persons or property or identifiable parties and is contingent on a fact or facts, the action is quasi-judicial. Consequently, the trial court framed the issue in the case as follows: "whether or not the requested land use amendment is consistent with the Martin County Comprehensive Plan and whether or not the requested land use amendment is a logical and consistent extension of present uses in the general area of Plaintiff's land." Since resolution of the issue was contingent upon facts, the court applied the strict-scrutiny standard of review and concluded that the County improperly denied Yusem's requested amendment.

On appeal, the Fourth District reversed the trial court's ruling based upon a determination that the court was without jurisdiction to decide the merits of the action. However, in its opinion, the panel divided, with the majority agreeing that the County's decision was subject to a strict-scrutiny standard of review. *Martin County v. Yusem*, 664 So.2d 976 (Fla. 4th DCA 1995). The district court relied upon our decision in *Board of County Commissioners v. Snyder*, 627 So.2d 469 (Fla.1993) (*Snyder II*), in which this Court held that rezoning actions that have a limited impact on the public and that can be seen as policy applications, rather than policy setting, are quasi-judicial decisions. The district court, similar to the trial court, concluded that the County's action was essentially a quasi-judicial rezoning decision because to increase the density on Yusem's fifty-four acres would have a limited impact on the public.

\*1291 The district court distinguished this case from *Section 28 Partnership, Ltd. v. Martin County*, 642 So.2d 609, 612 (Fla. 4th DCA 1994), *review denied*, 654 So.2d 920 (Fla.1995). In *Section 28 Partnership*, the district court found the denial of a comprehensive plan amendment involving the development of a 638-acre tract was legislative. In contrast to Yusem's requested amendment, the tract which was the subject of the proposed amendment in *Section 28 Partnership* was surrounded by pristine land (it was situated at the headwaters of the Loxahatchee River and was bordered on two sides by the Jonathan Dickinson State Park), and the amendment would have created a new category of property under the Plan. *Yusem*, 664 So.2d at 977.

Further, the district court found support for its decision in *City of Melbourne v. Puma*, 630 So.2d 1097 (Fla.1994). In *Puma*, we accepted jurisdiction over the Fifth District's decision involving a rezoning from a low-density residential to a commercial classification. See *Yusem*, 664

So.2d at 977-78. We remanded *Puma* for further consideration in light of our opinion in *Snyder II. Puma*, 630 So.2d at 1097. Neither our opinion nor the Fifth District's opinion in *Puma* set forth the fact that the rezoning in that case required an amendment to the comprehensive land use plan.<sup>3</sup> However, because the rezoning in *Puma* did require an amendment to the comprehensive plan, the district court in *Yusem* found that this Court's resolution of *Puma* was consistent with its conclusion that amendments to comprehensive plans are not necessarily legislative. *Yusem*, 664 So.2d at 978.<sup>4</sup> The district court's majority found support for its logic in respect to the meaning of our *Puma* decision in an article by Thomas G. Pelham. See Thomas G. Pelham, *Quasi-Judicial Rezoning: A Commentary on the Snyder Decision and the Consistency Requirement*, 9 J. Land Use & Envtl. L. 243 (1994).

Judge Pariente dissented, writing that the adoption of a comprehensive land use plan, which required the county to determine whether it should alter its overall plan for managed growth, local services, and capital expenditures as embodied in the future land use map, was a legislative act; therefore, decisions concerning the amendment of a comprehensive plan should similarly be treated as legislative acts. 664 So.2d at 979. Further, Judge Pariente distinguished this case from our decision in *Snyder*, in which we found the denial of a request to rezone a particular parcel of land to a designation which was consistent with the policies of the plan was a quasi-judicial decision, because the rezoning request in this case was inconsistent with the plan and required a plan amendment. Judge Pariente noted that a bright-line rule finding that all plan amendments were legislative acts would provide clarity to the procedures involved in this otherwise confusing area of the law. *Id.* at 982. Therefore, Judge Pariente would have found that the trial court should have reviewed the county's action in a trial de novo under the deferential "fairly debatable" standard of review. *Id.*

\*1292 On motion for rehearing and clarification, the court certified the foregoing question, asking us to clarify whether a rezoning decision which has a limited impact under *Snyder II* but requires an amendment to the comprehensive plan is still a quasi-judicial decision subject to strict-scrutiny review. *Yusem*, 664 So.2d at 982 (on motions for rehearing and certification).

To resolve this question, the County advocates that we adopt the dissent's view and find that amendments to a comprehensive plan are legislative decisions subject to a fairly debatable standard of review. The County notes that this proceeding was clearly a legislative proceeding

because Yusem's request was to change, rather than apply, the existing plan. It is on this basis that the County distinguishes the case involving a request for a plan amendment from *Snyder II* involving a request for rezoning.

Yusem responds by arguing that the hearing before the Board was clearly quasi-judicial because during the hearing, he presented detailed evidence in support of his request; the hearing was directed at one specific property owner and one 54-acre parcel of land; and the County reviewed the facts and applied the standards contained in the plan. Yusem argues that there is no logical or factual reason to distinguish this case from *Snyder II*, and the trial court should strictly scrutinize this plan-amendment proceeding, which also involved a rezoning request. Several other parties have submitted amicus briefs in support of their positions.

Chapter 163, part II, Florida Statutes (1989) (Local Government Comprehensive Planning and Land Development Regulation Act) (the Act), was intended to enhance present advantages and encourage appropriate uses of land and resources. See § 163.3161(3), Fla. Stat. (1989). In furtherance of these goals, the Act requires each local government to adopt a comprehensive plan to prescribe the "principles, guidelines, and standards for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area." § 163.3177(1), Fla. Stat. (1989); see *Snyder II*, at 475 (stating that a comprehensive plan is intended to provide for the future use of land, which contemplates a gradual and ordered growth). A comprehensive plan includes several elements including a future land use element. See § 163.3177, Fla. Stat. (1989). With reference to this element, we have noted:

[T]he future land use plan element of the local plan must contain both a future land use map and goals, policies, and measurable objectives to guide future land use decisions. This plan element must designate the "proposed future general distribution, location, and extent of the uses of land" for various purposes. *Id.*, § 163.3177(6)(a). It must include standards to be utilized in the control and distribution of densities and intensities of development. In addition, the future land use plan must be based on adequate data and analysis concerning the local jurisdiction, including the projected population, the amount of land needed to accommodate the estimated population, the availability of public services and facilities, and the character of undeveloped land. *Id.*, § 163.3177(6)(a).

*Snyder II*, at 473.

In *Snyder II*, in the rezoning context, we distinguished legislative actions which result in the formulation of a general rule of policy and quasi-judicial actions which result in the application of a general rule of policy. *Id.* at 474. We recognized that comprehensive rezonings which affect a large portion of the public are legislative determinations; however, we also recognized that rezonings which impact a limited number of persons and in which the decision is contingent upon evidence presented at a hearing are quasi-judicial proceedings properly reviewable by petition for certiorari. *Id.* at 474-75. In reaching this decision, we stressed that in a quasi-judicial rezoning proceeding, the landowner has the burden of proving that the proposal is *consistent with the comprehensive plan* and complies with all procedural requirements of the zoning ordinance before the burden shifts to the government to demonstrate that maintaining the existing zoning classification accomplishes a legitimate \*1293 public purpose. *Id.* at 476.<sup>5</sup> In *Snyder II*, we plainly did not deal with the issue of the appropriate standard of review for amendments to a comprehensive land use plan.

Thereafter, we issued our brief opinion in *Puma*. As discussed above, in *Puma*, we accepted jurisdiction over the Fifth District's decision concerning a rezoning from a low density residential to a commercial classification. Although the rezoning in *Puma* required an amendment to the comprehensive land use plan, the amendment to the plan was not the focus of our decision in *Puma*. We recognize that our remand in *Puma* for further consideration in light of our opinion in *Snyder II* could logically be read as did the majority in *Yusem* since the underlying fact that the rezoning required an amendment to the comprehensive land use plan was not discussed in the opinion.

We also recognize that subsequent to *Snyder* and *Puma*, several district courts have employed a functional analysis in determining whether a plan amendment is either quasi-judicial or legislative. In some cases, the district courts have concluded that amendments to comprehensive plans are legislative decisions subject to the fairly debatable rule. See, e.g., *City Envtl. Servs. Landfill, Inc. v. Holmes County*, 677 So.2d 1327 (Fla. 1st DCA 1996) (county's decision to deny amendment creating new land use classification based on environmental risks, traffic, and road repair was legislative); *Martin County v. Section 28 Partnership, Ltd.*, 676 So.2d 532 (Fla. 4th DCA), review denied, 686 So.2d 581 (Fla.1996); *Board of County Comm'rs v. Karp*, 662 So.2d 718 (Fla. 2d DCA 1995) (finding amendment to comprehensive plan for 5.5-mile corridor affecting 179 acres and 48 parcels was legislative); *Section 28 Partnership, Ltd. v. Martin*



*County*, 642 So.2d 609 (Fla. 4th DCA 1994) (finding plan amendment requiring creation of new classification of property allowing development of land near headwaters of Loxahatchee River and state park was legislative), *review denied*, 654 So.2d 920 (Fla.1995). Whereas in this case, the trial court and the district court used a functional analysis to reach the opposite conclusion: that an amendment to the comprehensive plan was a quasi-judicial decision subject to strict-scrutiny review. The district court concluded that the decision by the County should be functionally viewed as having limited impact on the public since the Board hearing addressed the change in land use designation for a particular piece of property.

<sup>11</sup> While we continue to adhere to our analysis in *Snyder* with respect to the type of rezonings at issue in that case, we do not extend that analysis or endorse a functional, fact-intensive approach to determining whether amendments to local comprehensive land use plans are legislative decisions. Rather, we expressly conclude that amendments to comprehensive land use plans are legislative decisions. This conclusion is not affected by the fact that the amendments to comprehensive land use plans are being sought as part of a rezoning application in respect to only one piece of property.<sup>6</sup>

As this Court noted in *Snyder II*, a comprehensive land use plan must be based upon adequate data and analysis in providing for gradual and ordered growth in the future use of land. *Snyder II*, 627 So.2d at 475; *see also Machado v. Musgrove*, 519 So.2d 629 (Fla. 3d DCA 1987) (finding that a local land use plan is like a constitution for all future development within the governmental boundary). Consequently, we agree with Judge Pariente's dissent below that *Snyder*'s functional analysis in rezoning cases is not applicable \*1294 in comprehensive plan amendment cases:

[I]n contrast to the rezonings at issue in *Snyder*, the review of the proposed amendment here required the County to engage in policy reformulation of its comprehensive plan and to determine whether it now desired to retreat from the policies embodied in its future land use map for the orderly development of the County's future growth. The county was required to evaluate the likely impact such amendment would have on the county's provision of

local services, capital expenditures, and its overall plan for growth and future development of the surrounding area. The decision whether to allow the proposed amendment to the land use plan to proceed to the DCA for its review and then whether to adopt the amendment involved considerations well beyond the landowner's 54 acres.

*Yusem*, at 981 (Pariente, J., dissenting). We also agree with Judge Stone's concurring opinion in *Section 28 Partnership* that there is no reason to treat a county's decision rejecting a proposed modification of a previously adopted land use plan as any less legislative in nature than the decision initially adopting the plan. *See Section 28 Partnership*, 642 So.2d at 613 (Stone, J., concurring).

Our conclusion that amendments to comprehensive plans are legislative decisions is further supported by the procedures for effecting such amendments under the Act. Amendments to comprehensive plans are evaluated on several levels of government to ensure consistency with the Act and to provide ordered development. *See* § 163.3184(8), Fla. Stat.

The Act provides for a two-stage process for amending a comprehensive plan: transmittal and adoption. In the first stage, the local government determines whether to transmit the proposed amendment to the Department for further review. *See* § 163.3184(3) Fla. Stat. If the local government transmits the proposed amendment, the process moves into the second stage. The Department, after receiving the amendment, provides the local government with its objections, recommendations for modifications, and comments of any other regional agencies. *See* § 163.3184(4), Fla. Stat. At this point, the local government has three options: (1) adopt the amendment; (2) adopt the amendment with changes; or (3) not adopt the amendment. *See* § 163.3184(7), Fla. Stat. (1989).<sup>7</sup>

Upon adoption of the amendment by the local government, the Department again reviews the amendment. *See* § 163.3184(8), Fla. Stat. (1989). After this review and an administrative hearing, if an amendment is determined not to be in compliance with the Act, the State Comprehensive Plan, and the Department's minimum criteria rule, *see* § 163.3184(1)(b), Fla. Stat., then the matter is referred to the Administration Commission. *See* § 163.3184(9)(b),

(10)(b), Fla. Stat. The Administration Commission, composed of the Governor and the Cabinet, see § 163.3164(1), Fla. Stat., is then empowered to levy sanctions against a local government, including directing state agencies not to provide the local government with funding for future projects. See § 163.3184(11)(a), Fla. Stat. (1989).

This integrated review process ensures that the policies and goals of the Act are followed. The strict oversight on the several levels of government to further the goals of the Act is evidence that when a local government is amending its comprehensive plan, it is engaging in a policy decision. This is in contrast to a rezoning proceeding, which is only evaluated on the local level. See *Snyder*.

Moreover, our conclusion today that amendments to a comprehensive plan are legislative decisions subject to the fairly debatable rule is consistent with section 163.3184, Florida Statutes (1989). As noted \*1295 above, once a local government decides to adopt an amendment, the Department issues a notice of intent to find whether an amendment is in compliance with state law, see § 163.3184(9)(a), Fla. Stat., or is not compliance with state law, see § 163.3184(10)(a), Fla. Stat. In this proceeding, the determination of compliance is made using the fairly debatable rule. *Id.* By our decision today, we make clear that this standard applies at any stage in such proceedings.

Additionally, our decision today will further the proper administration of justice in Florida. Currently in Florida, there is much confusion surrounding the proper procedural vehicle for challenging a local government's decision concerning an amendment to a comprehensive plan. See, e.g., *Yusem*; *Martin County v. Section 28 Partnership, Ltd.*, 676 So.2d 532 (Fla. 4th DCA 1996) (original action); *Section 28 Partnership, Ltd. v. Martin County*, 642 So.2d 609 (Fla. 4th DCA 1994) (petition for certiorari). By our holding that all amendments to comprehensive plans are legislative activities subject to the fairly debatable standard, parties will know to file such challenges as original actions in the circuit court. See *Hirt v. Polk County Board of County Comm'rs*, 578 So.2d 415, 416 (Fla. 2d DCA 1991).

<sup>121</sup> One of the amicus briefs suggests that the trial court did not properly have subject-matter jurisdiction in the case, arguing that section 163.3184(13), Florida Statutes (1989) ("Exclusive Proceedings"), provides that proceedings under that section are the sole method for determining whether a plan amendment is in compliance with the Act. Accordingly, it is argued that Yusem should have pursued the administrative procedures outlined in section 163.3184, Florida Statutes, prior to initiating court

review. See *City of Jacksonville v. Wynn*, 650 So.2d 182 (Fla. 1st DCA 1995). However, we note that section 163.3184 only expressly prescribes administrative proceedings to review decisions of the Department. See § 163.3184(9)(a), (10)(a), Fla. Stat. (1989). The Department is an agency as defined in section 120.52, Florida Statutes (1995), and its actions as an agency are subject to the Administrative Procedure Act. However, a county's actions are only subject to the Administrative Procedure Act to the extent the county is expressly made subject to the Act. See § 120.52(1)(c), Fla. Stat. Since section 163.3184 does not expressly subject a county's decision to deny a requested amendment to the comprehensive plan as "agency action," Yusem was not required to exhaust any additional administrative remedies prior to the filing of an action in the circuit court. It is on this basis that we distinguish *Wynn*, because in that case the parties were seeking review of the decision of the Department to find Jacksonville's comprehensive plan in compliance with the Growth Management Act.

<sup>131</sup> Last, we note the following. The fairly debatable standard of review is a highly deferential standard requiring approval of a planning action if reasonable persons could differ as to its propriety. See *B & H Travel Corp. v. State Dep't of Community Affairs*, 602 So.2d 1362 (Fla. 1st DCA 1992). In other words, "[a]n ordinance may be said to be fairly debatable when for any reason it is open to dispute or controversy on grounds that make sense or point to a logical deduction that in no way involves its constitutional validity." *City of Miami Beach v. Lachman*, 71 So.2d 148, 152 (Fla.1953). The procedural requirements inuring to a quasi-judicial proceeding are distinct from those inuring to a legislative proceeding. See generally *City Envtl. Servs. Landfill, Inc. v. Holmes County*, 677 So.2d 1327 (Fla. 1st DCA 1996). However, we do point out that even with the deferential review of legislative action afforded by the fairly debatable rule, local government action still must be in accord with the procedures required by chapter 163, part II, Florida Statutes, and local ordinances. Cf. *David v. City of Dunedin*, 473 So.2d 304 (Fla. 2d DCA 1985) (finding null and void an ordinance enacted in violation of the notice provisions of the relevant statutes).

Accordingly, we hold that all comprehensive plan amendments are legislative decisions subject to the fairly debatable standard of review. We find that amendments to a comprehensive plan, like the adoption of the plan itself, result in the formulation of policy. We approve in part the district court's decision \*1296 to the extent that it permitted Yusem to file a new application for amendment without prejudice, and we remand to the trial court for consideration of claims which have not been considered.

We agree with the district court that in light of the manner in which this area of law was evolving at the time of his filing the action, justice would best be served by allowing the landowner to start anew. *Yusem*, 664 So.2d at 978.

It is so ordered.<sup>8</sup>

KOGAN, C.J., and OVERTON, SHAW, GRIMES and HARDING, JJ., concur.

ANSTEAD, J., recused.

All Citations

690 So.2d 1288, 22 Fla. L. Weekly S156

Footnotes

- 1 Neither party argues that this requested zoning change did not require an amendment to the Plan.
- 2 Chapter 163, part II, Florida Statutes (Local Government Comprehensive Planning and Land Development Regulation Act), provides for a two-stage amendment-adoption process: transmittal and adoption. § 163.3184(3),(7), Fla. Stat. (1989).
- 3 The district court noted that the rezoning request required an amendment to the comprehensive plan in its opinion following remand from this Court. See *City of Melbourne v. Puma*, 635 So.2d 159 (Fla. 5th DCA 1994).
- 4 Additionally, the district court relied upon *Battaglia Properties, Ltd. v. Florida Land & Water Adjudicatory Commission*, 629 So.2d 161 (Fla. 5th DCA 1993). The majority in *Yusem* found that two members of the three-judge panel in *Battaglia* concluded that an amendment to a comprehensive plan was not a legislative decision under *Snyder I*. *Yusem*, 664 So.2d at 978. However, *Battaglia* is distinguishable from the case at bar. In *Battaglia*, the developer sought and received an amendment to the comprehensive plan necessary for the development of the property, but the amendment contained new zoning conditions on the property. The issue in that case was the propriety of new zoning conditions in conjunction with an amendment to the comprehensive plan. *Battaglia*, 629 So.2d at 165. Judge Sharp found that the zoning changes at issue in *Battaglia* were legislative decisions. *Id.* Judge Goshorn would have found that the conditional rezoning changes were quasi-judicial decisions but agreed with the result reached by Judge Sharp. See *id.* at 169 (Goshorn, J., concurring specially). Judge Cowart concluded that the rezoning decisions were quasi-judicial and dissented from the majority's conclusion. *Id.* (Cowart, Senior Judge, dissenting). *Battaglia* is thus distinguishable from the case at bar, which confronts purely the question of the proper standard of review of amendments to a comprehensive plan.
- 5 We additionally noted that even in a situation in which the denial of a zoning application would be inconsistent with the plan, the local government should have the discretion to decide that the maximum development density should not be allowed provided the government approves some development that is consistent with the plan and the decision is supported by competent, substantial evidence. *Snyder II*, 627 So.2d at 475.
- 6 We do note that in 1995, the legislature amended section 163.3187(1)(c), Florida Statutes, which provides special treatment for comprehensive plan amendments directly related to proposed small-scale development activities. Ch. 95-396, § 5, Laws of Fla. We do not make any findings concerning the appropriate standard of review for these small-scale development activities.
- 7 In 1993, the legislature amended section 163.3184, Florida Statutes, to require the Department to review a plan amendment if it determines that this review is necessary or if it is requested to do so by a regional planning council, affected person, or local government transmitting the plan. See ch. 93-206, § 10, Laws of Fla. For a discussion of the changes made by the legislature in 1993, see David L. Powell, *Managing Florida's Growth: The Next Generation*, 21 Fla. St. L.Rev. 223 (1993).
- 8 We do not address any of the other issues raised by the parties.