



STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

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

JEB BUSH
Governor

THADDEUS L. COHEN, AIA
Secretary

February 10, 2006

The Honorable Walter T. Kelley
Mayor, City of Lynn Haven
825 Ohio Avenue
Lynn Haven, Florida 32444

Dear Mayor Kelley:

The Department has completed its review of the Comprehensive Plan Amendments (2005-L1C and 2005-L1E) for the City of Lynn Haven (Ordinance Nos. 836 and 824, respectively) as adopted December 27, 2005 and determined that they do not meet the requirements of Chapter 163, Part II, Florida Statutes (F.S.), for compliance. We have determined that the City's other adopted Comprehensive Plan Amendment (Ordinance No. 825) meets the requirements of Chapter 163, Part II, F.S. The Department is issuing a Statement of Intent and Notice of Intent to find the Comprehensive Plan Amendments adopted by Ordinance Nos. 836 and 824 Not in Compliance and the Comprehensive Plan Amendment adopted by Ordinance No. 825 In Compliance.

Please note that a copy of the adopted City of Lynn Haven Comprehensive Plan Amendments, the Department's Objections, Recommendations, and Comments Report dated September 2, 2005, the Notice of Intent and the Department's Statement of Intent to find the Comprehensive Plan Amendments Not in Compliance must be available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at the City of Lynn Haven Clerk's Office, 825 Ohio Avenue, Lynn Haven, Florida 32444.

In addition, the Notice of Intent and the Statement of Intent will be forwarded to the Division of Administrative Hearings of the Department of Management Services for the scheduling of an administrative hearing pursuant to Section 120.57, F.S. Please be advised that Section 163.3184(8)(c)2, F.S., requires a local government that has an internet site to post a copy of the Department's Notice of Intent on the site within 5 days after receipt of the mailed copy of the Department's Notice of Intent.

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Mayor Kelley
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If the In Compliance portion of the determination is challenged by an affected person, you will have the option of mediation pursuant to Subsection 163.3189(3)(a), F.S. If you choose to attempt to resolve the matter through mediation, you must file the request for mediation with the administrative law judge assigned by the Division of Administrative Hearings. The choice of mediation will not affect the right of any party to an administrative hearing.

We would like to meet with you and your staff at your earliest convenience for the purpose of developing a mutually acceptable solution to this not in compliance finding. The issues raised are in the attached Statement of Intent. While the Department acknowledges the City's effort to promote an urban mix of uses, an amendment of this magnitude would result in a significant impact on area roadways. Department staff is willing to work quickly to structure a compliance agreement and remedial amendment to address the Department's concerns.

If you have any questions or are interested in discussing a compliance agreement, please contact Ms. Kelly Martinson, Assistant General Counsel at 850-488-0410.

Sincerely,



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

VJH/alw

Enclosures: - Notice of Intent
Statement of Intent

cc: Marion Cook, City Planner, City of Lynn Haven
Terry Joseph, Executive Director, West Florida Regional Planning Council

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

IN RE: CITY OF LYNN HAVEN
COMPREHENSIVE PLAN AMENDMENT
ADOPTED BY ORDINANCE NOS. 836 & 824
FEBRUARY 10, 2006

Docket No. 05-1-NOI-0304

STATEMENT OF INTENT TO FIND
COMPREHENSIVE PLAN AMENDMENT
NOT IN COMPLIANCE

The Florida Department of Community Affairs, pursuant to Section 163.3184(10), Florida Statutes (“F.S.”), and Rule 9J-11.012(6), Florida Administrative Code (“F.A.C.”), hereby issues this Statement of Intent to find the Comprehensive Plan Amendments (“Amendments”) adopted by the City of Lynn Haven in Ordinance Nos. 836 and 824 on December 27, 2005, not in compliance based upon the Objections, Recommendations and Comments Report (“ORC Report”) issued by the Department on September 2, 2005, which is hereby incorporated by reference. The Department finds the Amendments not “in compliance”, as defined in Section 163.3184(1)(b), F.S., because they are not consistent with Chapter 163, Part II, F.S., Rule 9J-5, F.A.C., and the State Comprehensive Plan, Chapter 187, F.S., for the following reasons:

I. CHANGES RELATED TO THE FUTURE LAND USE MAP AND
CORRESPONDING CHANGES TO THE FUTURE LAND USE (FLUE) ELEMENT

A. Inconsistent provisions. The map amendment applies the new Mills Bayou Traditional Neighborhood Design (TND) future land use category to a recently annexed 950-acre parcel located north of CR 390 and southwest of CR 2321. The new Mills Bayou TND category establishes development limitations on the site of 2,000

dwelling units and 200,000 square feet of commercial uses and other public uses and also phases development of the site into two phases: Phase I consisting of 500 dwelling units and 50,000 square feet of commercial and Phase II consisting of the remaining 1,500 dwelling units and 150,000 square feet of commercial and other public uses. Phase I will not cause adverse impacts to US Highway 231 and County Roads 390 and 2321; however, combined with the build out of Phase II, there would be adverse transportation impacts to these roadways as these facilities will fall below the adopted level of service due to the impacts generated by the amendments. These segments are located outside Lynn Haven's city limits.

The adopted text language does not adequately cap the amendment because Phase II can proceed without another plan amendment or Capital Improvements Plan ("CIP") update. The text language states that Phase II is only limited to transportation concurrency requirements at the development order stage and is not required to undergo another plan amendment to the Future Land Use Map ("FLUM") or CIP to address impacts. The Amendments are deferring addressing the impacts to the concurrency stage and not the planning stage. These Amendments do not contain assurances that the necessary improvements will occur and do not clearly indicate who will be responsible for these improvements. The Amendments are therefore inconsistent with the State's requirement that comprehensive plans ensure that necessary public facilities and services, including transportation facilities, are able to support the future land use map and do not fall below the adopted level of service. Thus, the amendments are not financially feasible.

Authority: Sections 163.3177(3)(a)1, 3 & 5 and 163.3177(6)(a), (b) & (j), F. S., and Rules 9J-5.005(3); 9J-5.006(2)(a), (3)(b)1 & (3)(c)3; 9J-5.016(3)(b)1 & 3, (3)(c)4 & 6; and 9J-5.019(3)(b), (f), & (h), F. A. C.

B. Recommended remedial actions: Rescind Ordinance Nos. 836 and 824 and adopt a revised Ordinance, to include updates to the CIP, as appropriate, to ensure that necessary public facilities and services correlate to future land use projections and address existing and projected deficiencies. The City can also reduce the amount of dwelling units and non-residential development such that these road segments do not fall below the adopted level of service.

II. CONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

A. Inconsistent provisions. The Amendments are inconsistent with the State Comprehensive Plan goals and policies set forth in Section 187.201, Florida Statutes, including the following provisions:

- a. Public Facilities (17)-Goal (a) Policy (b) 1, 4, 6 and 7
- b. Transportation (19)-Goal (a) Policy (b) 3, 9, 11, and 13

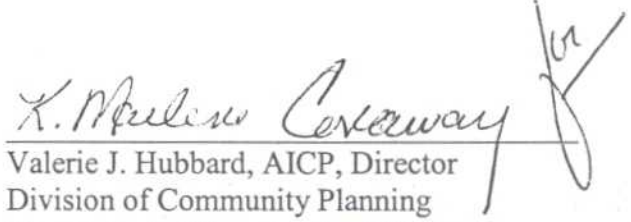
B. Recommended remedial action. These inconsistencies may be remedied by revising the Amendments as described above in Section I.

CONCLUSIONS

1. The Amendments are not consistent with the State Comprehensive Plan;
2. The Amendments are not consistent with Chapter 9J-5, Florida Administrative Code;

3. The Amendments are not consistent with the requirements of Chapter 163, Part II, Florida Statutes;
4. The Amendments are not "in compliance," as defined in Section 163.3184(1)(b) Florida Statutes; and
5. In order to bring the Amendments into compliance, the City may complete the recommended remedial actions described above or adopt other remedial actions that eliminate the inconsistencies.

Executed this 9th day of February, 2006, at Tallahassee, Florida.


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

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS
NOTICE OF INTENT TO FIND THE CITY OF LYNN HAVEN
COMPREHENSIVE PLAN AMENDMENTS ADOPTED BY ORDINANCE NO. 825
IN COMPLIANCE

AND THE COMPREHENSIVE PLAN AMENDMENTS ADOPTED BY ORDINANCE NOS. 824 AND 836
NOT IN COMPLIANCE.

DOCKET NO. 05-1-NOI-0304-(A)-(N)

The Department gives notice of its intent to find the Amendment(s) to the Comprehensive Plan for City of Lynn Haven, adopted by Ordinance No(s). 824 and 836, on December 27, 2005, NOT IN COMPLIANCE, and Ordinance No(s). 825 on December 27, 2005 IN COMPLIANCE, pursuant to Sections 163.3184, 163.3187 and 163.3189, F.S.

The adopted City of Lynn Haven Comprehensive Plan Amendment(s), the Department's Objections, Recommendations, and Comments Report (if any), and the Department's Statement of Intent to find the Comprehensive Plan Amendment(s) Not In Compliance will be available for public inspection Monday through Friday, except for legal holidays, during normal business hours, City of Lynn Haven Clerks Office, 825 Ohio Avenue, Lynn Haven, Florida 32444.

Any affected person, as defined in Section 163.3184, F.S., has a right to petition for an administrative hearing to challenge the proposed agency determination that the Amendment(s) to the City of Lynn Haven Comprehensive Plan are In Compliance, as defined in Subsection 163.3184(1), F.S. The petition must be filed within twenty-one (21) days after publication of this notice, a copy must be mailed or delivered to the local government and must include all of the information and contents described in Uniform Rule 28-106.201, F.A.C. The petition must be filed with the Agency Clerk, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100. Failure to timely file a petition shall constitute a waiver of any right to request an administrative proceeding as a petitioner under Sections 120.569 and 120.57, F.S. If a petition is filed, the purpose of the administrative hearing will be to present evidence and testimony and forward a recommended order to the Department. If no petition is filed, this Notice of Intent shall become final agency action.

This Notice of Intent and the Statement of Intent for those amendment(s) found Not In Compliance will be forwarded by petition to the Division of Administrative Hearings (DOAH) of the Department of Management Services for the scheduling of an Administrative Hearing pursuant to Sections 120.569 and 120.57, F.S. The purpose of the administrative hearing will be to present evidence and testimony on the noncompliance issues alleged by the Department in its Objections, Recommendations, and Comments Report and Statement of Intent in order to secure a recommended order for forwarding to the Administration Commission.

Affected persons may petition to intervene in either proceeding referenced above. A petition for intervention must be filed at least twenty (20) days before the final hearing and must include all of the information and contents described in Uniform Rule 28-106.205, F.A.C. Pursuant to Section 163.3184(10), F.S., no new issues may be alleged as a reason to find a plan amendment not in compliance in a petition to intervene filed more than twenty one (21) days after publication of this notice unless the petitioner establishes good cause for not alleging such new issues within the twenty one (21) day time period. The petition for intervention shall be filed at DOAH, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060, and a copy mailed or delivered to the local government and the Department. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right such a person has to request a hearing pursuant to Sections 120.569 and 120.57, F.S., or to participate in the administrative hearing.

After an administrative hearing petition is timely filed, mediation is available pursuant to Subsection 163.3189(3)(a), F.S., to any affected person who is made a party to the proceeding by filing that request with the administrative law judge assigned by the Division of Administrative Hearings. The choice of mediation shall not affect a party's right to an administrative hearing.



K. Marlene Conaway
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