



STATE OF FLORIDA

DEPARTMENT OF COMMUNITY AFFAIRS

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

CHARLIE CRIST
Governor

THOMAS G. PELHAM
Secretary

August 14, 2009

RECEIVED
AUG 17 2009
City of Daytona Beach

The Honorable Glenn Ritchey, Mayor
City of Daytona Beach
301 South Ridgewood Avenue
Daytona Beach, Florida 32114

Dear Mayor Ritchey:

The Department has completed its review of the City of Daytona Beach comprehensive plan amendment (DCA No. 09-RWSP1) adopted by Ordinance No. 09-150 on June 3, 2009 and determined that it is not "in compliance" with the requirements of Chapter 163, Part II, Florida Statutes (F.S.) and Rule 9J-5, Florida Administrative Code (F.A.C.). The Department is therefore issuing a Statement of Intent and Notice of Intent to find the Amendment not "in compliance." The Notice of Intent has been sent to the *Daytona Beach News Journal* for publication on August 17, 2009.

Please note that a copy of the adopted Amendment and the Department's Statement of Intent and Notice of Intent to find the Amendment not "in compliance" must be available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at the Development and Administrative Services Clerk's Office Room 240, 301 South Ridgewood Avenue Daytona Beach, Florida 32114. Also, Section 163.3184 (8)(c)2, F.S., requires a local government that has an Internet site to post a copy of the Department's Notice of Intent on the site within 5 days after receipt of the mailed copy of the Notice of Intent.

Although the Notice of Intent and the Statement of Intent must be forwarded to the Division of Administrative Hearings of the Department of Management Services for the scheduling of an administrative law judge pursuant to Section 120.57, F.S., we are interested in meeting with you and your staff at your convenience for the purpose of developing an acceptable solution to the not "in compliance" finding.

2555 SHUMARD OAK BOULEVARD ♦ TALLAHASSEE, FL 32399-2100
850-488-8466 (p) ♦ 850-921-0781 (f) ♦ Website: www.dca.state.fl.us

♦ COMMUNITY PLANNING 850-488-2356 (p) 850-488-3309 (f) ♦ FLORIDA COMMUNITIES TRUST 850-922-2207 (p) 850-921-1747 (f) ♦
♦ HOUSING AND COMMUNITY DEVELOPMENT 850-488-7956 (p) 850-922-5623 (f) ♦

The Honorable Glenn Ritchey, Mayor
August 14, 2009
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If you have any questions, or are interested in discussing a compliance agreement, please contact Mr. David Jordan, Assistant General Counsel at 850-922-1720.

Sincerely,

A handwritten signature in black ink that reads "Mike McDaniel". The signature is written in a cursive, flowing style.

Mike McDaniel
Bureau Chief, Division of Community Planning

MM/ap

Enclosures: Notice of Intent
Statement of Intent

cc: Mr. Rich Walton, Planning Director, City of Daytona Beach
Mr. Phil Laurien, East Central Florida Regional Planning Council

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS
NOTICE OF INTENT TO FIND THE
CITY OF DAYTONA BEACH
COMPREHENSIVE PLAN AMENDMENT
NOT IN COMPLIANCE
DOCKET NO. 09-RWSP1-NOI-6402-(A)-(N)

The Department gives notice of its intent to find the Amendment to the Comprehensive Plan for the City of Daytona Beach, adopted by Ordinance No. 09-150 on June 3, 2009, NOT IN COMPLIANCE, pursuant to Sections 163.3184, 163.3187 and 163.3189, F.S.

The adopted City of Daytona Beach Comprehensive Plan Amendment, the Department's Objections, Recommendations, and Comments Report, (if any), and the Department's Statement of Intent to Find the Comprehensive Plan Amendment Not In Compliance will be available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at the City of Daytona Beach, City Hall, Clerk's Office and Development and Administrative Services, Room 240, 301 South Ridgewood Avenue, Daytona Beach, Florida 32114.

This Notice of Intent and the Statement of Intent 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 this proceeding. A petition for intervention must be filed at least twenty (20) days before the final hearing and must include all of the information and contents described in Uniform Rule 28-106.205, F.A.C. Pursuant to Section 163.3184(10), F.S., no new issues may be alleged as a reason to find a plan or 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.



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

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

IN RE: DAYTONA BEACH
COMPREHENSIVE PLAN AMENDMENT
ADOPTED BY ORDINANCE NO. 09-150

Docket No. 09-RWSP1-NOI-6402

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 Amendment (“Amendment”) adopted by the City of Daytona Beach by Ordinance Number 09-150 on June 3, 2009, not “in compliance.” The Department finds that the Amendment is not “in compliance”, as defined in section 163.3184(1)(b), F.S., because it is 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. WATER SUPPLY PLAN

A. Inconsistencies: The Department identifies the following inconsistencies:

1) The City did not account for its entire service area in its population projections. The City provides water for most of the City, the City of South Daytona, areas of unincorporated Volusia County and approximately 1/3 of the City of Daytona Beach Shores.

The City’s water supply facilities work plan (work plan), adopted by Infrastructure Element Policy 1.6.5 has not accounted for population or demand projections for unincorporated Volusia County within its service area. Additionally, the City did not adjust the anticipated demand for water supply to account for the area of the City served

by Ormond Beach. Three thousand undeveloped acres of the City will be served by Ormond Beach.

Therefore, based on the lack of accurate demand projections based on the population within the City's service area the City has not accurately identified its need for projected water supply.

[Sections 163.3177(2),(3),(4)(a), (6)(a), (c), and (h), (8) and (10), F.S.; Rule 9J-5.005(2),(5); 9J-5.006(2)(a), (3)(b) 1, (3)(c)3; 9J-5.011(1), (2)(b)1-3; 9J-5.013(1)(c)F.A.C]

2) The City's adopted work plan and the amended Capital Improvements Element (CIE) do not list all the projects necessary to demonstrate adequate water supply to meet projected demand.

The ten year capital improvements schedule (CIS) in the adopted work plan and the CIE do not include the selected alternative water supply projects (construction of a reservoir and reuse pipeline). Page 13 of the work plan states the reservoir and reuse pipeline are currently in the design and construction phase.

Table 3-2 in the Work Plan lists potential reuse customers. The work plan table 3-3 projects that demand for reuse will increase substantially over the next ten years.

In addition, page 13 in the adopted work plan states the increased utilization of treated water currently discharged by the City's two wastewater treatment plants will reduce customer usage of potable (and hence, Floridan aquifer) water for non-potable uses, and that reuse transmission and distribution mains, pump stations, reservoirs and above ground storage tanks are needed. The projects that are needed to produce and distribute the supply of reclaimed water to meet reuse water demand are not included in the ten year CIS in the adopted work plan or CIE.

The adopted work plan also describes a need for an Aquifer Storage and Recovery project, but this project is not included in the ten year CIS in the adopted work plan or the CIE.

Further, several inconsistencies exist between the projects and costs listed in the adopted water supply plan and the projects and costs shown in the ten year CIS. The inconsistencies are as follows:

- \$4 million expenditure for reuse projects associated with Consumptive Use Permit (CUP) requirements (p. 55 of the work plan) is more than the \$1.5 million shown in the 10-year capital improvements schedule (CIS);
- \$2 million expenditure for various water and sewer projects (p. 56 of the work plan) is deleted in the 10-year CIS;
- \$2.5 million for potable water storage tanks (p. 56 of the work plan) is deleted in the 10-year CIS;
- \$1.5 million for lift station expansion (p. 57 of the work plan) is deleted in the 10-year CIS;
- \$1.5 million for concrete sewer line replacement (p. 57 of the work plan) is deleted in the 10-year CIS in the Water Supply Plan.

[Sections 163.3164(32), 163.3177(1), (2), (3), (4), (6)(a), (c), (d), (h)1 and 2, (8), (10), F.S. Rule 9J-5.005(2) and (5), Rule 9J-5.006(2)(a), (3)(b)1, (3)(c)3, Rule 9J-5.011(1)(a) through (f), (2)(b)1-3, (2)(c)1; 9J-5.016(1)(a), (2)(a) (b) and (c), (3)(b)1., 3., and 5., (3)(c)6., (4)(a)1, 2, F.A.C.

B. Recommended Remedial Action: Revise the adopted work plan and provide relevant and appropriate data and analysis regarding the projected growth of the service area, including the area of unincorporated Volusia County served by the City, and subtracting

the area of the City served by Ormond Beach. Population projections should be based on the best available data and analysis.

Based on the appropriate water demand, identify the necessary capital improvements to meet the projected demand for water supplies on an annual basis. Revise the ten year CIS within the adopted work plan to include all projects described as necessary in the next ten years, including traditional potable water, alternative water supply and reuse projects.

Any projects occurring within the first five years must also be included in the five year schedule of capital improvements in the CIE of the Comprehensive Plan. Funding sources and the costs of the projects must be consistent throughout the five and ten year schedules and the adopted work plan.

II. CONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

A. Inconsistent provisions. The Amendment is inconsistent with the following State Comprehensive Plan goal and policies set forth in Section 187.201, Florida Statutes:

- a. Water Resources Goal (7)(a) and Policies (b)5, 10, & 11.
- b. Land Use Goal (15)(a) and Policies (b)1, 2 & 6
- c. Public Facilities Goal (17)(a) and Policies (b)3, 6, 9 & 10.
- d. Plan Implementation Goal (25)(a) and Policy (b)7

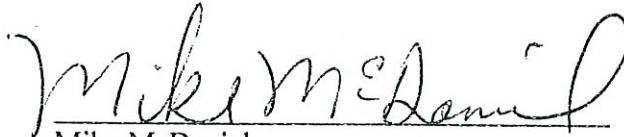
B. Recommended Remedial Action. These inconsistencies may be remedied by revising the Amendment as described above in Section I.

CONCLUSIONS

1. The Amendment is not consistent with the State Comprehensive Plan;
2. The Amendment is not consistent with Chapter 9J-5, F.A.C.;

3. The Amendment is not consistent with the requirements of Chapter 163, Part II, F.S.;
4. The Amendment is not "in compliance," as defined in section 163.3184(1)(b) F.S.; and
5. To bring the Amendment into compliance, the City may complete the recommended remedial actions described above or adopt other remedial actions that eliminate the inconsistencies.

Executed this 14 day of August 2009, in Tallahassee, Florida.



Mike McDaniel
Chief, Division of Community Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399