

MEMORANDUM

TO: Lori Barnes, Planning and Zoning Division Manager, City of North Port

FROM: Jennifer R. Cowan, B.C.S.

DATE: January 6, 2023

RE: Interpretation of Comprehensive Plan Goal 1 and Policy 1.1 as it pertains to Multi-Family Special Exception (Petition No. SPX-22-123)

The City of North Port (“City”) requested an opinion as to whether staff’s interpretation of Goal 1 and Policy 1.1 of the Future Land Use Element of the Comprehensive Plan is reasonable in accordance with principles of statutory construction. Staff interpreted Goal 1 to provide for a balancing of all of the various factors listed in said goal without specific weight or priority assigned to any one factor and Policy 1.1 to provide a suggestive limitation for residential use. The short answer is yes, both interpretations are reasonable based on the information provided. A more in-depth analysis is provided below.

I. Overview of Comprehensive Plan and Zoning Regulations.

In Florida, local governments regulate land use through comprehensive planning and zoning. Comprehensive planning and zoning are interrelated but different functions of local government.¹ A comprehensive plan is a statutorily mandated legislative plan to control and direct the use and development of property within a county or municipality.² The plan is like a constitution for all future development within the governmental boundary.³ A comprehensive land use plan is not a zoning ordinance; rather, it serves as a conceptual framework within which zoning is to be accomplished consistent with the plan.⁴

¹ Lee County v. Sunbelt Equities, II, Ltd. Partnership, 619 So. 2d 996, 1004 (Fla. 2d DCA 1993).

² Gardens Country Club, Inc. v. Palm Beach County, 590 So. 2d 488, 490 (Fla. 4th DCA 1991) (citing Machado v. Musgrove, 519 So.2d 629, 631–32 (Fla. 3d DCA 1987), rev. denied, 529 So.2d 694 (Fla.1988)).

³ Id.

⁴ Porter v. Saddlebrook Resorts, Inc., 596 So. 2d 472, 474 n. 2 (Fla. 2d DCA 1992).

Zoning regulations are the means by which a local government implements its comprehensive plan.⁵ Zoning is the division of land into distinct districts, or zones, and the regulation of certain uses and developments within those zones.⁶ It is the process that a local government employs to legally control the use that may be made of property and the physical configuration of development within its jurisdiction.⁷ Zoning involves the exercise of discretionary powers within limits imposed by the comprehensive plan.⁸

By law, a zoning regulation is consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by such regulation are compatible with and further the goals, objectives, and policies enumerated in the comprehensive plan.⁹ The Community Planning Act defines goals as “the long-term end toward which programs or activities are ultimately directed”; objectives as “a specific, measurable, intermediate end that is achievable and marks progress towards a goal”; and policies as “the way in which programs and activities are conducted to achieve an identified goal.”¹⁰ In determining the validity of a zoning regulation, a reviewing court will evaluate consistency by reference to the goals, objectives, and policies in the comprehensive plan itself.¹¹

II. Rules of Statutory Construction for Interpreting Comprehensive Plans and Zoning Regulations.

Rules of statutory construction are applicable to the interpretation of comprehensive plans and zoning regulations.¹² Thus, if the terms of a comprehensive plan are not defined, then the language of the plan should usually be given its plain and ordinary meaning.¹³

When the plain language is ambiguous, courts will turn to other rules of statutory construction.¹⁴ One basic tenet of statutory construction is that a statute should be interpreted to give effect to every clause in it, so that each part can be read in harmony.¹⁵ Statutory phrases should not be read in isolation, but rather within the context of the

⁵ Citrus County v. Halls River Development, Inc., 8 So. 3d 413, 421 (Fla. 5th DCA 2009).

⁶ 7 Fla. Jur 2d Building, Zoning, and Land Controls § 113.

⁷ Id.

⁸ Halls River Development, Inc., 8 So. 3d at 421.

⁹ See § 163.3194(3)(a), Fla. Stat. (2022).

¹⁰ § 163.3164 (19), (34) & (37), Fla. Stat. (2022).

¹¹ Bay County v. Harrison, 13 So. 3d 115, 118-19 (Fla. 1st DCA 2009).

¹² Realty Associates Fund IX, L.P. v. Town of Cutler Bay, 208 So. 3d 735, 738 (Fla. 3d DCA 2016) (citing Katherine's Bay, LLC v. Fagan, 52 So.3d 19, 28 (Fla. 1st DCA 2010)).

¹³ 1000 Friends of Florida, Inc. v. Palm Beach County, 69 So. 3d 1123, 1126 (Fla. 4th DCA 2011).

¹⁴ Id. at 1127.

¹⁵ Jones v. ETS of New Orleans, Inc., 793 So. 2d 912, 914-915 (Fla. 2001).

entire section.¹⁶ This applies both to the reading of phrases and to the reading of individual words.¹⁷

The interpretation issues addressed by this opinion primarily turn on the reasonable meanings of several words in the City’s Comprehensive Plan, including “should” and “guideline.” Generally, individual words are given their plain and ordinary meaning, unless the words are otherwise defined in the statute or by the clear intent of the legislating body.¹⁸ For example, the word “shall,” by its plain and ordinary meaning, is a mandatory word.¹⁹ This means that if something “shall” be done, it is required to be done if whatever enumerated criteria is met.²⁰ Conversely, the plain and ordinary meaning of “may” is permissive.²¹ The word “should” has been interpreted as a recommendation, which allows the underlying body discretion on when to follow such a recommendation.²² Thus, “should” is likewise a permissive term, which indicates that the associated action is discretionary, rather than mandatory in nature.²³ The word “guideline” in Chapter 163 is neither defined, nor has its meaning been analyzed by the courts. When a term is not defined in a statute or ordinance, a dictionary may be used as a tool to ascertain the plain and ordinary meaning of the word.²⁴ Meriam-Webster defines “guideline” as “an indication or outline of policy or conduct.”²⁵ Thus, the plain and ordinary meaning of “guidelines” as used in Chapter 163 is discretionary and permissive rather than mandatory, as it relates to an adopted policy. Further, the word “guideline” must be interpreted within the context of Chapter 163, which prescribes the goals, objectives, and policies of a city’s comprehensive plan.

III. City of North Port’s Comprehensive Plan and Zoning Regulations related to Multifamily Residential Uses in the Office Professional, Institutional (OPI) Zoning District.

The City’s Future Land Use Element of its Comprehensive Plan provides:

GOAL 1: Ensure that the character and location of land uses **maximize the potential for economic benefit and the enjoyment of natural and man-made resources by**

¹⁶ Id.

¹⁷ Id.

¹⁸ Kelly v. State, 795 So. 2d 135, 136 (Fla. 5th DCA 2001).

¹⁹ Id.

²⁰ Id.

²¹ Estate of Johnson ex rel. Johnson v. Badger Acquisition Of Tampa LLC, 983 So. 2d 1175, 1181 n. 3 (Fla. 2d DCA 2008).

²² State v. Thomas, 528 So. 2d 1274, 1275-76 (Fla. 3d DCA 1988).

²³ Univ. of S. Florida v. Tucker, 374 So. 2d 16, 17 (Fla. 2d DCA 1979).

²⁴ Broward Cnty. v. Florida Carry, Inc., 313 So. 3d 635, 639 (Fla. 4th DCA 2021).

²⁵ “Guideline.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/guideline>. Accessed 3 Jan. 2023.

citizens while minimizing the threat to health, safety and welfare posed by hazards, nuisances, incompatible land uses, and environmental degradation.

Objective 1: Future development activities shall continue to be directed in appropriate areas as depicted on the Future Land Use Map, and shall encourage the use of innovative land development regulations, consistent with sound planning principles, minimal natural limitations, the goals, objectives and policies contained within this plan, and the community character.

Policy 1.1: Land development regulations adopted to implement this Comprehensive Plan shall be consistent with F.S. 163.3202(1), as amended, and based on and **be consistent with the following densities and intensities, presuming concurrency requirements are satisfied, for residential and non-residential development as indicated below:**

Professional Office - These lands are designated for professional and business offices, institutional, cultural, residential and associated uses (0.95 FAR, 15 DU/acre excluding bonuses, incentives or transfer of development rights. As a guideline, the residential use should not exceed 50% of the floor area).

The City implements its Comprehensive Plan through its zoning regulations. Specifically, Article VII of the City's Unified Land Development Code (the "ULDC") designates the OPI Office, Professional, Institutional District ("OPI District") and provides that it implements Objective 1 and Policy 1.1 of Goal 1 of the Comprehensive Plan's Future Land Use Element, as it pertains to professional office designations.²⁶ The OPI District permits the following uses and structures: professional offices; business offices; rest homes, nursing homes, convalescent homes, homes for the aged, homes for orphans and adult congregate living facilities; medical and dental clinics and laboratories; art galleries, libraries, museums, community centers, publicly or privately owned and operated recreation facilities and theaters for live stage productions; research laboratories not involving odor, noise, smoke or other obnoxious effects detectable to normal senses from off the premises, not involving manufacturing activities; houses of worship; public parks, playgrounds and buildings; dance, art, music and photographic studios; funeral homes; private clubs; animal hospitals with boarding of animals in completely enclosed buildings; emergency and essential services; public

²⁶ Section 53-88, ULDC.

schools, private schools, public libraries, vocational, technical and trade schools; banks and financial institutions; and cemeteries.²⁷ It prohibits any use, structure or activity not specifically permitted therein, including adult entertainment, or exhibition establishments, adult bookstores or any other establishments whose primary purpose is to sell sexually explicit material or the exhibition of sexually explicit activities.²⁸ Section 53-90 (permitted uses and structures) and Section 53-91 (prohibited uses and structures) of the ULDC do not list multi-family residential as a permitted or prohibited use in the OPI District.

Section 53-92 of the ULDC provides that “[a]ny use not specifically permitted and not specifically prohibited in this zoning district may file for a special exception permit in accordance with Article XXII of this chapter, provided that the use applied for contributes to the intent of the zoning district as stated in the City’s Comprehensive Plan and this Unified Land Development Code.” Article XXII of the ULDC permits the City to grant special exceptions to its zoning regulations. Section 53-254 of Article XXII provides that a “special exception is a use that would not be appropriate generally or without restriction throughout a zoning district but which, if controlled as to number, area, location or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity or the general welfare.” In effect, Article XXII allows the City to allow certain land uses in zones that do not expressly allow such land uses, provided the land use is not expressly prohibited in such a zone.

IV. Interpretation of Goal 1 and Policy 1.1 of the Future Land Use Element of the City’s Comprehensive Plan as it Applies to Statutory Construction.

The interpretation of the Goals, Objectives, and Policies of the Future Land Use Element of the City’s Comprehensive Plan shall be made by the Planning Director.²⁹ Further, the interpretation of the zoning regulations shall be made by the Director responsible for land development services.³⁰ Here, the Planning Director determined that multifamily could be approved as a special exception use in the OPI District, interpreted Goal 1 as providing for a balancing of all of the factors listed in the goal without specific weight assigned to any one factor, and interpreted the language in Policy 1.1 as a suggestive limitation for residential use in lands designated as professional office. Staff requested that we review and opine on whether these interpretations of Goal 1 and Policy 1.1 of the Future Land Use Element of the City’s Comprehensive Plan are reasonable in accordance with rules of statutory construction.

The plain language of Goal 1 provides that the overall goal is to ensure that the character and location of land use maximizes the potential for both the economic benefit

²⁷ Section 53-90, ULDC.

²⁸ Section 53-91, ULDC.

²⁹ Policy 1.10, of Goal 1, Future Land Use Element of the Comprehensive Plan.

³⁰ Section 53-8, ULDC.

and the enjoyment of natural and man-made resources while minimizing the threat to health, safety, and welfare posed by hazards, nuisances, incompatible uses, and environmental degradations. While the plain language of Goal 1 appears clear, if there was any concern regarding whether the factors identified in the Goal should be prioritized, the tenets of statutory construction mandate we must give effect to every clause such that each part can be read in harmony.³¹ Further, ignoring or adding words is a departure from the essential requirements of the law. Without any priority language provided, Goal 1 provides two items that should be maximized (economic benefit and enjoyment of resources) while minimizing the threats to health, safety, and welfare. Goal 1 does not provide for a prioritization of those items maximized or those threats to be minimized, but instead the plain language presents these factors as items to be weighed. Hence, staff's interpretation that the factors in Goal 1 should be weighed without priority provided to any benefit or threat is in accordance with the rules of statutory construction.

Further, Goal 1 and Policy 1.1 must be read together in considering their meaning. Goal 1 is an overarching long-term end towards which programs or activities are ultimately directed. The objective and ultimate policy related to professional offices was developed as the way in which the programs and activities would be conducted to achieve this goal. In other words, the land development regulations that implement the designated land use for professional and business offices, institutional, cultural, residential and associated uses, were adopted to provide that future development activities maximize the benefits while minimizing the threats as provided in Goal 1. Therefore, in reading Goal 1 and Policy 1.1 together, it is clear that residential use (which includes multi-family) within the OPI district may be consistent with Goal 1. The determination of that consistency would be based on the development's compliance with the implementing ULDC (i.e., whether the special exception criteria is met).

In interpreting Policy 1.1's Professional Office provision there is a parenthetical that states: "(0.95 FAR, 15 DU/acre excluding bonuses, incentives or transfer of development rights. As a guideline, the residential use should not exceed 50% of the floor area)." In the first part of the parenthetical, the provision sets the floor area ratio at 0.95 and dwelling units at 15 dwelling units per acre. Section 53-93 of the ULDC implements consistent density (15DU/acre) and intensity (0.95 FAR) in the OPI District. In the second part of the parenthetical, it states that "as a guideline residential use should not exceed 50% of the floor area." This portion of the parenthetical is not implemented in the ULDC but remains language in the Comprehensive Plan guiding development. As discussed above, the term "guideline" is not defined in the Comprehensive Plan or by any applicable law, but its plain and ordinary meaning is permissive and discretionary. Further, courts have held that "should" is likewise a permissive discretionary term.³² Thus, the language that residential use should not exceed 50% of the floor area is meant merely as a recommendation in meeting the goals of the Comprehensive Plan and is not mandatory

³¹ ETS of New Orleans, Inc. 793 So. 2d at 914-915.

³² Univ. of S. Florida v. Tucker, 374 So. 2d 16, 17 (Fla. 2d DCA 1979).

in either the Comprehensive Plan or ULDC. Therefore, staff's interpretation that the goals of the Comprehensive Plan can be met without strict adherence to the 50% floor area provision is in line with the discretion afforded by the rules of statutory construction.

Furthermore, from a practical view point it may be worth noting that the Policy 1.1 guideline language is only used with professional office and commercial land designations in the Comprehensive Plan. This guideline is not implemented in the ULDC. The guideline states that the residential use should not exceed 50% of the floor area, with floor area defined as the usable area of each story of a building, or portion thereof, within surrounding exterior walls. This is not a common way of limiting residential use/dwellings in a land area and it is unclear how such a restriction could work in a stand-alone residential use scenario. Further, both sections 53-38 and 53-93 of the ULDC, which implement Policy 1.1, provide that the maximum density and intensity of both the Commercial and OPI Districts is 15 dwelling units and 0.95 floor area ratio. Density is defined as an existing or projected relationship between numbers of dwelling units³³ and land area, whereas intensity is the degree to which an area is developed based on density, use, mass, size, impact, floor area ratio,³⁴ and traffic generations. Hence, as is commonly done in many cities, residential density is determined by dwelling units per acre, where non-residential intensity is generally determined by FAR. Moreover, residential use alone does not generally have floor area maximums. Thus, it appears that in both the commercial and professional office land designations, the residential guideline language may have been included to guide multi-use developments (i.e., where you might have multiple stories containing both offices/commercial and residential uses), but not as a mandatory limitation on all residential use for those land designations.

For these reasons, staff's interpretation that the language in Goal 1 of the Future Land Use Element of the Comprehensive Plan provides for a balancing of all of the factors listed in Goal 1, without specific weight or priority assigned to any one factor, and staff's interpretation that the guideline language in Policy 1.1 provides a recommendation of a limitation for residential use to 50% of the floor area are consistent with the rules of statutory construction.

Should you have any questions, please feel free to contact me. Thank you.

³³ Dwelling Unit are a single room or unified combination of rooms, regardless of form of ownership that is designed **for residential use** by one (1) or more persons or single family and includes multiple family buildings. Section 61-3, ULDC.

³⁴ Floor Area Ratio (FAR) is the ratio of gross floor area of **non-residential development** to the square footage of a given lot, parcel, or site. With multi-story structures it gauges the intensity of permitted or proposed non-residential development. When residential units are proposed to be vertically integrated with non-residential uses, the FAR shall NOT reflect the square footage devoted to the residential use. Section 61-3, ULDC.