
LEGAL MEMORANDUM OF APPLICANT

TO: Seminole County
FROM: Lonnie N. Groot, Lonnie N. Groot, P.L.
DATE: July 23, 2024
SUBJECT: Legal And Comprehensive Plan Analysis Relative To *Seminole County Comprehensive Plan*; Nikolic Home Small Scale Future Land Use Map/Designation Amendment; Naviline Project Number: 24-10000001

I. QUESTION PRESENTED:

Whether the proposed small scale amendment to the *Seminole County Comprehensive Plan* is consistent with the statutory and regulatory framework governing local government comprehensive plans as set forth in controlling State law, including, but not limited to, Section 163.3177, *Florida Statutes*, which is part of Florida's *Community Planning Act*, which is codified as Part II, entitled "Growth Policy; County and Municipal Planning; Land Development Regulation," of Chapter 163, entitled "[Intergovernmental Programs](#)," of the *Florida Statutes*], and whether it maintains internal consistency with the other elements of the *Seminole County Comprehensive Plan*. It is beyond dispute that, additionally, the proposed small scale amendment has been well processed by Seminole County Planning Staff in accordance with controlling State law and the Implementation Element of the *Seminole County Comprehensive Plan* itself as well as the implementing processes and procedures set forth in the *Land Development Code of Seminole County*.

II. SHORT ANSWER:

Yes, the proposed small scale amendment to the *Seminole County Comprehensive Plan* complies with procedural requirements, is supported by appropriate data and analysis, and does not conflict with other elements of the existing *Seminole County Comprehensive Plan*. Additionally, the proposed small scale plan amendment is consistent with the goals, objectives and policies of the *Seminole County Comprehensive Plan* in light of Seminole County's planning framework and any and all applicable State or regional review criteria.

III. BACKGROUND:

The property owners of the subject real property filed an application for a small scale amendment to the *Seminole County Comprehensive Plan* in order redesignate approximately 2.60 acres of real property, located on the west side of Markham Woods Road, approximately ½ mile south of Markham Road, from the Public-Quasi Public future land use designation to the Suburban Estates future land use designation. The Suburban Estates future land use designation allows a maximum density of one (1) dwelling unit per net buildable acre. The existing zoning classification assigned to the subject real property is A-1 (Agriculture) which allows a minimum lot size of one (1) acre and permits

single family residential uses. The A-1 zoning classification is supported under the proposed Suburban Estates future land use designation and is a consistent zoning classification within that future land use designation. Given the status of the subject real property as being privately owned and not being placed to any public or quasi-public use, the Suburban Estates law use designation is an appropriate, or consistent, future land use designation to be assigned to real property which is privately owned and developable for private residential uses. On the other hand, the Public, Quasi-Public future land use designation is not appropriate, or consistent, in that the intent of that future land use designation is to identify locations for a variety of public and quasi-public uses, transportation, communication, and utilities and is appropriate for real property which is designated in areas where public and quasi-public uses are established and in areas reserved for future public use. That is not the case with regard to the subject privately owned parcel of real property.

Under controlling Florida law, local governments are required to adopt and maintain a comprehensive plan that guides future growth and development. Any amendments to the plan must be consistent with both the local comprehensive plan's overall goals and with State requirements. Section 163.3167, *Florida Statutes*. To accomplish that goal, it is clear that the subject application should be approved.

IV. LEGAL ANALYSIS:

The proposed amendment to the *Seminole County Comprehensive Plan* is a small scale amendment which is a type of comprehensive plan amendment which applies to parcels of land which are fifty (50) acres or less in size located in urban areas and one hundred (100) acres or less in size when located in certain other areas. Small scale amendments are limited to changes to a future land use map for site-specific small scale development activities such as in this case - - single family residential development. No text changes are proposed to the *Seminole County Comprehensive Plan* in conjunction with the proposed small scale amendment. Section 163.3187, *Florida Statutes*.

Section 163.3194, *Florida Statutes*, relates to the legal status of comprehensive plans and provides that after a comprehensive plan is adopted/enacted in conformity with State law, all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan or element shall be consistent with such plan or element, as adopted.

The proposed small scale amendment supports the goals, objectives, and policies of *Seminole County Comprehensive Plan*. Seminole County Planning Staff has done a professional job in conducting a review and analysis of the proposed amendment and the draft staff report that has been provided to the undersigned indicates support for the proposed amendment as should be the case. Seminole County engages in a well-reasoned and implemented intergovernmental coordination process and external consistency of the proposed small scale amendment has been demonstrated. For example, Section 187.201 (14) (a), *Florida Statutes* (of the *State Comprehensive Plan*), established the following goal, with regard to property rights:

Florida shall protect private property rights and recognize the existence of legitimate and often competing public and private interests in land use regulations and other government action.

Seminole County has expanded upon that State established goal in addressing the legislative intent expressed in Section 163.3161(10), *Florida Statutes*, and Section 187.101(3), *Florida Statutes*, to the effect that governmental entities must respect judicially acknowledged and constitutionally protected private property rights, and that each local government shall include in its comprehensive plan a property rights element to ensure that private property rights are considered in local decision-making. In the *Property Rights Element* of the *Seminole County Comprehensive Plan* a goal has been adopted mandating that "Seminole County will make decisions with respect for property rights and with respect for people's rights to participate in decisions that affect their lives and property." And, more specifically, in Objective PR 1: relating to "Private Property Rights Decision Making," it is stated that that "[t]he County shall consider the following property rights in local decision making":

- (1). The right of a property owner to physically possess and control their interests in the property, including easements, leases, or mineral rights.
- (2). The right of the property owner to the quiet enjoyment of the property, to the exclusion of all others.
- (3). The right of a property owner to use, maintain, develop, and improve his or her property for personal use or the use of any other person, subject to State law and local ordinances.
- (4). The right of a property owner to privacy and to exclude others from the property to protect the owner's possessions and property.
- (5). The right of a property owner to dispose of their property through sale or gifts.

Further, Seminole County recognizes the provisions of the *Bert J. Harris, Jr., Private Property Rights Protection Act*, Section 70.001, *Florida Statutes*, as amended. The objectives of the Property Rights Element require Planning Staff when it makes a recommendation relative to any land use decision to consider the provisions of the *Bert J. Harris Act* and other general principles of law relating to the appropriate regulation of land without said regulation resulting in the taking of private property rights. Seminole County Planning Staff has professionally applied its sound and generally accepted land use planning and development practices and principles in arriving at the positive recommendation for the application as set forth in the Planning Agenda Memorandum that has been provided to the undersigned.

Policy FLU 5.3.2 in the *Future Land Use Element* of the *Seminole County Comprehensive Plan* provides as follows:

Public, Quasi-Public

Purpose and Intent

The purpose and intent of this land use is to identify locations for a variety of public and quasi-public uses, transportation, communication, and utilities. Public and quasi-public uses are designated on the **Exhibit FLU: Future Land Use Map** in areas where public and quasi-public uses are established and in areas reserved for future public use. The maximum intensity permitted in this designation is 0.65 floor area ratio.

Uses

- A** Public and private recreation, education, and library facilities;
- B** Public elementary schools, public middle schools, and public high schools;
- C** Public and private cemeteries and mausoleums;
- D** Public safety facilities; and
- E** Water, sewer, telephone, electric, gas, communication, and transportation facilities

Maintaining the Public, Quasi-Public future land use designation on the subject privately owned real property would be contrary to the five (5) property rights consideration acknowledged for protection in the *Property Rights Element* of the *Seminole County Comprehensive Plan* (as outlined above) as well as an array of other controlling legal provisions and principles deriving from State and Federal law. Maintaining the current Quasi-Public future land use designation on the subject real property would be an arbitrary and capricious action which would not be consistent with the history and policies of Seminole County with respect to the protection of property rights and would not be consistent with sound and generally accepted land use planning and development practices and principles.

V. REQUEST:

The property owners request that the Seminole County Planning and Zoning Commission proceed with the public hearing process and, in accordance with its duties as set forth in Section 163.3174, *Florida Statutes*, Chapter 7 *Land Development Code* of *Seminole County*, and Section 30.3.1 of the *Land Development Code* of *Seminole County*, and recommend that the Board of County Commissioners of Seminole County adopt, approve

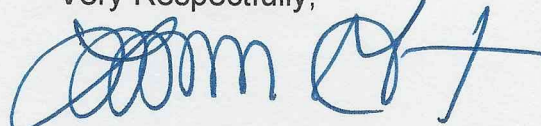
and enact the proposed small scale amendment to the *Seminole County Comprehensive Plan*.

VI. CONCLUSION:

As a legal professional who was proud to serve Seminole County Government for fifteen (15) years and was part of the team that initially developed the *Comprehensive Plan* that initially became required by what was then commonly known as the *Growth Management Act*, and who has watched Seminole County since leaving County Government in 2000 as it grappled with the challenges of managing growth in a highly desirable location with an array of beautiful natural amenities and resources; I can affirm that taking the action requested will not adversely impact that sound planning vision and will ensure that reasonable property rights are afforded to the property owners. I will submit a resume/vita at a subsequent time.

Thank you very much for your attention to this matter. We appreciate your time in providing a professional evaluation of this proposal as set forth in the application under consideration and will attempt to fully answer any questions that may arise.

Very Respectfully,

A handwritten signature in blue ink, appearing to read 'Lonnie N. Groot', with a stylized flourish at the end.

Lonnie N. Groot
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