NOT FINAL UNTIL DISPOSITION
OF TIMELY-FILED MOTION FOR
REHEARING OR CLARIFICATION

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

OLIGON PROPERTIES, LLC,
Appellant,

CASE NO. 2023-72-AP-01

APPELLATE DIVISION

v.

MIAMI-DADE COUNTY DEPT. OF REGULATORY AND ECONOMIC RESOURCES,
Appellee.
_____/

OPINION

Opinion filed: September 13, 2024

On Appeal from the Final Administrative Action of the Miami Dade County Office of Code Enforcement.

Bryan Morera, Esq. and Austin Gomez, Esq. of Morera Law Group, P.A., as counsel for Oligon Properties, LLC, Appellant.

David Sherman, Esq. and Benjamin Simon, Esq., Assistant County Attorneys, as counsel for Miami-Dade County Dept. of Regulatory and Economic Resources, Appellee.

Before: TRAWICK, DE LA O, and ARECES, R., JJ.

PER CURIAM

This case presents legal and factual issues identical to those raised in *RR 1 Developer, LLC v. Miami-Dade County Dept. of*

Regulatory and Economic Resources, Case No. 2023-60-AP-01.[1] This Court adopts and incorporates by reference its June 25, 2024 Opinion in Case No. 2023-60-AP-01, which is attached hereto. Appellee did not file a notice of appeal in *RR1*, nor has it filed a Confession of Error in this case.

In *RR 1*, this Court found the Hearing Officer failed to observe the essential requirements of the law, made a decision unsupported by competent substantial evidence and denied Appellant the due process of law when it incorrectly held that the owner of a property zoned for industrial use could be cited for purported violations of zoning provisions applicable to properties that are zoned for agricultural use. For the reasons stated in this Court's *RR1* Opinion dated June 25, 2024, the Hearing Officer in this case, like the Hearing Officer in *RR1*, departed from the essential requirements of the law, made a decision unsupported by competent substantial evidence and denied Appellant the due process of law when he incorrectly reached the same conclusion.

Accordingly, all citations issued in this case are quashed.

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[1] The Appellant and Appellee in this case are represented by the same lawyers who represented the appellant and appellee in *RR1*.

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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

RR 1 DEVELOPER, LLC.,
Appellant,

CASE NO. 2023-60-AP-01

APPELLATE DIVISION

v.

MIAMI-DADE COUNTY DEPT.
OF REGULATORY AND
ECONOMIC RESOURCESM
Appellee.
_____/

OPINION

Opinion filed: June 25, 2024.

On Appeal from Final Administrative Action of the Miami-Dade County Office of Code Enforcement.

Bryan Morera, Esq. and Austin Gomez, Esq. as counsel for RR 1 Developer LLC, Appellant.

David Sherman, Esq. and Benjamin Simon, Esq., Assistant County Attorneys, as counsel for Miami-Dade County Dept. of Regulatory and Economic Resources, Appellee.

Before: TRAWICK, DE LA O, and ARECES, R., JJ.

ARECES, R., J.

Appellant RR 1 Developer, LLC ("Appellant") contends the Hearing Officer below erred in affirming 47 citations, which charged Appellant with having violated Miami-Dade County Code Section 33-279.3.[1] This Court agrees.

The facts are simple. Appellant's real property is zoned IU-1 (or, industrial use).[2] The specific use for which Appellant was fined is permitted on IU-zoned properties.[3] Appellant was, nevertheless, found to have violated ordinances applicable to properties zoned AU (or, agricultural use). It is undisputed that Appellant's property is not currently zoned AU.

The outcome of this appeal should appear obvious. In finding

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[1] The 47 citations are as follows: T104535, T104538, T104544, T104549, T104555, T104560, T104568, T104571, T104537, T104552, T104559, T104570, T104575, T104579, T104581, T104585, T104541, T104586, T104591, T104593, T104596, T104598, T104600, T104603, T104605, T104607, T104610, T104539, T104548, T104551, T104558, T104564, T104569, T104574, T104626, T104627, T104628, T104629, T104630, T104633, T104635, T104636, T104639, T104640, T104641, T104642, T104644.

[2] Specifically, Industrial Light Manufacturing.

[3] Appellee conceded as much during oral argument.

that Appellant was in violation of zoning regulations which did not apply to his property, the Hearing Officer failed to observe the essential requirements of the law, deprived Appellant of due process and entered an Order[4] that was not supported by competent, substantial evidence.

Appellee, however, argues that this Court should affirm the Hearing Officer's ruling because the comprehensive land use plan has designated the subject property "agricultural" despite the fact that the property is zoned for light industrial manufacturing. As a result, Appellee contends that Appellant's IU-zoned property is now subject to AU-restrictions. Appellee is mistaken.

It is well-settled that comprehensive land use plan provisions are not zoning laws. *See Gardens Country Club, Inc. v. Palm Beach Cnty.*, 590 So. 2d 488, 490 (Fla. 4th DCA 1991). The Third District Court of Appeal has explained the difference between a comprehensive land use plan and zoning laws. *See Machado v. Musgrove*, 519 So. 2d 629 (Fla. 3d DCA 1987). Specifically, the Third

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[4] It is actually *forty-seven* Orders, each finding Appellant in violation of section 33-279.3 of the Miami Dade County Code of Ordinances, which prohibits the parking of certain vehicles in *AU-zoned* properties. Appellant was assessed one violation per parked vehicle.

DCA explained,

> Land use planning and zoning are different exercises of sovereign power....
>
> A local comprehensive land use plan is a statutorily mandated legislative plan to control and direct the use and development of property within a county of municipality. The plan is likened to a constitution for all *future* development within the governmental boundary.
>
> *Zoning*, on the other hand, is the means by which the comprehensive plan is implemented, and *involves the exercise of discretionary powers within limits imposed by the plan.*

Id. at 631-32 (internal citations omitted) (emphasis added). Simply put, without more, a change to a comprehensive, or future, land use plan does not change an existing parcel's zoning. *See, e.g., City of Gainesville v. Cone*, 365 So. 2d 737, 739 (Fla. 1st DCA 1978) ("The adoption of the Comprehensive Development Plan did not change the zoning or land use regulations of a single parcel of property in the City. The existing zoning categories remained in full force and effect and still remain in full force and effect.").

On the contrary, a comprehensive land use plan sets forth the "long term expectations for growth" which guide *future* zoning and development actions. *See Southwest Ranches Homeowners Ass'n,*

Inc. v. Broward Cnty., 502 So. 2d 931, 936 (Fla. 4th DCA 1987) ("the purpose of a comprehensive plan is to set general guidelines for future development, and not necessarily to accomplish immediate land use changes.").

In this case, the County's own land use map, in at least three places, clearly reflects an understanding, if not the express intent, that mere enactment of, or amendment to, the land use map is insufficient to ensure each individual property is zoned in conformity with the County's vision for long-term future growth. For example, section LU-4E provides,

> Zoning shall be examined to determine consistency with the Comprehensive Plan, and if deemed necessary to remedy an inconsistency, rezoning action shall be initiated. Examination could occur through a special zoning study, area-planning activity, or through a study of related issues.

See Land Use Element § LU-4E (Appx. at 448). The Land Use Element also provides,

> The number of rezoning applications filed by the Department of Regulatory and Economic Resources and approved by the Board of County Commissioners to bring preexisting zoning into closer uniformity with the LUP map shall be logged by the Department of Regulatory and Economic Resources and reported in the EAR.

See Land Use Element Objectives LU-4 and LU-5 (Appx. at 545).

Finally, the Land Use Element specifically provides the County should formulate "zoning overlay or other regulations...to orient the uses allowed in business and industrial zoning districts to those which support the rural and agricultural economy of the area." *Id.* at § LU-9L (Appx. at 459). Specifically, section LU-9L reads,

> Miami-Dade County shall formulate and adopt zoning overlay or other regulations applicable to land outside the Urban Development Boundary to orient the uses allowed in business and industrial zoning districts to those which support the rural and agricultural economy of the area. Uses permitted by right would relate exclusively to agricultural or mining industries, and other uses would be approvable as special exceptions upon demonstration that the use supports the non-urban economy of that area or is required by residents of the immediate area.

Id.

The three aforementioned provisions would be entirely unnecessary if the mere amendment to a comprehensive land use map were alone sufficient to change a property's zoning designation.[5]

[5] Additionally, there are times where a property may have more than one permissible use. Appellee's argument would subject the

Moreover, the County's Code of Ordinances recognizes the difference between zoning and comprehensive land use maps. For example, in Section 33-279.2—another provision that is applicable to AU-zoned properties—the Code clearly provides that there will be properties that are zoned IU despite being designated agricultural on the comprehensive land use plan. *See* Miami-Dade County, Fla., Code § 33-279.2. Specifically, said section states, in pertinent part,

> Notwithstanding any provisions to the contrary in Chapter 33 of this Code, the agricultural uses provided in this Section are permissible in areas zoned EU, RU, BU and IU that are designated Agriculture on the Comprehensive Development Master Plan Land Use Plan Map and that are located outside of the Urban Development Boundary.
> ...
> For areas zoned BU and IU:
> (1) Agricultural uses provided in Section 33-279 of the Code are permitted.

Id. Section 33-279.2 plainly authorizes IU-zoned properties, like Appellant's, to use their properties for agricultural uses that may not have otherwise been permitted under sections 33-259 and 33-259.1—the sections of the Code that set forth the permitted uses for

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landowner of one such property to every conceivable, permissible zoning designation's regulations. This would be contrary to Florida law and a gross violation of due process.

IU-1 zoned properties. Appellee, however, reads sec. 33-279.2 as completely overriding sections 33-259 and 33-259.1 and *limiting* the IU property's permissible uses to only those uses permitted on agricultural-zoned properties. This is a misreading of the law.

When the County has sought to limit the permissible uses of IU-zoned properties, it has done so in clear and obvious ways. For example, section 33-259 specifically provides that *"[n]o land, body of water, or structure shall be used or permitted to be used and no structure shall be erected...excepting for one (1) or more"* of an enumerated list of uses on IU-1 zoned properties. *See* Miami-Dade County, Fla., Code § 33-259 (emphasis added); *see also* Miami-Dade County, Fla., Code § 33-259.1(c)-(d) (setting restrictions on certain permitted IU-1 uses).

More importantly, the County knows how to make IU-1-zoned properties subject to other provisions in the Code and even to limitations set forth in the comprehensive development master plan. *See* Miami-Dade County, Fla., Code § 33-259(92). Specifically, the County has legislated,

> Notwithstanding any other provisions to the contrary, on lands zoned IU-1 that are located within an area designated Institutions, Utilities

> and Communications and are within the Urban Development Boundary on the CDMP Land Use Plan map, the uses enumerated in Section 33-284.28.10 are permitted *subject to* the following:
>
> *(a)*Such uses *shall only be permitted to the extent allowed by the [Comprehensive Development Master Plan].*
> ....

Id. (emphasis added).

In contrast to the above provisions, section 33-279.2 does not subject IU-1-zoned properties to any limitations or restrictions. Section 33-279.2 also does not make some permitted use subject to any of the terms contained within the Comprehensive Development Master Plan or its Land Use Map. Instead, through section 33-279.2, the County has merely authorized IU-1-zoned properties, like Appellant's, to engage in certain agricultural uses, which would not have otherwise been permitted.

In any event, the evidence before the Hearing Officer clearly established that the County's zoning maps did not include the subject property within the "AU district" as would be required for Appellant to be cited under section 33-279.3. In the proceedings

below, Appellee and its witness Mr. Kogon[6] engaged in the following exchange:

> Q: And by that do you mean that the property according to out [sic] designation of unincorporated Miami-Dade, it's zoned as IU1?
>
> A: That is correct.
>
> Q: And essentially IU1 means that a property according to its zoning is generally designated to allow used [sic] consistent with industrial light manufacturing.
>
> A: That is correct.
>
> ...
>
> Q: So if—you've already described for us that according to the zoning designation for the property, the subject property, that it was zoned as IU1, industrial light manufacturing, and now you're telling us that the CDMP land use plan map designates it as agriculture, so which one controls?
>
> A: In this case the underlying land use controls.
>
> Q: Meaning the land use designated on the CDMP land use plan map.
>
> A: That is correct.

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[6] Mr. Kogon is the Assistant Director for Development Services for the Regulatory and Economic Resources Department.

Appx. at 107-111.

That is, in fact, incorrect.

The section under which Appellant was cited refers to certain agricultural activity permitted in the "AU *district*." *See* Miami-Dade County, Fla., Code § 33-279.3(1) (emphasis added). By the Code's own provisions, the boundaries of a zone classification *district* "are shown upon the *zoning* maps on file with the Department." *See* Miami-Dade County, Fla., Code § 33-3(a) (emphasis added). Appellant's designation as AU on the *CDMP*'s Land Use Map is irrelevant for purposes of § 33-279.3(1). Instead, what matters is Appellant's zone classification as reflected on the County's own zoning maps. In this case, pursuant to the *zoning* maps, Appellant is quite clearly within the IU district and *not* within the AU district.

Respondent, nevertheless, maintains that the IU-1-zoned property at issue in this case is subject to limitations imposed on AU-zoned properties and relies primarily on two cases—*Machado*, 519 So. 2d 629 and *Mojito Splash, LLC v. City of Holmes Beach*, 326 So. 3d 137 (Fla. 2d DCA 2021). Respondent's reliance on these two cases is misplaced.

In *Mojito*, a 2009 ordinance amended the city's comprehensive

land use plan to allow vacation rentals in R-2 zoning districts, but limited the occupancy of those vacation rentals to the greater of 6 persons, or 2 persons per room. In 2013, or four years later, the appellant purchased a vacation rental property located within an R-2 zoning district and planned to market the vacation property as one capable of sleeping 12 guests. In 2016, the city enacted an ordinance to create an enforcement mechanism by which to enforce the 2009 amendment. Appellant sued the city under the Private Property Rights Protection Act claiming his property had been devalued as a result of the 2016 ordinance.

Mojito, a Private Property Rights Protection Act case, ultimately turned on (1) "whether the claimed 'existing use of the real property' or the claimed 'vested right to a specific use of the real property' actually existed" *and* (2) "whether the government action inordinately burdened the property." The Second District Court of Appeal found appellant had no right, as of the 2009 Ordinance, to rent his vacation rental property to an unlimited number of persons.

There are at least three reasons why *Mojito* is inapposite. First, this case does not concern the Private Property Rights Protection Act and, as a result, requires no analysis of vested rights or inordinate

burdens. Second, the city in *Mojito* did not fine the landowner for violation of some *non*-R-2-zoning regulation. The city, instead, sought to enforce the very regulations applicable to a property zoned R-2. Finally, unlike the instant case, the local government in *Mojito* enacted one or more additional ordinances to give effect to the local government's long-term vision for future growth as set forth in the comprehensive land use plan. In the instant case, Appellee could have, as set forth in its own land use objectives, sought to rezone Appellant's property to bring it into "closer uniformity" with the land use plan. The County failed, or chose not, to.

Appellee's reliance on *Machado* is equally misplaced. In *Machado*, the landowner sought to have his property rezoned from GU (interim zoning) to RU-5A (professional offices). 519 So. 2d at 630. The case turned on whether the RU-5A zoning designation was incompatible with the comprehensive land use plan, which designated the area as "estate residential -up to two units per acre." *Id.* at 632 ("The test in reviewing a challenge to a zoning action on grounds that a proposed project is inconsistent with the comprehensive land use plan is whether the zoning authority's determination that a proposed development conforms to each

element and the objectives of the land use plan is supported by competent and substantial evidence.").

Unlike *Machado*, no one in the instant case is seeking to rezone real property. There is, therefore, no need to engage in an analysis of whether some proposed new zoning designation is consistent with the comprehensive land use plan and its land use element. Additionally, Appellee's attempt to draw support from *Machado* is confusing. In *Machado*, the Third District Court of Appeal expressly stated the obvious—i.e., "local comprehensive plans...are not zoning laws." *Id.*[7]

In summary, the subject property is zoned IU-1. Appellee concedes the activity for which Appellant was cited is permitted on IU-zoned properties. Appellant was cited for violating an AU-zoning regulation. Appellant's property is not zoned AU.

The Hearing Officer, therefore, failed to observe the essential requirements of the law, made a decision unsupported by competent

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[7] Appellee's other arguments—namely, (1) that the AU regulations apply to IU-zoned properties because a County employee says so; and (2) that a statute which permits, but does not require some agricultural related activity on an IU-zoned property—are equally unpersuasive.

substantial evidence and denied Appellant the due process of law.

Accordingly, all 47 citations are quashed.

TRAWICK AND DE LA O, JJ., CONCUR.