

ORDINANCE NO. 98- 52

AN ORDINANCE OF ST. JOHNS COUNTY, FLORIDA AMENDING THE ADOPTED COMPREHENSIVE PLAN ORDINANCE 90-53, AS AMENDED, AN AMENDMENT ESTABLISHING A REVISED LEVEL OF SERVICE STANDARD TO THE FLORIDA INTRASTATE HIGHWAY SYSTEM BY AMENDING THE TRAFFIC CIRCULATION AND CAPITAL IMPROVEMENT ELEMENT(S) POLICIES OF THE ST. JOHNS COUNTY COMPREHENSIVE PLAN; PROVIDING FOR INTENT; AUTHORITY; FINDINGS OF FACT; THE AMENDMENT; FINDINGS OF CONSISTENCY; EFFECT ON THE COMPREHENSIVE PLAN; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, Chapter 125 and Section 163.3161-163.3215, Florida Statutes, empowers and requires the board of County Commissioners to prepare, implement, and enforce comprehensive plans and land development regulations for the control of development within the County; and

WHEREAS, Section 163.3187, Florida Statutes, provides for the amendment of an adopted Comprehensive Plan; and

WHEREAS, Section 163.3187, Florida Statutes, provides that amendments to Comprehensive Plan may be made two times during any calendar year,

WHEREAS, St. Johns County Ordinance 92-16 establishes procedures for amending the St. Johns County Comprehensive Plan establishing two cycles per year and this being the first amendment cycle for calendar year of 1998,

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA:

Section 1. Intent.

The purpose of this Ordinance is to amend Ordinance 90-53, which adopted the St. Johns County on September 14, 1990, ("Plan") to provide for the orderly growth of the St. Johns County, Florida and to exercise the authority and perform the duties set out in Sections 163.3161 - 163.3215, Florida Statutes.

Section 2. Authority

This Ordinance is adopted pursuant to Florida Statutes, Chapter 163 and 125; Florida Administrative Code Rules 9J-5 and 9J-11; and the Constitution of the State of Florida, as may be amended from time to time.

Section 3. Findings of Fact.

The amendment is based upon: (i) the Evaluation and Appraisal Report of the Comprehensive Plan and (ii) the review, process and coordination efforts between the County, the Department of Community Affairs and Department of Transportation, resulting in a proposed Petition for Variance from Chapter 14-94, F.A.C. to address the Level of Service standard for portions of Interstate 95 (I-95).

Section 4. Amendment

- (a) The following amendment to Traffic Circulation Element Policies B 1.1.1 and B.1.1.3 and Capital Improvements Element Policy J.1.2.1(6) of the St. Johns County Comprehensive Plan is to support and establish consistency with the recommendations in the St. Johns County Evaluation and Appraisal Report and the Order Granting the Petition for Variance to Chapter 14-94, F.A.C. signed by the Florida Department of Transportation Secretary Thomas F. Barry, Jr. on May 5, 1998, as attached. The Order granted a variance that immediately reduced the Level of Service Standard applicable to the rural portions of Interstate 95 in the County from LOS "B" to LOS "C" and that reduces the level of service standard applicable to both the rural portions and the transitioning urbanized portion of I-95 in St. Johns County to LOS "D" after December 31, 2001, provided certain conditions are met that are outlined in the Petition.
- (b) St. Johns County Comprehensive Plan Policies B.1.1.1, B 1.1.3, and J.1.2.1(6) are hereby repealed and deleted and are hereby replaced with the following Policies:

B. Traffic Circulation Element

Policies

B.1.1.1 Peak Hour Level of Service Standards. The established level of service standards during the peak hours shall be as set forth below, and in Policy B.1.1.2 and Policy B.1.1.3. Roadway Level of Service shall be measured by methodologies outlined in Florida's Level of Service Standards and Guidelines Manual for Planning, Florida Department of Transportation, 1995, or as updated.

Minimum Acceptable Level of Service Standards

Florida Intrastate Highway System

The Peak Hour Level of Service Standards for the Florida Intrastate Highway System shall be as set forth in Rule 14-94, Florida Administrative Code, as updated, except as modified by the Order granting the Petition for Variance by Florida Department of Transportation

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Secretary Thomas F. Barry, Jr. on May 5, 1998, as attached, or as modified by general law in Florida Statutes . The least stringent standard available pursuant to any such modification is the established level of service standard.

	Rural Area	Transitioning Urban Area, or Community	Urbanized Area
All Other Roadways	C	D	D

Exceptions to the standards adopted herein, which represent an adequate level of service standard for each of the listed segments, shall apply as follows:

Roadway Segment	Level of Service
US 1 Wildwood Dr. to St. Aug. City Limits	E
CR 214 (W. King St.) Holmes Blvd. to US 1	E
SR 16 Clay Co. Line to SR 13	D
SR 13 SR 16 to CR 16A	D
CR 16A SR 13 to CR 210	D
CR 210 CR 16A to Greenbriar Rd.	D

B.1.1.3 Backlogged Facilities. The inventory of backlogged facilities is comprised of those roadways operating below the adopted level of service standard at the time of plan adoption and are not designated as constrained.

The adopted level of service standard for roadways designated as backlogged shall be maintained. Roadway segments in St. Johns County designated as backlogged are located within the rural area. Maintained in the rural area means that any backlogged facility will be allowed to operate at levels that do not exceed a five percent increase in peak hour traffic volumes or a five percent decrease in travel speed.

J. Capital Improvements Element

J.1.2.1(6) The LEVEL OF SERVICE (LOS) standards which the County shall ensure are provided for a new development, and which the County shall strive to meet where existing deficiencies are noted, shall be in accordance with the following criteria:

Roads.

Florida Intrastate Highway System

The Peak Hour Level of Service Standards for the Florida Intrastate Highway System shall be as set forth in Rule 14-94, Florida Administrative Code, as updated, except as modified by the Order granting the Petition for Variance by Florida Department of Transportation Secretary Thomas F. Barry, Jr. on May 5, 1998, as attached, or as modified by general law in Florida Statutes. The least stringent standard available pursuant to any such modification is the established level of service standard.

	Rural Area	Transitioning Urban Area, or Community	Urbanized Area
All Other Roadways	C	D	D

Exceptions to the standards adopted herein, which represent an adequate level of service standard for each of the listed segments, shall apply as follows:

Roadway Segment	Level of Service
US 1 Wildwood Dr. to St. Aug. City Limits	E
CR 214 (W. King St.) Holmes Blvd. to US 1	E
SR 16 Clay Co. Line to SR 13	D
SR 13 SR 16 to CR 16A	D
CR 16A SR 13 to CR 210	D
CR 210 CR 16A to Greenbriar Rd.	D

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Section 5. Findings of Consistency

The Board of County Commissioners of St. Johns County, Florida hereby finds and determines that the revised policies of the Traffic Circulation Element and the Capital Improvements Element are: (i) consistent with the State Comprehensive Plan, Section 187.201, Florida Statutes, construed as a whole; (ii) consistent with the Northeast Florida Comprehensive Regional Policy Plan construed as a whole, without isolated application of a specific goal or policy; (iii) consistent with Florida Administrative Code Rule 9J-5 as revised, to the extent such Rule is not in conflict with Chapter 163, Part II, as provided in Section 163.3177 (10)(c); and (iv) is internally consistent in that the Traffic Element and the Capital Improvements Element are related and consistent with other elements of the Plan.

Section 6. Effect on the Comprehensive Plan.

The remaining portion of the adopted Comprehensive Plan Ordinance 90-53 of St. Johns County, Florida, which are not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section 7. Severability.

It is declared to be the intent of the Board of County Commissioners that if any provisions, paragraph, or section of this Ordinance is for any reason finally held invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed separate, distinct, and independent, and such holding shall not affect the remaining provisions .

Section 4. Effective Date.

This Ordinance shall take effect upon receipt of the Secretary of State.

PASSED AND ENACTED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA THIS 25 DAY OF AUGUST, 1998.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY

BY: Moran A. Floyd
M.A. Floyd, Chairman

ATTEST: CHERYL STRICKLAND

BY: Cheryl Strickland
CLERK

EFFECTIVE DATE: August 28, 1998

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STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION
Haydon Burns Building
605 Suwannee Street
Tallahassee, Florida

ST. JOHNS COUNTY,

Petitioner,

vs.

DOT CASE NO.: 98-0044

DEPARTMENT OF TRANSPORTATION,

Respondent.

ORDER GRANTING PETITION FOR VARIANCE

On March 2, 1998, a Petition for Variance was filed by Petitioner, ST. JOHNS COUNTY (hereinafter the COUNTY), seeking a waiver of the minimum level of service (LOS) standards under Chapter 14-94, Florida Administrative Code. The Petition for Waiver requests that the DEPARTMENT immediately reduce the LOS standard "B" applicable to Interstate Route 95 (I-95) within the rural areas of St. Johns County to LOS "C" and subsequently reduce the LOS to "D" for the entire length of I-95 in St. Johns County, upon compliance with certain conditions proposed by the COUNTY.¹

Respondent, DEPARTMENT OF TRANSPORTATION (hereinafter DEPARTMENT), caused a notice of the Petition for Variance to be published in the March 20, 1998, edition of the Florida Administrative Weekly. Written comments were received

¹The northernmost portion of I-95 in St. Johns County currently lies within an "transitioning urban area," which is assigned an LOS "C" by Rule 14-94.003(1).

from New Plan Realty Trust and Friends of Matanzas, Inc. These comments questioned the basis for the variance and the adequacy of the proposed conditions.

THE VARIANCE SOUGHT

1. The COUNTY seeks to have the LOS for the portions of I-95 within the rural portions of St. Johns County immediately reduced from "B" to "C" and to have the level of service for the entire length of I-95 in St. Johns County reduced to "D" after December 31, 2001. As conditions to the LOS reductions, the COUNTY proposes to plan, fund, and construct a series of improvements to the existing roadway system west of and parallel to I-95, which will form a north/south corridor to reduce the impact of local traffic on I-95.

2. Rule 14-94.003(1) prescribes LOS standards for all roads on the State Highway System. The majority of I-95 is within a portion of St. Johns County that is a "rural area" within the meaning of Rule 14-94.002(14) and is assigned a LOS of "B" by Rule 14-94.003(1). A portion of I-95 at the northern end of St. Johns County is within an area that is a "transitioning urbanized area" within the meaning of Rule 14-94.002(14) and is assigned a LOS of "C" by Rule 14-94.003(1).

DISCUSSION

3. Section 120.542, Florida Statutes, provides in part:

(1) Strict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation. Agencies are authorized to grant variances and waivers to requirements of their rules consistent with this section and with rules adopted under the authority of this section. This section does not authorize agencies to grant variances or waivers to statutes. This section is

supplemental to, and does not abrogate, the variance and waiver provisions in any other statute.

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

* * *

(5) A person who is subject to regulation by an agency rule may file a petition with that agency requesting a variance or waiver from the agency's rule. In addition to any requirements mandated by the uniform rules, each petition shall specify:

(a) The rule from which a variance or waiver is requested.

(b) The type of action requested.

(c) The specific facts that would justify a waiver or variance for the petitioner.

(d) The reason why the variance or the waiver requested would serve the purposes of the underlying statute.

4. According to Rule 14-94.001(1), the purpose of Chapter 14-94 is to establish statewide minimum LOS standards to be used in the planning and operation of the State Highway System. Rule 14-94.001(1) also provides that the minimum LOS standards may be used by the Department to determine system deficiencies and assist in determining Department work program priorities. Sections 334.044 and 339.155, Florida Statutes, are cited as law

implemented by Rule Chapter 14-94. Although not cited, Section 338.001, Florida Statutes, is also implemented by Chapter 14-94.² All three of these statutes are part of the Florida Transportation Code.³ Section 334.035, Florida Statutes, provides:

The purpose of the Florida Transportation Code is to establish the responsibilities of the state, the counties, and the municipalities in the planning and development of the transportation systems serving the people of the state and to assure the development of an integrated, balanced statewide transportation system. This code is necessary for the protection of the public safety and general welfare and for the preservation of all transportation facilities in the state. The chapters in the code shall be considered components of the total code, and the provisions therein, unless expressly limited in scope, shall apply to all chapters.

Thus, regardless of their specific provisions, the underlying purposes of all three statutes are to assure the development of an integrated, balanced statewide transportation system, for the protection of the public safety and general welfare, and for the preservation of all transportation facilities in the state.

5. Section 163.3180(10), Florida Statutes, requires the COUNTY to adopt the DEPARTMENT'S LOS standards for the Florida Intrastate Highway System for purposes of the concurrency requirements of its Local Comprehensive Plan. Because I-95 has been designated as part of the Florida Intrastate Highway System, the COUNTY is required to utilize the LOS standards prescribed for I-95 by Rule 14-94.003(1). The COUNTY asserts

²See Rule 14-94.003(2)(d).

³See Section 334.01, Florida Statutes.

that it will suffer economic and legal hardship unless a variance from the LOS standards of Rule 14-94.003(1) is provided.

6. According to the COUNTY, previously approved residential development in the northwest sector of St. Johns County will increase inter-county trips via I-95 as new residents travel to work or shop. The COUNTY asserts that additional commercial development in this region of St. Johns County would promote intra-county trips that will alleviate some of the additional local traffic burden on I-95, and will also provide additional revenues to the COUNTY that can be used to fund local road improvements to divert local traffic away from I-95.

7. However, the COUNTY is facing an impending moratorium on development in the COUNTY due to concurrency limitations. I-95 is currently operating at an LOS of "C" in St. Johns County. According to the COUNTY, a moratorium may result in inverse condemnation actions against the COUNTY, while stopping the commercial development that the COUNTY contends would promote intra-county trips that would alleviate some of the additional local traffic burden on I-95.

8. The intended long-term effect of the COUNTY'S variance proposal is to permit local development to meet the concurrency constraints of Section 163.3180, Florida Statutes, by revising the LOS for I-95, while protecting that portion of the Florida Intrastate Highway System from the impact of traffic generated by local development through construction of roads that will provide for diversion of that traffic from I-95. This would relieve the COUNTY from the threat of inverse condemnation actions, as well as permit the commercial development that will promote local trips and also help fund local reliever roads.

9. The COUNTY has demonstrated that it will suffer a substantial hardship unless a variance to the LOS standards of Rule 14-94.003 is granted. Anticipated development in St. Johns County is expected to impact the level of service of I-95 north of the interchange with State Road 207. Therefore, the reduction of LOS for I-95 from "C" to "D" should be north of that interchange, rather than for the entire length of I-95, as proposed by the COUNTY. Further, the COUNTY'S proposed conditions should be revised to provide a financially feasible capital improvement schedule of improvements to, and construction of the parallel road system, to make necessary changes in the sequence of those improvements, and to strengthen and provide for the enforceability of the conditions of the variance.

10. The DEPARTMENT has revised the COUNTY'S proposed conditions. Those changes are shown in Appendix A to this Order, in legislative format, i.e., additional language is underlined, while deleted language is struck through. As modified, the COUNTY'S proposed variance, in conjunction with the modified conditions of the variance, serves the purposes of Rule 14-94.003 and the statutes implemented. Accordingly, the DEPARTMENT should grant a variance to the LOS standards of Rule 14-94.003(1), immediately reducing the LOS to "C" for the rural portions of I-95 in St. Johns County, and reducing the LOS to "D" for all portions of I-95 in St. Johns County north of the interchange with State Road 207 after December 31, 2001, subject to the conditions set forth in Appendix A to this Order.

ORDER

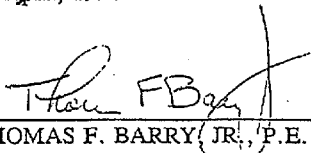
Based on the foregoing, it is

ORDERED that the Petition for Variance, filed by Petitioner, **ST. JOHNS COUNTY**, is hereby granted, with the modification that the reduction in LOS for I-95 from

"C" to "D" shall be for that portion of I-95 north of the interchange with State Road 207 and with the modified conditions set forth in Appendix A to this Order. It is further,

ORDERED that notice of the foregoing disposition of the Petition for Variance, filed by Petitioner, ST. JOHNS COUNTY, shall be published in the Florida Administrative Weekly.

DONE AND ORDERED this 5th day of ^{May}~~April~~, 1998.


THOMAS F. BARRY, JR., P.E.
Secretary
Department of Transportation
Haydon Burns Building
605 Suwannee Street
Tallahassee, Florida 32399

NOTICE OF RIGHT TO ADMINISTRATIVE PROCEEDING

This Order is a notice of proposed Department action and will become final unless, within 21 days of receipt of this Order, the petitioner files a written request for an administrative proceeding with:

Clerk of Agency Proceedings
Department of Transportation
Haydon Burns Building
605 Suwannee Street, MS 58
Tallahassee, Florida 32399-0458

You may request a formal hearing pursuant to Section 120.57(1), Florida Statutes, if you disagree with the facts stated in the Order. If you do not disagree with the facts stated in the Order, you may request an informal proceeding pursuant to Section 120.57(2), Florida Statutes.

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The written request must conform to the requirements of Rules 28-106.201 and 28-106.301, Florida Administrative Code, and must contain:

- a. The petitioner's name and address and an explanation of how the petitioner is affected by the action described in the DEPARTMENT'S notice of intended action.
- b. A statement of how and when the petitioner received the DEPARTMENT'S notice of intended action.
- c. A statement of whether there is a disagreement with the facts as stated in the DEPARTMENT'S notice of intended action and, if so, what facts are disputed.
- d. A statement of the basic facts that support opposition to the action to be taken under the DEPARTMENT'S notice of intended action.
- e. A statement identifying any rules or statutes that are relied upon to support opposition to the action to be taken under the DEPARTMENT'S notice of intended action.
- f. A statement of the relief that is sought.
- g. A statement whether a formal or informal proceeding is requested.
- h. Any other information which the petitioner contends is material.

You may request either a formal hearing pursuant to Section 120.57(1), Florida Statutes, or an informal proceeding pursuant to Section 120.57(2), Florida Statutes. Please note that, even if you request an informal proceeding, a formal hearing will be held if there are disputed issues of material fact (i.e., facts in dispute that are relevant under law or Department rules). If there are no disputed issues of material fact, an informal proceeding will be held.

If a formal hearing is held, this matter will be referred to the Division of Administrative hearings, where you may present witnesses and evidence and cross examine other witnesses before an administrative law judge, who will issue a recommended order that will be reviewed by the Secretary of Transportation. If an informal proceeding is held, you will have the right to provide the Department with any written documentation or legal arguments which you wish the Department to consider. If you wish to make an oral presentation (in person or by telephone) you must so state in your request for an informal proceeding.

Copies furnished to:

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