

STEARNS WEAVER MILLER
WEISSLER ALHADEFF & SITTERSON, P.A.

Jacob T. Cremer
401 East Jackson Street, Suite 2100
Tampa, FL 33602
Direct: (813) 222-5051
Fax: (813) 222-5089
Email: jcremer@stearnsweaver.com

October 15, 2024

**VIA - EMAIL: dsmith@martin.fl.us; shetherington@martin.fl.us;
hjenkins@martin.fl.us; sheard@martin.fl.us; eciampi@martin.fl.us**

Commissioner Smith
Commissioner Hetherington
Commissioner Jenkins
Commissioner Heard
Commissioner Ciampi
Martin County
2401 SE Monterey Road,
Stuart, FL 34996

RE: Martin County Proposed Evaluation-Based Comprehensive Plan Amendments
File No. CPA 24-04, CPA 24-01 and CPA 24-02
Transmittal Hearing October 22, 2024

Dear Commissioners:

Stearns Weaver Miller has the pleasure of representing Kolter Land LLC, Kanner/96th Street Investments, LLC, and their affiliates. We submit these written comments and recommendations on their behalf in regard to Martin County's proposed evaluation-based Comprehensive Plan amendments. As described in detail below, these proposed amendments are not in compliance with state law. Please enter these comments into the record at the upcoming transmittal hearing on October 22, 2024.

I. Background

Growth Management staff have proposed amendments to Future Land Use Element policies 4.1D.3 and 4.1D.5 concerning the methodology for projecting future residential housing demand and for conducting the related residential capacity analysis for the purpose of determining whether future land use map amendments are warranted in response to population and growth demands. Please note that these comments are based on the attached excerpted draft amendments (**Attachment "1"**) presented to the Martin County Local Planning Agency at its public hearing held on October 3, 2024 ("Draft Amendments") and that are scheduled for consideration by the Board of County Commissioners at the October 22, 2024 public hearing. This letter also addresses concerns regarding the draft Residential Capacity Analysis, dated September 6, 2024, that was included with the background documents provided by staff.

It is important to note that Kolter Land filed an application on March 26, 2024 that proposed text amendments to the above referenced policies. This application has not yet been scheduled for public hearings before the Local Planning Agency and the Board of County Commissioners. As discussed in that submittal, the County's approach to determining land use need is inconsistent with statutory changes enacted in 2011 with the passage of the Community Planning Act, as well as other statutory requirements set forth in Section 163.3177, Fla. Stat. Those comments are attached (**Attachment "2"**) and summarize the concerns of Kolter Lands in regard to the County's approach for determining the need for land use allocations.

II. Martin County's Policies Must Not Preempt Use of Best Available Data and Professionally Accepted Methodology

In effect, the County has determined through its policies that best available data which may exist at the time of a future plan amendment application will not be considered if it is not listed in the County's policies. The County's policy approach is prescriptive in nature. It mandates the use of certain data, while prohibiting consideration of other data. It is not appropriate and is not in compliance with s. 163.3177(1)(f), Fla. Stat., to prescribe that only certain data can be considered to the exclusion of other data.

Another major compliance concern is that the County's policies specify one particular methodology rather than allowing the County to consider an alternative, professionally acceptable methodology for calculating housing demand and residential capacity. Section 163.3177(6)(f)2, Fla. Stat., specifies that local governments cannot require one particular methodology over another professionally accepted methodology. Yet, the County's policies preempt consideration of any other professionally accepted methodology before even reviewing alternative methodologies that may be prepared by an applicant in reliance on best available data. In effect, the County has determined that it will consider only its preferred methodology to the exclusion of any other professionally accepted methodology, which is facially inconsistent with statutory requirements.

III. Martin County's Mandated Methodology Utilizes Overly-Simplified and Unrealistic Assumptions That Fail to Account for Real World Conditions

The two major policy deficiencies described above are exacerbated by the County's particular methodology requirements that fail to rely on best available data and fail to react appropriately to best available data. For example, the County's policies in prescribing use of only certain data does not allow consideration of basic data routinely utilized in land use needs analyses, such as *persons per household*. It also fails to differentiate between single family and multifamily units in determining land use allocation needs and doesn't consider how demand varies by unit type, location, development form and community type. These are basic considerations that are required in order for a methodology to be considered professionally accepted. The County's methodology ignores market realities and assumes that the demand for a single family unit in a conventional, low density subdivision is the same as the demand for a multifamily unit in a high density setting within a neo-traditional new town or urban village. These are very different market preferences that are completely homogenized by the County's *one-size fits all* approach.

The County's methodology also fails to consider those same market preferences in determining the extent to which land use allocations potentially respond to and satisfy projected

housing demands. Most notably, the Draft Amendments require the County’s residential capacity analysis to count the units from all approved Master Plans and Final Site Plans toward overall capacity without any distinction based on the market preferences of future residents. Similar to the one size fits all demand projection methodology, the residential capacity analysis considers all units to be the same regardless of unit type, location, development form and community type. Newfield is a perfect case in point. The Residential Capacity Analysis, dated September 6, 2024, counts 4,200 units approved for Newfield toward residential capacity without any supporting analysis estimating how much of the projected housing demand will be satisfied by the single family and multifamily housing planned for that project in a neo-traditional development form as compared to more conventional, lower density single-family neighborhoods. The County applies very simplistic assumptions in its one-size fits all prescriptive methodology that completely ignores market preferences. As such, the County’s policies are not consistent with s. 163.3177(6)(a)4, Fla. Stat.

The County’s methodology for determining residential capacity similarly fails to react appropriately to best available data concerning development potential of vacant lands. Rather than evaluate actual trends, the County’s policies prescribe that all vacant lands must be assumed to develop to the maximum density permitted by the applicable land use category and that density within wetlands must be assumed to count at 50% of the maximum density permitted by the applicable land use category. Actual development trends documented over decades prove that these unfounded assumptions are simply unrealistic and greatly overstate potential capacity based on the character of the undeveloped lands and applicability of policies governing land use compatibility, density transitions, wetland protection and that provide guidance for regulatory requirements that realistically limit development potential. Section 163.3177(6)(a)2 requires an analysis of such factors so that land use allocations are based on the study of actual data and trends over time rather than mandating over-simplified assumptions that are not consistent with real-world development limitations that yield the average densities documented by long-term trends. The market will develop to the maximum density achievable based on the character of the undeveloped land (i.e., topography, habitat conditions, floodplain conditions, etc.), taking into account required policies and regulations. It is internally inconsistent to adopt policies that ignore the effects of the County’s comprehensive plan policies that limit ability to achieve maximum densities.

IV. Martin County’s Methodology for Estimating Residential Capacity Is Internally Consistent with Other Comprehensive Plan Elements and Is Not Coordinated with Other Agency Plans

It is also evident that the County’s need methodology is not consistent with the data-driven plans prepared by other agencies, including the Martin County MPO and the South Florida Water Management District (SFWMD). The Martin County Long Range Transportation Plan forecasts future population and housing growth by Traffic Analysis Zone based on average development trends rather than assuming maximum densities. In fact, this is how all of the MPOs/TPOs plan for transportation needs throughout urban counties in Florida. Similarly, the SFWMD prepares its Regional Water Supply Plan based on average development trends as do all of the other Water Management Districts. Martin County has developed its methodology for land use allocation purposes based on mandates assumptions and data exclusions that are internally inconsistent with the methodologies and forecasts utilized to prepare its transportation and various infrastructure

elements. As such, the County's policies fail to achieve internal consistency as required by s. 163.3177(2), Fla. Stat. Mandating unrealistic assumptions and data exclusions by policy in advance of receiving a future plan amendment contravenes statutory requirements. Such policies fail to allow the County or an applicant to consider best available data at the time of a future plan amendment application submittal. Moreover, the methodology itself is not professionally accepted.

Another major problem concerning the residential capacity methodology is that it fails to differentiate antiquated subdivisions from successful subdivisions. Again, the prescriptive methodology requires that all vacant lots in a platted subdivision must be counted toward capacity, regardless of whether the subdivision has experienced poor absorption as a result of poor design, lack of amenities, infrastructure deficiencies or other factors that have resulted in the market bypassing the approved subdivision for other preferred subdivisions. Without any consideration for absorption rates, the County's methodology unrealistically assumes that such antiquated subdivisions will satisfy housing demands through the 2045 plan horizon. This short-sighted policy approach ignores best available data and effectively precludes the ability of the housing market to provide higher quality residential housing products in response to market preferences.

V. Martin County Has Not Implemented the Community Planning Act and other Related Statutory Provisions Addressing Community Needs and Market Preferences

Finally, it is important to recognize that Martin County has not implemented the statutory changes resulting from the Community Planning Act. Section 163.3177(6)(a)2 specifies that comprehensive plan policies must be based on studies and surveys addressing the amount of land required to accommodate anticipate growth taking into account the character of undeveloped lands, the need for job creation, capital investment and economic diversification, and the need to modify land uses and development patterns within antiquated subdivisions. Martin County has a legal obligation to study development trends resulting from its own policies. If policies have not been successful in achieving maximum densities or retrofitting antiquated subdivisions, then Martin County must acknowledge those policy limitations rather than mandating over-simplifying assumptions that ignore the effects of its own policies. Martin County should study growth and development trends carefully and provide a transparent, candid evaluation of how its policies affect development in the market place. Rather than imposing a methodology designed to constrain development based on unsupported assumptions, Martin County should embrace the spirit of the Community Planning Act and comply with its requirements. In regard to land use allocations, Section 163.3177(6)(a)4 sets forth a broader approach for determining community needs. It states:

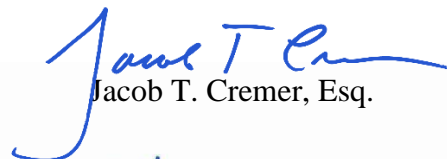
The amount of land designated for future planned uses shall provide a balance of uses that foster vibrant, viable communities and economic development opportunities and address outdated development patterns, such as antiquated subdivisions. The amount of land designated for future land uses should allow the operation of real estate markets to provide adequate choices for permanent and seasonal residents and business and may not be limited solely by the projected population.

Martin County's formulaic policy approach was not amended in response to the Community Planning Act that was enacted to ensure local governments allocate land uses in response to the overall needs of the community. Housing prices have increased substantially, and the County's prescriptive methodologies only exacerbate the problem by precluding consideration of best available data and imposing unrealistic assumptions designed to under-project housing demand and overstate capacity.

We acknowledge that the Draft Amendments attempt to correct two significant shortcomings of the County's methodology. In particular, the proposed amendment to Policy 4.1D.3 adjusts the County's formula by multiplying Total Housing Units by the percentage increase in projected population to calculate increased demand for housing compared to the existing housing base. However, this amendment still does not account for other factors affecting housing demand as discussed in the foregoing. Similarly, the proposed amendment to Policy 4.1D.5 eliminates the unsupported 3% excess vacancy provision. However, the proposed methodology adjustments do not correct the fundamental legal deficiencies inherent with the County prescriptive, formulaic approach that prevents use of best available data, doesn't react appropriately to available data, mandates unrealistic assumptions in lieu of undertaking appropriate studies, and precludes consideration of other methodologies that are professionally accepted. At the very least, the County should amend its policies to allow applicants to utilize other professionally accepted methodologies.

In conclusion, while the Draft Amendments have some notable improvements that we commend the County on considering, as a whole the Draft Amendments are not in compliance as defined by section 163.3184(1)(b), Fla. Stat. We would be happy to meet with you or staff to discuss ways to ensure that any amendments that are approved are in compliance.

Sincerely,



Jacob T. Cremer, Esq.



Kenneth B. Metcalf, AICP

CC:

Morris A. Crady, AICP (mcrady@lucidodesign.com)

Josh Long, Kolter Land LLC (jlong@kolter.com)

Sarah Woods, Martin County Attorney (swoods@martin.fl.us)

Don Donaldson, Martin County Administrator (ddonaldson@martin.fl.us)

Paul Schilling, Martin County, Growth Management Director (pschilling@martin.fl.us)

Clyde Dulin, Martin County, Comprehensive Planning Administrator (cdulin@martin.fl.us)