

Miami-Dade County's \$1 Billion Roadway Expansion Project Gets Nixed (May, 2020)

By: [Gary L. Brown](#) On March 30, 2020, Honorable Suzanne Van Wyk^[1], Administrative Law Judge, "ruled against a \$1 billion Miami-Dade County plan for a highway extension into wetlands and agricultural areas."^[2] The Miami-Dade County Comprehensive Plan ("the Plan") "was first envisioned in 2012 and approved by county commissioners in September 2018."^[3] Two administrative challenges were subsequently filed^[4] and consolidated.^[5] The Plan Amendment would have allowed for "an extension of State Road 835 (also known as the Dolphin Expressway) from its current terminus at Northwest (NW) 137th Avenue and NW 12th Street to the West Kendall suburban area of the County."^[6] In particular, one of the major issues was that the Plan would have traversed through many agricultural areas such as: (1) "the County's Open Land Subarea 3, which contains the Tamiami-Bird Canal Basins and the eastern portion of the North Trail and Bird Drive Everglades Basins;^[7] (2) "the Bird Drive Basin;^[8] (3) "the County's West Wellfield protection area, and a portion . . . [would have] . . . run through the 30-day and 100-day travel-time contours;^[9] (4) "the Pennsuco wetlands"^[10] and (5) "[a]griculturally-designated lands . . . "^[11] Ultimately, in her order, Van Wyk emphasized the discrepancies with the Plan, and in particular, noted that although "[t]he county pointed to planned bus facilities for the highway," Van Wyk agreed with the Petitioners and found "that the highway extension runs counter to the Strategic Miami Area Rapid Transit, or SMART, Plan, which is supposed to prioritize alternatives to private vehicle travel."^[12] In pertinent part, Van Wyk interpreted what is known as the Community Planning Act^[13] and found that the 13-mile toll road extension is more properly categorized as a "development," not subject to any exemptions^[14], because it ma[de] a material change in the use of land in the path of its alignment. [Therefore, the] [I]and within the path of the new . . . [expressway would] . . . no longer be used for its current purpose (e.g., agriculture production, wetland mitigation, stormwater storage), and . . . [would] . . . instead be used as a transportation corridor.^[15] Thus, Honorable Van Wyk recommended that the state's Administration Commission enter a final order against the county because the plan for the 13-mile toll road extension of State Road 836 is not in compliance with other county plans and objectives, namely the prioritization of mass transit and the preservation of the Everglades. ^[1] Honorable Van Wyk has previously ruled in favor of environmental organizations. For instance, in 2015, Van Wyk backed the Seminole Tribe of Florida in a legal battle . . . [against] . . . Hendry County to change its comprehensive growth-management plan to spur economic development. . . . Van Wyk found numerous flaws in the plan, which she wrote would make about 580,000 acres of land eligible for largescale commercial and industrial developments and what are described as 'economic engine' projects. Judge [Sides](#) *With Seminole Tribe In Growth Dispute*, Miami Daily Bus. Review, (Feb. 17, 2015) at A6. Moreover, in 2017, "Van Wyk called for the County Commission to admit its mistake . . . when they approved a 2,000-home development in mostly rural east Orange County last year. . . ." Steven Lemongello, *Ruling Muddles Development Plan*, Orlando Sentinel (Fla.) (Aug. 12, 2017) at 1. ^[2] Caroline Bolado, *Fla. Judge Smacks Down \$1B Miami Highway Extension Plan*, Law360 (Mar. 30, 2020); see also 2020 Fla. Div. Adm. Hear. Lexis 184. ^[3] 2020 Fla. Div. Adm. Hear. Lexis 184; Bolado, *supra* note 2. ^[4] Notably, Petitioners teamed up with Richard Grosso, Nova Shepard Broad College of Law Professor, who stated in an interview with the Daily Business Review that: "The discussion had been dominated by this notion that spending a billion dollars to build a highway would fix the traffic problem, but when the actual facts were scrutinized outside of the political arena it showed that that's not true." Raychel Lean, *Big Win for Lawyer Who Lost Board Seat Over Pro Bono Work*, 94 Miami Daily Bus. Review (Apr. 2, 2020) at A1. ^[5] 2020 Fla. Div. Adm. Hear. Lexis 184 at ¶ Preliminary Statement. On October 26, 2018, Petitioners, Limonar Development, LLC; Wonderly Holdings, LLC; and Mills Family, LLC (the 'Limonar Petitioners'), filed a Petition with the Division of Administrative Hearings ("Division") challenging the Plan Amendment as not based on relevant and appropriate data and analysis and internally inconsistent with the Miami-Dade County Comprehensive Plan ("the Plan"), in violation of the Community Planning Act, chapter 163, part II, Florida Statutes. That same date, Petitioners, Tropical Audubon Society and Michelle Garcia (the "Audubon Petitioners"), filed a Petition with the Division challenging the Plan Amendment on similar grounds. The cases were assigned to the undersigned, who entered an Order of Consolidation on November 9, 2019, and scheduled the consolidated cases for hearing on April 15 through 19, 2019. *Id.* ^[6] *Id.* at ¶ 13 ("The approximate 13-mile extension . . . [was] . . . planned as a six-lane expressway from its current terminus to Southwest (SW) 8th Street and SW 167th Avenue, then continu[ed] as a four-lane expressway to connect with SW 136th Street in Kendall."). ^[7] *Id.* at ¶¶ 21, 22. ("Open Land . . . is more than 'simply surplus undeveloped land, and is intended to serve resource-based functions like agriculture or development of potable water supply. [Moreover,] [t]he basins are recharge areas for the Biscayne Aquifer, the primary source of the County's drinking water."). ^[8] *Id.* at ¶ 23 ("Existing development in that area is limited to agriculture and the C-4 detention basin."). ^[9] *Id.* at ¶ 24. ^[10] 2020 Fla. Div. Adm. Hear. Lexis 184 at ¶ 26 ("The Pennsuco wetlands are . . . designated as [a] critical habitat for endangered species, including the wood stork, the Florida bonneted bat, the Everglades snail kite, and the Florida Panther."). ^[11] *Id.* at ¶ 28 ("Land with this designation contains the best agricultural land remaining in the County.") (internal citations omitted) (alterations in original). ^[12] *Id.* at ¶¶ 168–74; Bolado, *supra* note 2. ^[13] Fla. Stat. § 163.3164. ^[14] 2020 Fla. Div. Adm. Hear. Lexis 184. Respondents argued that the new expressway "[f]ell within the following exception to the definition of development: 'Work by a highway or road agency or railroad company for the maintenance or improvement of a road or railroad track, if the work is carried out on land within the boundaries of the right-of-way.'" *Id.* at ¶ 204 (quoting Fla. Stat. § 380.04 (3)(a)). However, Van Wyk found that "[t]he case law construing the exemption is contrary to Respondent's assertions." 2020 Fla. Div. Adm. Hear. Lexis 184 ¶ 205 (citing *Miami-Dade County v. Florida Power & Light Company*, 208 So. 3d 111, 117–18 (Fla. 3d DCA 2016); *Bd. of Cty. Comm'rs v. Dep't of Cmty. Aff.*, 560 So. 2d 240, 241 (Fla. 3d DCA 1990)). ^[15] 2020 Fla. Div. Adm. Hear. Lexis 184; Under the Community Planning Act, a development has the same meaning as in Fla. Stat. § 380.04, and therefore, is defined as "the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels." *Id.* ¶ 203; Fla. Stat. § 380.04.



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