

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PADDOCK PARK DEVELOPMENT, INC.,)
)
 Petitioner,)
)
vs.)
)
)
CITY OF OCALA and DEPARTMENT)
OF COMMUNITY AFFAIRS,)
)
 Respondents.)
_____)

RECOMMENDED ORDER

Notice was provided and on April 15 and 16, 1993, a formal hearing was held in this case. The hearing location was Ocala, Florida. Authority for conducting the hearing is set for in Section 120.57(1), Florida Statutes. Charles C. Adams was the Hearing Officer.

APPEARANCES

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(Paddock Park)

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For Respondent: City of Ocala
(Ocala)

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and

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For Respondent: Department of Community Affairs
(DCA)

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STATEMENT OF ISSUES

The issues to be considered here concern whether Comprehensive Plan Amendment #92-3, adopted by Ocala on June 23, 1992, by Ordinance No. 2254 is "in compliance" with requirements of law as that term is defined in Section 163.3184(1)(b), Florida Statutes.

In particular the determination on compliance is limited to an analysis of Paddock Park's stated reasons for finding the plan amendment "not in compliance." In summary those allegations are as follows:

1. The Future Land Use Map (FLUM) amendment is inconsistent with provisions of Section 163.3177(3)(a), Florida Statutes and Rule 9J-5.006, Florida Administrative Code, for the reasons specified in Sections I.A.1.(a)(b) and (d) of the DCA's May 1, 1992 objections, recommendations and comments (ORC).

2. The FLUM amendment is inconsistent with the provisions of Section 163.3177(6)(b), Florida Statutes and Rule 9J-5.007, Florida Administrative Code for the reasons specified in Section I.A.2.(a) of the ORC, and by reason of an erroneous assumption that 80 percent of the traffic generated on the 39.44 acre parcel which is at issue would impact State Road 200 rather than S.W. 42nd Street, resulting in a material miscalculation of the impact on the latter roadway by the proposed reclassification contemplated by the FLUM amendment.

3. The FLUM amendment is inconsistent with both Potable Water and Sanitary Sewer sub-elements and is inconsistent with the provisions of the Capital Improvement Element of the Ocala Comprehensive Plan, in that the reclassification results in estimates of potable water and sanitary sewer usage in excess of that contemplated by Ocala's Water and Waste-water Master Plan for which no provision is made in the Capital Improvement Element of the Comprehensive Plan.

4. The FLUM amendment is inconsistent with Objectives 1 and 2 and Policy 3.3 of the Inter-governmental Coordination Element of the Ocala Comprehensive Plan in that the FLUM amendment was made without notification or opportunity for input from Marion County as it influences the impact of the land use reclassification on the level of service on S.W. 42nd Street, a roadway alleged to be under the jurisdiction of Marion County or upon the land use classifications of property

lying immediately east and west of the 39.44 acre parcel at issue and the entire area lying south of S.W. 42nd Street, which latter parcel lies within the jurisdiction of Marion County.

PRELIMINARY STATEMENT

On September 18, 1992, DCA issued a Notice of Intent to Find the Comprehensive Plan Amendment, identified in the Statement of Issues, "in compliance".

On October 9, 1992, Paddock Park filed a petition with the DCA which challenged the preliminary agency action finding the Comprehensive Plan Amendment "in compliance". Subsequently the case was referred to the Division of Administrative Hearings to conduct a hearing to consider the dispute concerning the Comprehensive Plan Amendment. The hearing was conducted on the aforementioned dates.

The witnesses who testified at hearing are identified in the index to the transcript. Paddock Park's Exhibits A and B; Ocala's Exhibits A, G, J, K, L and M and DCA's Exhibit B were admitted as evidence. A prehearing statement was submitted and is transmitted with this record.

The transcript was prepared and filed with the Division of Administrative Hearings on May 27, 1993. The parties were granted an extension of time to file proposed recommended orders beyond the normal 10-day deadline for submitting proposed recommended orders. Each party filed a proposed recommended order on July 1, 1993. In view of the extension of time for filing proposed recommended orders, the requirement for preparing a recommended order within 30 days from the date upon which the transcript was filed is waived. See Rules 28-5.402 and 60Q-2.031, Florida Administrative Code. The fact finding suggested by the proposed recommended orders is addressed in an appendix within the recommended order.

FINDINGS OF FACT

The Parties

1. Paddock Park is a Florida corporation. It has its principal place of business in Ocala, Florida. It is the developer of Paddock Park, a Development of Regional Impact (DRI). Part of the DRI lies immediately north and east of the parcel of land which is the subject of the dispute. Paddock Park by submitting oral and written comments during the review and adoption proceedings associated with the subject Comprehensive Plan Amendment established itself as an affected person.

2. DCA is the state land planning agency which has the responsibility for reviewing comprehensive plans and amendments to those plans in accordance with Chapter 163, Part II, Florida Statutes.

3. Ocala is a local government in Florida. It is required to adopt a comprehensive plan consistent with Chapter 163, Part II, Florida Statutes, and the State and Regional Plans. Any amendments, such as the present amendment at issue, must also comply with Chapter 163, Part II, Florida Statutes, and the State and Local Plans.

4. Ocala is located in the south central part of Marion County, Florida. It is the largest urban area in the county. It is comprised of approximately 18,820 acres of land area. In 1990 Ocala had an estimated population of 45,130 with a projected increase of population to 73,309 persons by the year 2015.

Comprehensive Plan Amendment:
Description, Preparation, Adoption and Review

5. Ocala submitted its Comprehensive Plan to DCA on October 30, 1991. On December 14, 1991, DCA published a notice determining that the plan was "in compliance" with legal requirements.

6. On January 24, 1992, Ocala submitted proposed Comprehensive Plan Amendment #92-1 to DCA for ORC review. The overall purpose of that amendment was to incorporate annexed property into Ocala's existing plan. One of those parcels is the subject of this dispute.

7. The proposed Comprehensive Plan Amendment #92-1 included six FLUM changes. Each of those changes was addressed by separate ordinance. The FLUM change which is specifically at issue in this case was described as Comprehensive Plan Amendment #92-3. It is a parcel of approximately 59 acres in size. Within that parcel Ocala has classified 20.15 acres for retail services land use and 39.44 acres for professional services land use.

8. The overall 59 acre parcel described in the proposal is located 200 feet south of State Road 200. That roadway is a principal arterial roadway. The 59 acre parcel extends southward to S.W. 42nd Street. The latter roadway is a collector roadway which is maintained and operated by Marion County in the immediate vicinity of this parcel. The collector roadway terminates at I-75, an interstate highway to the west and first intersects S.W. 27 Avenue a roadway within the Ocala corporate limits to the east.

9. The ownership of the 59 acres is held by different property owners. The southern most parcel, "Tri-Star Parcel", is the 39.44 acres bordered by S.W. 42nd Street. At all relevant times that parcel has been undeveloped. The northernmost parcel, "Pearson Parcel", is 20.15 acres in size and it is partially developed with a now defunct mobile home park in the northern reaches of that property.

10. The overall 59 acres is surrounded by other parcels within Ocala, excepting parcels basically to the south which are within unincorporated Marion County. Surrounding properties to the north of the 59 acres are designated for retail services that include a real estate office, a gas station and a bank. To the west, property is designated for retail services and includes the Hilton Hotel complex. To the east parcels are designated for professional services as well as retail services, to include a regional shopping mall, offices and a multi-family residential development of approximately 400 units. The Paddock Park property described before is located in this area and offers professional services land use.

11. Preliminary to the submission of proposed Comprehensive Plan Amendment #92-3, the Ocala Planning Department had considered the designation of land uses for the 20.15 acres and 39.44 acres. The Ocala Planning and Zoning Commission as the local planning agency reviewed the proposed land use designation by the Ocala Planning Department. The land planning agency then made a recommendation to the Ocala City Council, the governing body, concerning the appropriate land use for the two parcels.

12. The Ocala City Council made its initial determination on the designation of the 39.44 acre parcel at a transmittal hearing held on January 4, 1992. It was at that juncture that the designation of the 39.44 acres as professional services was initially addressed by the Ocala City Council. Ocala then submitted the proposed amendment for DCA review and comment.

13. On May 1, 1992, DCA responded to the proposed Comprehensive Plan Amendment #92-3, together with the other proposed Comprehensive Plan Amendments under consideration by issuing an ORC report.

14. On June 18, 1992, the Ocala City Council held a workshop to consider the ORC report directed to the proposed Comprehensive Plan Amendments. Ocala also filed a written response to the ORC report.

15. On June 23, 1992, the Ocala City Council held a public hearing to consider adoption of Comprehensive Plan Amendment #92-3 together with other council business. Paddock Park was represented at that hearing by an attorney, counsel in the present action. At the public hearing counsel made known Paddock Park's opposition to designating the 39.44 acres, "Tri-Star Parcel", as professional services land use. In particular counsel questioned the assumption that 80 percent of the traffic generated by activities on the 39.44 acres would be routed to State Road 200, in that there was no existing access to State Road 200 from that parcel. Instead counsel stated his belief, in behalf of his client, that the access from the 39.44 acres parcel would be to S.W. 42nd Street. Counsel made mention that S.W. 42nd Street had a capacity as a collector roadway of about 12,500 trips for level of service "E". Counsel stated that he anticipated this parcel would generate 10,267 trips leaving only approximately 1,900 trips available on S.W. 42nd Street for any development which Paddock Park wished to undertake and for the development of Red Oak Farms and Ocala Stud Farm properties which lie to the south of S.W. 42nd Street. Counsel mentioned that the property south of S.W. 42nd Street carried a low density residential designation. Mention was made by counsel that a large amount of professional services land use contemplated for development of the 39.44 acres would effectively destroy Paddock Park's ability to develop by overloading S.W. 42nd Street. Counsel for Paddock Park requested the Ocala City Council to leave the land use designation for the 39.44 acres as agricultural or change it to some form of low density residential as opposed to professional services land use. Other discussions were held between counsel and the Ocala City Council concerning the implications of designating the 39.44 acres as professional services land use.

16. A motion was made at the June 23, 1992 meeting to adopt City of Ocala Ordinance No. 2254 which dealt with the subject of the 20.15 acres and 39.44 acres which had been described in proposed Comprehensive Plan Amendment #92-3. That motion gained a second. A vote on the motion was delayed while further discussion was made concerning the 39.44 acres. In this interval an attempt was made by one councilman to amend the motion to adopt by changing the 39.44 acres from professional services to medium density residential. That attempt at amendment died for lack of a second. The Ocala City Council then voted to adopt City of Ocala Ordinance No. 2254. This constituted the adoption of amendments to the Ocala Comprehensive Plan which was received on August 7, 1992, reviewed by DCA and found to be "in compliance" by notice given by DCA on September 18, 1992. Included within that series of amendments was adopted Comprehensive Plan Amendment #92-3 dealing with the 39.44 acre parcel as professional services land use.

17. In addition to the oral remarks by counsel made during the June 23, 1992 public hearing concerning adoption of the subject amendment to the Comprehensive Plan, counsel filed written objections on that same date. As basis for those objections counsel incorporated some objections to the proposed Comprehensive Plan Amendment #92-3 as stated in the ORC report, specifically the objection that Ocala had failed to demonstrate the need for an additional 40 acres of professional land services use to accommodate the projected population. Other reasons for objecting set forth in the correspondence included objection based upon the belief that a medium density residential designation of Paddock Park property to the east and low density residential use assigned by Marion County to the south were inconsistent with professional services designation of the 39.44 acres. Written comment was also made concerning the expected overtaxing of S.W. 42nd Street.

18. Other than the data and analysis in support of the proposed Comprehensive Plan Amendment #92-3, the ORC report which addressed the data and analysis contemplated by the proposed Comprehensive Plan Amendment #92-3 and the oral and written remarks by counsel for Paddock Park, the Ocala City Council had no other basis for understanding the possible impacts of the traffic generated by activities on the 39.44 acres under professional services land use classification as they would pertain to S.W. 42nd Street and other roadways that would be impacted by that development.

19. The change contemplated by the proposed Comprehensive Plan Amendment #92-3 and the adopted Comprehensive Plan Amendment related to those parcels was from a current zoning of B-2 (community business) related to the 20.15 acres to retail services and from A-1 (agricultural) for the 39.44 acres to professional services.

20. The adopted Ocala Comprehensive Plan Amendment 92-3 changed the data and analysis from what was submitted with the proposed plan amendment concerning the anticipated impacts on roadways brought about by designating the 39.44 acre parcel as professional services land use. As stated, those differences were not known to the Ocala City Council when it adopted the subject Comprehensive Plan Amendment on June 23, 1992. Nonetheless, the data had been available prior to the June 23, 1992 adoption hearing or available sufficiently contemporaneous to that date to be proper data for determining the land use classification impacts on affected roadways. The data was professionally obtained and analyzed as submitted to DCA with the adopted Comprehensive Plan Amendment #92-3. Similar explanations pertain to the demands on potable water and sanitary sewer services for the parcels described in Comprehensive Plan Amendment #92-3.

21. The procedures used by Ocala and the DCA in addressing the adopted Comprehensive Plan Amendment #92-3 on the subject of impacts to roadways and potable water and sanitary sewer services were not irregular when considering the underlying data and analysis that was prepared by Ocala, submitted to the DCA and approved by the DCA in finding the Comprehensive Plan Amendment #92-3 "in compliance".

22. When DCA received the proposed Comprehensive Plan Amendment #92-3 it disseminated that information to Marion County to include the associated data and analysis accompanying that proposal. Marion County did not respond to the opportunity to comment on the proposed Comprehensive Plan Amendment #92-3 for the benefit of DCA in preparing the ORC report and in keeping with Marion County's statutory duty to consider Comprehensive Plan Amendment #92-3 in the context of the relationship and affect of that amendment on any Marion County comprehensive plan element. Marion County did not communicate the results of

any review conducted concerning compatibility of the proposed Comprehensive Plan Amendment #92-3 with Marion County Comprehensive Plan Elements. No specific information concerning Comprehensive Plan Amendment #92-3 in its proposed form or in its adopted form was provided from Ocala to Marion County. Nor was any other contact made by Ocala with Marion County concerning Comprehensive Plan Amendment #92-3. The record does not reflect any attempt being made to discourage Marion County from offering comments concerning Comprehensive Plan Amendment #92-3.

23. At the time that the Ocala City Council considered the plan amendment adoption on June 23, 1992, to designate the 39.44 acres as medium density residential would have promoted an over-allocation of that land use classification by 70 percent, whereas in classifying the property as professional services Ocala increased the percentage of professional services land use allocation from 93 percent to slightly in excess of 100 percent within the Ocala corporate limits. These facts together with the compatibility between a professional services land use designation and the uses for nearby parcels roughly north, east and west of the subject property supports classifying the 39.44 acres as professional services land use. In addition to the concern for proper allocation of land uses, Ocala recognized that the professional services land use classification would allow citizens other than those who resided in Ocala to be served.

24. Notwithstanding the nature of some existing low density residential and agricultural land uses in the vicinity of the 39.44 acres designated by the amendment for professional services land use, especially property roughly to the south of that 39.44 acres across S.W. 42nd Street in Marion County, it was not inappropriate to designate the subject 39.44 acres as professional services land use. Paddock Park did not prove to the exclusion of fair debate that the designation of the parcel as professional services land use was a decision not in compliance with applicable statutes and rules.

Allegation One

25. The objections offered by DCA to proposed Comprehensive Plan Amendment #92-3 which are described in the first allegation to the petition by Paddock Park states:

The above-cited proposed Future Land Use amendments are not based on data and analysis as cited below:

(a) Existing land use map depicting the existing generalized land uses of the subject properties, the generalized land uses of land adjacent to the amended boundaries of the City, and the boundaries to the subject properties and their location in relation to the surrounding street and thoroughfare network is not included;

(b) The appropriate acreage in the general range of density and intensity of use for the existing land use of the subject properties are not included;

* * *

(d) An analysis of the amount of land needed to accommodate the projected population, including the categories of land use and their

densities and intensities of use, the estimated gross acreage needed by category and a description of the methodology used in order to justify the land uses assigned to the subject properties. The basis on which land uses are assigned to the subject properties is not included in the documentation supporting the amendment.

26. To meet the criticisms offered by DCA in its ORC report, thereby avoiding any violation of Section 163.3177(3)(a), Florida Statutes and Rule 9J-5.006(1)(2), Florida Administrative Code, DCA made these recommendations:

(a) Include an existing land use map depicting the existing generalized land uses of the subject properties, the generalized land uses of land adjacent to the amended boundaries of the City, and the boundaries of the subject properties and their location in relation to the surrounding street or thoroughfare network.

(b) Expand the data and analysis supporting the proposed amendments to identify in tabular form the approximate acreage and the general range of density and intensity of existing land uses of the subject properties. In addition, the existing land use data tables in the Comprehensive Plan should be updated to reflect these annexed parcels.

* * *

(d) Include an analysis of the amount of land needed to accommodate the projected population, identifying the categories of land use and their densities and intensities of use, the estimated gross acreage needed by category and the methodology used in order to justify the land uses assigned to the subject properties. The City should also take into consideration any existing over-allocation of land uses. The over-allocation of land for any use should be reasonably related to the projected growth needs and allow for a certain amount of flexibility in the market place.

27. When the adopted Comprehensive Plan Amendment #92-3 was submitted to DCA for compliance determination it included maps that depicted the existing land uses of the annexed areas, the existing land uses of parcels adjacent to the annexed areas and identification of surrounding street networks. The maps attached to the adopted Comprehensive Plan Amendment #92-3 generally address the requirements of Section 163.3177(3)(a), Florida Statutes and Rule 9J-5.006(1)(a), Florida Administrative Code. This information together with preexisting knowledge by DCA satisfied its concerns in this area of criticism and led to the favorable response to Comprehensive Plan Amendment #92-3.

28. In addition Ocala, in the adopted Comprehensive Plan Amendment #92-3, provided revised background information which served as data and analysis to support the adopted Comprehensive Plan Amendment #92-3. This information was to the following affect:

BACKGROUND: The parcel designated for a Retail Service land use was once developed as a mobile home park. Though not part of the annexation, that parcel includes access to S.R. 200. Other considerations justifying the land use designations include: the lack of environmental constraints - the site is on previously developed land; the compatibility with surrounding properties, contributing to infill development along an established commercial corridor which has been designated in the Comprehensive Plan as an activity center in which development should be promoted; the access to a major arterial roadway with excess capacity able to accommodate the land use; and the availability of adequate water and sewer.

The rear parcel is appropriate for development in a Professional Services land use, which would be compatible with the surrounding land uses.

The amendment adds 20.15 acres to the commercial acreage of the City, changing the over-allocation in the Retail Services sub-category from 133 percent to 135 percent (See Table 1). Adding additional acreage in the commercial land use category is justified in this instance since retail uses, particularly in this area, serve not only the existing and future city residents but also non-incorporated county residents as well as residents of neighboring counties [objection 1.b.] The second parcel adds 39.44 acres to the Professional Services sub-category, changing the percentage from 93 percent to 101.5 percent for this sub-category of commercial land uses (See Table 1). Adding additional acreage in the commercial land use category is justified due to the current under-allocation of Professional Services land use acreage, and due to the probability that the proposed that the proposed office uses will serve a larger population than just City residents. [objection 1.b]

29. With the submission of the adopted Comprehensive Plan Amendment #92-3 Ocala included Table 1 that identified projected and existing allocations of acreage pertaining to need due to population increases and the anticipated impacts of this Comprehensive Plan Amendment on percentages of allocation of land use for the year 2002.

30. Concerning Allegation One, Paddock Park has failed to show to the exclusion of fair debate that the adopted Comprehensive Plan Amendment #92-3 is not "in compliance" with applicable statutes and rules.

Allegation Two

31. In its objections to proposed Comprehensive Plan Amendment #92-3 DCA stated:

The traffic circulation analysis for the above-cited proposed Future Land Use Map amendments are incomplete because of the following reasons:

(a) The analyses do not address all the roadways that will be impacted by the development of the subject properties. In most cases, the analyses only address the roadways that provide direct access to these properties.

32. DCA recommended:

Revise the traffic circulation analyses from the above-cited FLUM amendments to address the following:

(a) All roadways that will be impacted by the development of the subject properties.

33. In the statement concerning the data and analysis associated with the roadways set out in the adopted Comprehensive Plan Amendment #92-3 Ocala stated the following:

ROADWAYS: Development of The annexed area has an impact on S.R. 200, a 6-lane state roadway classified as a principle arterial, on S.W. 27th Ave., a 4-lane minor arterial, on S.W. 42nd St., a 2-lane roadway classified as a local street. S.R. 200 was operating in 1990 at LOS D with 30,932 trips (using the most recent traffic counts available). Capacity at adopted LOS D is 46,300 trips. Traffic counts are not available for 42nd St., but the total capacity for local street generally is 12, 100 trips per day. Capacity on S.W. 42nd St. may be less. The affected segment of S.R. 200 is expected to remain at LOS D by 1997, with 35,363 trips (Ocala Comprehensive Plan.)

Splitting the area with a Retail Services land use in the north part and with a Professional Services and use replacing the existing A-1 zoned area in the south, the 20.15 acres of commercial land use in the north parcel could generate 239,445 193,979 GLA square footage (based on 31 percent building coverage, the maximum possible due parking

requirements) which could generate 12,19710, 693 trips on S.R. 200 (assuming 100 percent use and no passer-by or diverted trips). [Objection 2(b)] Subtracting 30 percent trips for passer by traffic which would be on the road in any case results in a predicted increase of 7,485 trips due to the commercial development and a total of 38,417 trips and LOS D. The addition of 12, 197 trips would not decrease the LOS of S.R. 200 below the adopted LOS of D on the frontage segment, and would not decrease the LOS below C on the other impacted segments. Southwest 27th Ave. would not change from its existing LOS of A. [Objection 2(b)] In any case, the addition of this many additional trips due to retail development is unlikely due to the large number of existing retail uses on S.R. 200. In other words, it is unlikely that any new retail development would attract a large number of people who don't currently use the roadway.

Impact from development of the 39.44 acre south part in a Professional Services land is difficult to assess, due to a lack of data on mixed use developments (ITE Trip Generation, 5th Edition). Analyzing the 39.44 acre south parcel, and Using the trip estimates for an office park development in the ITE manual and splitting the traffic with 80 percent on S.R. 200 and 20 percent on S.W. 42nd St., an estimated additional 6,024 8,280 trips would result on S.R. 200 at full development. Due to the lack of traffic counts on S.W. 42nd St., the impact on the adopted LOS of E of an additional 6,024 trips is difficult to assess. However, a windshield survey indicates current traffic volumes on S.W. 42nd St. is far less than the 6,086 trips that would be necessary, with the addition of the estimated 6,024 from full development in a Professional Services land use, to degrade the adopted LOS, Adding 7,845 trips from the commercial development results in a possible 16125 added trips on S.R. 200 from full development on the annexed area in this land use, which would result in 47,057 total trips when added to the 1990 traffic count of 30,932 and degrade the affected segment of S.R. 200 below LOS D (Total trips can not fall below 46,300. Trips on 42nd St. would increase by 1,987 total trips.

Using the trip estimates for a business park development, rather than for an office park

development as above, results in 5,924 trips from the proposed Professional Services land use area.

Adding the 4,739 (80 percent of 5,924) trips to the 7,845 Retail Services land use estimated trips results in 12,584 estimated additional trips on S.R. 200, for a total of 43,516 which would keep the roadway segment at LOS D (46,300 maximum). To summarize, development on either parcel is not expected to degrade the LOS on the affected roadways below adopted levels of service. In any case, the concurrency system would not allow a development to be permitted which causes the roadway to degrade below the adopted LOS standard.

34. Through the data and analysis submitted with the adopted Comprehensive Plan Amendment #92-3, Ocala has spoken to the impacts on collector and arterial roads and sufficiently concluded that the levels of service on those roads will not be lowered by the projected development impacts. Paddock Park's attempt to prove that other roadways such as S.W. 41st Street, S.W. 42nd Avenue, S.W. 33rd Avenue and S.W. 27th Avenue should have been included with the data and analysis and to prove more generally that the traffic impact data and analysis submitted by Ocala was insufficient did not demonstrate to the exclusion of fair debate that the supporting data and analysis submitted with the adopted Comprehensive Plan Amendment #92-3 was inadequate. Furthermore, development may not take place that compromises the level of service on roadways because of the protections afforded by the requirement for concurrent facilities to be provided.

35. While Ocala determined that its original assumption concerning the traffic division for 80 percent to State Road 200 and 20 percent to S.W. 42nd Street projection for traffic generation was erroneous, this miscalculation did not preclude Ocala from further analysis concerning the impacts to roadways which has been previously described. Nor was Ocala prohibited from further considering the development pattern within the overall professional services land use classification expected to transpire within the 39.44 acre parcel, in particular as it pertains to automobile traffic generation. Finally, Ocala was entitled to correct any mathematical errors in calculations performed in the proposed Comprehensive Plan Amendment #92-3 when submitting the data and analysis concerning impacts to roadways which accompanied the adopted Comprehensive Plan Amendment #92-3 sent to DCA for review and compliance determination.

36. As described, the data and analysis performed in submitting the adopted Comprehensive Plan Amendment #92-3 need not have been available to the Ocala City Council when it voted to approve to adopt the subject Comprehensive Plan Amendment on June 23, 1992. Given that the opportunity was presented to change the assessment concerning impacts to the roadways from the point in time in which the proposed Comprehensive Plan Amendment #92-3 was submitted until the place at which the adopted Comprehensive Plan Amendment #92-3 with associated data and analysis was transmitted for review and compliance determination, and upon the basis that the data and analysis performed to support the adopted Comprehensive Plan Amendment #92-3 has not been shown to be inadequate when considered to the exclusion of fair debate, Ocala's willingness to correct perceived errors in its assumptions associated with the data and analysis

submitted with the proposed Comprehensive Plan Amendment #92-3 is condoned by this process and acceptable.

Allegation Three

37. As with the discussion concerning the roadways, it is the data and analysis performed to support the adopted Comprehensive Plan Amendment #92-3 which pertains. It states:

POTABLE WATER: The area is served by City water. The area is within 1/4 mile of existing water lines and would have to connect upon development. Development as above could generate 43 gpm (1,055 gallons per acres per day X 17.8 acres) with all non-residential uses and 29.7 gpm with a mix of retail and residential uses of the property. New distribution pipes and treatment facilities would not be required. since S.R. 200 is already served by a 16" main and the increased water demand represents at most .0619 mgd, or 1.2 percent of the projected available potable water capacity in 1997. [Objection 3] Costs related to development using water plant capacity would be offset by the hook-up fees charges when new developments connect to water and sewer.

SANITARY SEWER: The area is served by City sanitary sewer. The area is within 1/8th of a mile of existing service and would have to connect to the City sewer system upon development Using the 51.7 percent ratio of water to wastewater flows contained in the Comprehensive Plan, flows of 22.2 gpm and 15.3 gpm, average flow, and 88.8 gpm and 61.2 gpm peak flow, respectively, could be expected which represent .032 mgd or 1.2 percent of the projected available sewer plant capacity in 1997. [Objection 3]

38. Through this data and analysis it has been established that there is adequate sewer and potable water capacity to service the development of the Tri-Star Parcel. Paddock Park has failed to prove to the exclusion of fair debate that the Potable Water and Sanitary Sewer Elements within the adopted Comprehensive Plan Amendment #92-3 are inconsistent with applicable statutes and rules and the Potable Water and Sanitary Sewer Elements and the Capital Improvement Element to the overall Ocala Comprehensive Plan, the controlling requirements when considering the amendment's acceptability.

Allegation Four

39. Within the Ocala Comprehensive Plan within the Inter-governmental Coordination Element, Objective one states:

The City of Ocala shall maintain applicable level of service standards with the entity

having operational or maintenance responsibility for the facility. The review and coordination of level of service standards will begin as of May, 1992, or at the adoption of the concerns of City management system, which ever occurs first, and will be a continuing process.

Objective Two states:

The City of Ocala shall coordinate its Comprehensive Plan with that of the long-range objectives of Marion County and the Marion County School Board. The coordination mechanism between the City and the County shall consist of plan amendments and additional plan elements.

40. Policy 3.3 in the Ocala Comprehensive Plan Inter-governmental Coordination Element states:

The City of Ocala will continue to provide means of notification, review and input, in writing, regarding proposed development and zoning changes between itself and Marion County. It shall be the responsibility of City officials.

41. In adopting Comprehensive Plan Amendment #92-3 Ocala has not interfered with the applicable levels of service standards pertaining to operational or maintenance responsibility for any facility over which Marion County or the City of Ocala have responsibility. By virtue of the provision of the proposed Comprehensive Plan Amendment #92-3 to Marion County through DCA, Ocala has met Objective Two and Policy 3.3 to the Inter-governmental Coordination Element within the Ocala Comprehensive Plan.

CONCLUSIONS OF LAW

42. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this proceeding under the authority set forth in Section 120.57(1), Florida Statutes.

43. DCA issued a notice finding the adopted Comprehensive Plan Amendment #92-3 "in compliance" with applicable provisions within Chapter 163, Part II, Florida Statutes. This notice was provided in accordance with Section 163.3184(9)(a), Florida Statutes. As contemplated by that provision, the plan amendment shall be determined to be "in compliance" if the determination concerning compliance with applicable law is fairly debatable.

44. The hearing to consider the compliance issue was conducted pursuant to Section 163.3184(9)(b), Florida Statutes.

45. Paddock Park and Ocala are affected "persons" as defined in Section 163.3184(1)(a), Florida Statutes, entitled to participate in the proceeding to determine whether the subject plan amendment is "in compliance" with applicable law.

46. To be found "in compliance", amended Comprehensive Plan #92-3 must be consistent with requirements set forth in Sections 163.3177, 163.3178 and 163.3191, Florida Statutes, the state Comprehensive Plan, the appropriate regional policy plan, and Chapter 9J-5, Florida Administrative Code, to the extent that those rules are not inconsistent with Chapter 163, Part II, Florida Statutes. See Section 163.3184(1)(b), Florida Statutes.

47. Paddock Park filed a timely petition, in accordance with Section 163.3184(9)(a), Florida Statutes, to challenge the preliminary determination by DCA that adopted Comprehensive Plan Amendment #92-3 was "in compliance".

48. The preparation, transmittal, review and adoption proceedings described in Section 163.3184(2), Florida Statutes, have been complied with.

49. More specifically, Sections 163.3184(3)(4)(5)(6)(7)(8) and (9), Florida Statutes, concerning transmittal of the proposed plan, inter-governmental review, regional and county review, state land planning review, local government review, comments by the DCA and adoption of the plan and Notice of Intent by DCA have been satisfied as to procedural requirements.

50. In carrying out the procedural requirements mentioned in the above paragraph, Marion County was informed about the proposed Comprehensive Plan Amendment #92-3. To the extent that Marion County performed a review of the proposed Comprehensive Plan Amendment #92-3 it was not shown that Marion County was concerned about the relationship and affect of the subject proposed Comprehensive Plan on any Marion County Comprehensive Plan element, especially as it would pertain to land use classification and impacts to S.W. 42nd Street.

51. In complying with the procedures set forth in Section 163.3184, Florida Statutes, considered in the context contemplated by the City of Ocala Comprehensive Plan in its Inter-governmental Coordination Element at Objectives One and Two and Policy 3.3, appropriate coordination has been achieved concerning impacts to S.W. 42nd Street and the propriety of classifying the 39.44 acres as professional services.

52. The adopted Comprehensive Plan Amendment #92-3 has complied with Section 163.3177, Florida Statutes; Chapter 9J-5, Florida Administrative Code; Rule 9J-11.006, Florida Administrative Code and the City of Ocala Comprehensive Plan in those instances addressed in the petition challenging the intent to find the adopted Comprehensive Plan Amendment #92-3 "in compliance".

53. The data and analysis which accompanied the adopted Comprehensive Plan Amendment #92-3 addressed in the petition in opposition to the adopted Comprehensive Plan was sufficient to meet the aforementioned legal requirements. This speaks to the issues framed in Allegations One through Three pertaining to existing land uses and future projections, roadways and potable water and sanitary sewer information.

54. It was acceptable for Ocala to submit data and analysis with the adopted Comprehensive Plan Amendment #92-3 which had not been available to the Ocala City Council when it voted to adopt the Comprehensive Plan Amendment. The data involved preexisted or was available in a time frame contemporaneous to the decision to adopt the Comprehensive Plan Amendment. It was not shown that the methodology used in collecting the data and the application of the data was other than through professionally acceptable approaches. The data utilized was acceptable in that it was the best available existing data. Analysis was made upon the data.

55. Concerning the failure to account for circumstances existing in the surrounding parcels in Marion County, beyond the need to communicate the pendency of the Comprehensive Plan Amendment #92-3, Ocala has no responsibility to anticipate the possible influences on property lying within Marion County.

56. In summary Paddock Park has failed to show to the exclusion of fair debate that the adopted Comprehensive Plan Amendment #92-3 was not "in compliance" with applicable statutes and rules.

RECOMMENDATION

Based upon a consideration of the facts found and the conclusions of law reached, it is,

RECOMMENDED:

That a Final Order be entered which finds the adopted Comprehensive Plan Amendment #92-3 to be "in compliance" and dismisses the petition by Paddock Park.

DONE and ENTERED this 19th day of August, 1993, in Tallahassee, Florida.

CHARLES C. ADAMS
Hearing Officer
Division of Administrative Hearings
The Oakland Building
2009 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of August, 1993.

APPENDIX TO RECOMMENDED ORDER, CASE NO. 92-6257GM

The following discussion is given concerning the proposed findings of fact submitted by the parties:

Paddock Park's Facts:

Paragraphs 1 and 2 are not necessary to the resolution of the dispute.

Paragraph 3 in its first two sentences are subordinate to facts found. The remaining sentences in that paragraph are not necessary to the resolution of the dispute.

Paragraphs 4 and 5 are not necessary to the resolution of the dispute.

Paragraphs 6 through 9 are subordinate to facts found.

Paragraph 10 is contrary to facts found in its suggestion that the decision to classify the parcel in question as professional services was inappropriate or that the data and analysis addressing impacts to roadways made at the time the adopted Comprehensive Plan Amendment #92-3 was submitted was inadequate. Otherwise Paragraph 10 is subordinate to facts found.

Paragraph 11 is subordinate to facts found.

Paragraph 12 is subordinate to facts found with the exception of its suggestion that the adopted Comprehensive Plan Amendment #92-3 failed to adequately address land uses of properties adjacent to the 39.44 acre parcel, to include location of roadways.

Paragraph 13 is subordinate to facts found with the exception of the third objective is not relevant to the inquiry in that it was not identified as an allegation in the petition as amended at hearing.

Paragraph 14, while no specific attempt was made to coordinate and review the impact of the adopted Comprehensive Plan Amendment #92-3 as it impacted levels of service on S.W. 42nd Street and Southwest 27th Avenue through discussions with Marion County, Paddock Park did not show that the activities envisioned by adopted Comprehensive Plan Amendment #92-3 would inappropriately influence the operational and maintenance responsibility concerning those facilities.

Paragraphs 15 and 16 constitute conclusions of law.

Paragraph 17 is contrary to facts found to the extent that it asserts inadequate identification of land uses and roadways in the adopted Comprehensive Plan.

Ocala's Facts:

Paragraphs 1-3 are subordinate to facts found

Paragraphs 4-6 constitute legal argument.

Paragraphs 7-17 are subordinate to facts found.

Paragraphs 18 through 20 constitute legal argument.

Paragraph 21 is not necessary to the resolution of the dispute.

Paragraphs 22 through 32 are subordinate to facts found.

Paragraphs 33 through 37 are not necessary to the resolution of the dispute.

Paragraphs 38 through 46 are subordinate to facts found.

Paragraphs 47 and 48 are not necessary to the resolution of the dispute.

Paragraphs 49 through 54 are subordinate to facts found.

Paragraphs 55 through 59 are not necessary to the resolution of the dispute.

Paragraphs 60 through 65 are subordinate to facts found.

Paragraph 66 is not necessary to the resolution of the dispute.

Paragraph 67 through 70 are subordinate to facts found.

Paragraph 71 is rejected as contrary. Paragraph 71 is not factually correct.

Paragraphs 72-74 are subordinate to facts found.

Paragraphs 75 through 77 are not necessary to the resolution of the dispute.

Paragraph 78 is subordinate to facts found.

Paragraph 79 is not necessary to the resolution of the dispute.

Paragraphs 80 through 82 is subordinate to facts found.

Paragraph 83 is rejected to the extent that it suggests that it was necessary for Paddock Park to offer remarks about potable water and sanitary sewer at the June 23, 1992 public hearing.

Paragraph 84 is not necessary to the resolution of the dispute.

Paragraphs 85 through 88 are subordinate to facts found.

Paragraphs 89 through 98 are not necessary to the resolution of the dispute.

DCA's Facts:

Paragraphs 1 through the first sentence in Paragraph 14 are subordinate to facts found. The second sentence in that paragraph is not necessary to the

resolution of the dispute. The remaining sentences in Paragraph 14 are subordinate to facts found.

Paragraphs 15 through 19 are subordinate to facts found.

Paragraphs 20 and 21 are not necessary to the resolution of the dispute.

Paragraphs 22 through 24 are subordinate to facts found.

Paragraphs 25 through 27 are not necessary to the resolution of the dispute.

Paragraphs 28 through 33 are subordinate to facts found.

Paragraph 34 is not necessary to the resolution of the dispute.

Paragraph 35 constitutes legal argument.

Paragraphs 36 and 37 are subordinate to facts found.

Paragraphs 38 through 40 are not necessary to the resolution of the dispute.

Paragraphs 41 and 42 are subordinate to facts found.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.