

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF COMMUNITY AFFAIRS, )  
)  
Petitioner, )  
)  
vs. ) CASE NO. 93-0977GM  
)  
BROWARD COUNTY, )  
)  
Respondent, )  
)  
and )  
)  
SUSAN EDN, )  
)  
Intervenor. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to written notice a formal hearing was held in this case before Larry J. Sartin, a duly designated Hearing Officer of the Division of Administrative Hearings, on August 16, 1993, in Fort Lauderdale, Florida.

APPEARANCES

For Petitioner: Bridgett A. Ffolkes  
Assistant General Counsel  
Karen Brodeen  
Assistant General Counsel  
Department of Community Affairs  
2740 Centerview Drive  
Tallahassee, Florida 32399-2100

For Respondent: Sharon L. Cruz  
Deputy County Attorney  
Daniel E. Taylor  
Assistant County Attorney  
Broward County  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301

For Intervenor: Susan Edn, pro se  
8881 S.W. 49th Court  
Cooper City, Florida 33328

## STATEMENT OF THE ISSUE

Whether an amendment to the Broward County Comprehensive Plan, PC-92-20, which was adopted by ordinance number 92-50 rendered the Broward County Comprehensive Plan not "in compliance", within the meaning of Section 163.3184(1)(b), Florida Statutes?

## PRELIMINARY STATEMENT

On or about December 9, 1992, the Board of County Commissioners of Broward County, Florida, adopted ordinance number 92-50 approving nineteen amendments to the Broward County Comprehensive Plan which the County had adopted, in accordance with the 1985 Local Government Comprehensive Planning and Land Development Regulation Act, Part II of Chapter 163, Florida Statutes.

Following review of Broward County's plan amendment, the Petitioner, the Department of Community Affairs, determined that amendment PC-92-20 was "in compliance" and that plan amendment PC-91-39 was not "in compliance". The Petitioner entered a Statement of Intent to Find Comprehensive Plan Amendment Not in Compliance and published notice thereof. The Statement of Intent indicated that Broward County Ordinance 92-50 was not in compliance.

On February 23, 1993, the Petitioner filed a Petition of the Department of Community Affairs with the Division of Administrative Hearings. The matter was assigned case number 93-0977GM and was assigned to the undersigned.

On March 5, 1993, Susan Edn filed a Petition to Intervene in Determination of Non-Compliance of Broward County Comprehensive Plan Amendment. Ms. Edn's petition was limited to a challenge to PC-92-20. The petition was granted by an Order Granting Intervention entered March 16, 1993.

On August 12, 1993, the Petitioner and Respondent filed a Joint Motion to Relinquish Jurisdiction. The joint motion, which was not opposed by Ms. Edn, sought dismissal of the portion of this proceeding concerning PC-91-39, the subject of the Petitioner's original determination of noncompliance. The joint motion was granted at the commencement of the final hearing of this case and was memorialized by an Order Granting Joint Motion to Relinquish Jurisdiction entered August 17, 1993.

At the final hearing Ms. Edn called no witnesses. Twenty-six exhibits were offered by Ms. Edn. Those exhibits have been marked as "Edn" exhibits one through twenty-six. Edn exhibits 4, 11, 15, 17, 18A and 18E, and 19 were accepted into evidence. Edn exhibits 1-3, 5-10, 12-14, 16, 18B-18D, and 20-26 were accepted into evidence, but only to the extent ultimately determined to be relevant. Ms. Edn exhibit 10 was not shown to be relevant. Finally, Edn exhibits 1-3, 5-6, 9-10, 12-13, 18B-18C and 24-26 were also determined to be hearsay and have been relied upon only to the extent that they are subject to a hearsay exception or they corroborate or explain otherwise admissible evidence.

The Respondent presented the testimony of Donald Waldron. Four exhibits were offered by the Respondent and accepted into evidence.

The Petitioner presented the expert testimony of John Healey. Two exhibits were offered by the Petitioner and were accepted into evidence.

No transcript of the final hearing was ordered by the parties. Pursuant to an agreement of the parties and approved by the undersigned at the conclusion of the final hearing, proposed recommended orders were to be filed on or before September 20, 1993. All three parties filed proposed recommended orders. The proposed recommended orders contain proposed findings of fact. A ruling on each proposed finding of fact has been made either directly or indirectly in this Recommended Order or the proposed finding of fact has been accepted or rejected in the Appendix which is attached hereto.

#### FINDINGS OF FACT

##### A. The Parties.

1. The Petitioner, the Florida Department of Community Affairs (hereinafter referred to as the "Department"), is a state agency. The Department is charged pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act, Part II of Chapter 163, Florida Statutes (hereinafter referred to as the "Act"), with responsibility for, among other things, the review of comprehensive growth management plans and amendments thereto.

2. The Respondent, Broward County (hereinafter referred to as the "County"), is a political subdivision of the State of Florida. The County is the local government charged with the responsibility pursuant to the Act for developing a comprehensive plan for future development in the unincorporated areas of the County and the approval of amendments to the County's comprehensive plan.

3. The Intervenor, Susan Edn, is a resident of, and owns real property located in, Broward County, Florida.

4. Ms. Edn submitted written and oral comments to the County concerning the plan amendment at issue in this proceeding.

##### B. General Description of the County.

5. The County is a generally rectangular-shaped area located on the southeastern coast of Florida.

6. The County is bounded on the north by Palm Beach County, on the south by Dade County, on the east by the Atlantic Ocean and on the west by Collier and Hendry Counties.

##### C. The County's Comprehensive Plan.

7. The County adopted a comprehensive plan as required by the Act on March 1, 1989 (hereinafter referred to as the "County Plan").

8. Volume 1 of the County Plan includes the Broward County Land Use Plan, which applies to, and governs, future land use throughout the County, including the unincorporated areas of the County.

##### D. The Future Land Use Element.

9. The County Plan includes a Future Unincorporated Area Land Use Element dealing with future land use in the unincorporated areas of the County. See Volume 2 of the County Plan, Edn exhibit 15.

10. The Future Land Use Element of the County Plan required by the Act consists of the Broward County Land Use Plan and the Future Unincorporated Area Land Use Element.

11. The Future Land Use Element identifies a number of land-use categories, including a "residential" category. Densities of development on land designated "residential" are also established.

12. There are eight designated residential future land uses identified and defined in the Future Land Use Element of the County Plan. Those designations and densities are as follows:

- a. Estate (1) Residential: up to 1 dwelling unit per gross acre.
- b. Low (2) Residential: up to 2 dwelling units per gross acre.
- c. Low (3) Residential: up to 3 dwelling units per gross acre.
- d. Low (5) Residential: up to 5 dwelling units per gross acre.
- e. Low-Medium (10) Residential: up to 10 dwelling units per gross acre.
- f. Medium (16) Residential: up to 16 dwelling units per gross acre.
- g. Medium-High (25) Residential: up to 25 dwelling units per gross acre.
- h. High (50) Residential: up to 50 dwelling units per gross acre.

13. The density of development for the Rural Estate category is up to 1 dwelling unit per gross acre. The density for the Rural Ranch category is up to 1 dwelling unit per 2.5 gross acres or up to 1 dwelling unit per 2 net acres.

14. The County Plan includes Goal 08.00.00, titled Public Facilities and Phased Growth, and Objective 08.01.00, which provide:

GOAL 08.00.00

PHASE GROWTH CONSISTENT WITH THE PROVISION OF ADEQUATE REGIONAL AND COMMUNITY SERVICES AND FACILITIES.

OBJECTIVE 08.01.00 COORDINATE FUTURE LAND USES WITH AVAILABLE REGIONAL AND COMMUNITY FACILITIES AND SERVICES

Coordinate future land uses with the availability of regional and community facilities and services sufficient to meet the current and future needs of Broward County's population and economy without endangering its environmental resources.

The following policies related to Goal 08.00.00 and Objective 08.01.00 are included in the County Plan:

POLICY 08.01.04 In order to protect the health, safety, and welfare of Broward County's residents, development should not be permitted in those portions of Broward County with inadequate potable water and wastewater treatment facilities.

. . . .

POLICY 08.01.09 Private septic tanks and wells in Broward County should be phased out and replaced with centralized water and wastewater systems, where necessary, to protect the health, safety, and welfare of Broward County's residents.

POLICY 08.01.10 Local government entities shall require existing development on septic tanks and private wells to hook up to centralized sewer and water facilities as they become available.

15. The evidence failed to prove that the amendment which is the subject of this proceeding is inconsistent with the policies quoted in finding of fact 14 or any other goal, objective or policy of the County Plan.

E. The Subject Amendment: PC-92-20.

16. The Board of County Commissioners of the County adopted Ordinance 92-50 on December 9, 1992. Ordinance 92-50 included nineteen amendments to the County Plan, including amendment PC-92-20.

17. PC-92-20 (hereinafter referred to as the "Challenged Amendment"), is the amendment to the County Plan challenged in this proceeding by Ms. Edn.

18. The Challenged Amendment amends the land use designation of approximately 2,453 acres of land. Of the 2,453 total acres, the designation of 2,272 acres is changed from Estate (1) Residential to Rural Ranch and the designation of the remaining 180.7 acres of land is changed to Rural Estate.

19. Pursuant to the Challenged Amendment the change in designation also results in a change in density from one dwelling unit per acre to a density of one dwelling unit per two and one-half acres for the Rural Ranch and a density of one dwelling unit per two net acres for the Rural Estate.

F. The Subject Property.

20. The 2,453 acres of land which are the subject of the Challenged Amendment are located in the unincorporated area of the County, east of Southwest 148th Avenue, south of Griffin Road, west of Flamingo Road and north of Sheridan Street.

21. Dwellings currently exist on approximately 85 percent to 90 percent of the subject property.

22. Existing dwellings are served by septic tanks and wells.

23. Pursuant to the County Plan, without the Challenged Amendment, the 10 percent to 15 percent of the subject property not yet developed may be developed at a higher density using septic tanks and individual wells.

24. The subject property is not currently serviced by a sewer service provider or a water service provider.

25. The County Plan recognizes and accepts the foregoing existing conditions. See Map 12-1 of the County Plan Map Series titled "Existing and Proposed Sanitary Sewer Service Area", and Map 14-1 of the County Plan Map Series, titled "Existing and Proposed Potable Water Service Area."

26. The Challenged Amendment does not modify the existing conditions of the subject property except to decrease the density of development allowed on the property.

27. The subject property is not located within a public wellfield zone of influence. See County Plan Land Use Plan Natural Resource Map Series, titled "Existing and Planned Waterwells & Zones of Influence."

G. The Department's Review of the Challenged Amendment.

28. The Department reviewed the Challenged Amendment as originated by the Act. After review of the Challenged Amendment, the Department raised no objections.

29. As part of the Department's initial review of the Challenged Amendment pursuant to Section 163.3184(6), Florida Statutes (1992 Supp.), the Department considered comments of various entities, including the Florida Department of Environmental Protection, the South Florida Regional Planning Council, the South Florida Water Management District and others concerning the Challenged Amendment. Some of those comments were critical.

30. The critical comments concerning the Challenged Amendment pertain to the use of wells for potable water and the use of septic tanks in the effected area. Those concerns were considered by the Department and ultimately determined to be insufficient to find the Challenged Amendment not "in compliance." The Department's conclusion was based, in part, upon the fact that the Challenged Amendment will reduce the demand on sewer by 477,400 gallons per day and the demand on water by 380,800 gallons per day. The Department's conclusion was also based upon the fact that the majority of the area effected has already been built-out.

31. Ms. Edn offered the critical comments of various governmental entities who provided comments to the Department pursuant to Section 163.3184, Florida Statutes (1992 Supp.), into evidence. Evidently, Ms. Edn believes that those comments were not adequately considered by the Department or that they prove that the Challenged Amendment is not "in compliance." The evidence failed to prove either suggestion.

32. The evidence failed to prove that the Department's consideration of critical comments about the Challenged Amendment was not adequate or that the Department's conclusions concerning those comments were not reasonable and proper. On the contrary, the evidence proved that the Department did consider all comments and decided that the Challenged Amendment was "in compliance" despite the critical comments. The evidence also proved that the Department's rationale for still finding the Challenged Amendment in compliance was reasonable.

33. Additionally, Ms. Edn failed to present evidence to support a finding that the entities that made critical comments concerning the Challenged Amendment during the initial review of the Challenged Amendment still believe those comments are valid. Therefore, the evidence failed to prove that the critical comments concerning the Challenged Amendment were still valid as of the date of the final hearing of this matter.

#### G. Data and Analysis-Sewer and Potable Water Services.

34. The evidence failed to prove that the County did not provide data and analysis concerning the impact of the Challenged Amendment on sewer and potable water services. Facility and service capacity data and analyses concerning the impact of the Challenged Amendment on the availability of, and the demand for, sewer and potable water services was provided to the Department by the County.

35. Based upon the data and analysis provided, the Challenged Amendment will tend to reduce the demand on sewer and potable water services. The evidence failed to prove that the data and analysis provided was inadequate.

#### H. Data and Analysis-Soil Suitability.

36. The evidence failed to prove that the County did not provide data and analysis concerning soil suitability. The County submitted data and analysis concerning the impact of the Challenged Amendment on soil and natural resources, including waterwells and zones of influence, to the Department.

37. The County concluded that the Challenged Amendment would preserve the natural function of soils in the area and Ms. Edn failed to prove the inaccuracy of the County's conclusion. See the County Land Use Plan Natural Resource Map Services titled "Soils."

#### I. Data and Analysis-Wellfield Protection.

38. The evidence failed to prove that the County did not provide data and analysis concerning the impact of the Challenged Amendment on wellfield protection.

39. The County relied upon the County Land Use Plan natural Resource Map Series titled "Existing and Planned Waterwells and Zones of Influence" and concluded that the area impacted by the Challenged Amendment is not located within a public wellfield's zone of influence. The evidence failed to prove the inaccuracy of the County's conclusion.

J. Data and Analysis-Biscayne Aquifer.

40. The evidence failed to prove that the County did not provide data and analysis concerning the impact of the Challenged Amendment on the Biscayne Aquifer.

41. The South Florida Water Management District has not designated the area of the County impacted by the Challenged Amendment to be a "prime groundwater recharge area" for the Biscayne Aquifer.

K. Proliferation of Urban Sprawl.

42. Pursuant to Section 163.3177(6)(a), Florida Statutes, (1992 Supp.) and Rule 9J-5.006(3)(b)7, Florida Administrative Code, comprehensive plans are required to discourage the proliferation of "urban sprawl".

43. The Department has provided a definition of "urban sprawl" in a November 1989 Technical Memorandum:

. . . scattered, untimely, poorly planned urban development that occurs in urban fringe and rural areas and frequently invades lands important for environmental and natural resource protection. Urban sprawl typically manifests itself in one or more of the following patterns: (1) leapfrog development; (2) ribbon or strip development; and (3) large expanses of low-density single-dimensional development.

44. The evidence failed to prove that the foregoing definition or any other pronouncement in the Technical Memorandum constitutes policy of the Department.

45. The evidence also failed to prove that the reduced densities allowed by the Challenged Amendment constitute "urban sprawl."

L. The State Comprehensive Plan.

46. The State Comprehensive Plan is contained in Chapter 187, Florida Statutes. Goals and Policies of the State Comprehensive Plan are contained in Section 187.201, Florida Statutes.

47. The evidence failed to prove that the Challenged Amendment is inconsistent with any provision of the State Comprehensive Plan.

M. The Regional Comprehensive Policy Plan.

48. The South Florida Planning Council has adopted the Regional Plan for South Florida (hereinafter referred to as the "Regional Plan").



49. The Regional Plan was adopted pursuant to Chapter 186, Florida Statutes, to provide regional planning objectives for the County, Dade County and Monroe County.

50. In the petition filed in this case, Ms. Edn alleged that the Challenged Amendment is inconsistent with Goal 13.4.10 of the Regional Plan. Goal 13.4.10 of the Regional Plan provides the following:

Within the study area of the Southwest Broward/Northwest Dade Subregional Study, any existing or new user of on-site disposal systems in Broward County and within the Dade County urban development boundary should be required to hook up to a centralized wastewater collection when available.

51. The evidence failed to prove that centralized wastewater collection is "available" to require existing or new users of on-site disposal systems in the area of the Challenged Amendment to hook up to.

52. The evidence failed to prove that the Challenged Amendment is inconsistent with the Regional Plan.

#### CONCLUSIONS OF LAW

##### A. Jurisdiction.

53. The Division of Administrative Hearings has jurisdiction of the parties to and the subject matter of this proceeding. Section 120.57(1), Florida Statutes (1992 Supp.).

##### B. Burden of Proof.

54. In proceedings instituted pursuant to Section 163.3184(10), Florida Statutes (1992 Supp.), the burden of proof is placed on the Department to prove by a preponderance of the evidence that the plan or plan amendment is not in compliance. This proceeding was initially instituted by the Department pursuant to Section 163.384(10), Florida Statutes (1992 Supp.).

55. The County has suggested that Ms. Edn, who has standing to participate in the proceeding, is subject to the more stringent burden of proof set out in Section 163.3184(9), Florida Statutes (1992 Supp.). Pursuant to that provision, a challenger to a plan amendment must prove that the local government's action was not "fairly debatable."

56. The issue of the appropriate burden of proof was not specifically addressed by all parties. The issue is a difficult one. Not having heard argument of the various views concerning the issue makes a decision on burden of proof more difficult. Which burden of proof applies in this proceeding need not be decided. Based upon a consideration of the evidence presented in this case, it is concluded that the evidence fails to prove that the Challenge Amendment is not "in compliance" under the standard of proof of Section 163.3184(9) or Section 163.3184(10), Florida Statutes (1992 Supp.).

C. General Legal Principles.

57. Plan amendments are subject to review by the Department under the Act. The purpose of such review is to determine whether the plan amendment is "in compliance". Section 163.3184(8), Florida Statutes (1992 Supp.).

58. The term "in compliance" defined in Section 163.3184(1)(b), Florida Statutes (1992 Supp.), as:

(b) "In compliance" means consistent with the requirements of ss. 163.3177, 163.3178, and 163.3191, the state comprehensive plan, the appropriate regional policy plan, and rule 9J-5, F.A.C., where such rule is not inconsistent with chapter 163, part II.

59. Section 163.3187, Florida Statutes (1992 Supp.), provides the manner in which a comprehensive plan may be amended:

(1) Amendments to comprehensive plans adopted pursuant to this part may be made not more than two times during any calendar year, except:

. . . .

(2) Comprehensive plans may only be amended in such a way as to preserve the internal consistency of the plan pursuant to s. 163.3177(2). . . .

(3) . . . . Each governing body shall also transmit copies of any amendments it adopts to its comprehensive plan so as to continually update the plans on file with the state land planning agency.

. . . .

60. Section 163.3177, Florida Statutes (1992 Supp.), describes the "[r]equired and optional elements of comprehensive plan[s]" and the "studies and surveys" upon which they must be based. Section 163.3177, Florida Statutes (1992 Supp.), specifies eleven elements which must be included in every comprehensive plan.

61. Section 163.3177(2), Florida Statutes (1992 Supp.), provides:

(2) Coordination of the several elements of the local comprehensive plan shall be a major objective of the planning process. The several elements of the comprehensive plan shall be consistent, and the comprehensive plan shall be economically feasible.

62. Chapter 9J-5, Florida Administrative Code, was adopted by the Department pursuant to the Act and sets out the "minimum criteria" for review of comprehensive plans and plan amendments to determine whether they are "in compliance".

63. The State comprehensive plan is contained in Chapter 187, Florida Statutes. The appropriate regional policy plan in this case is the Regional Plan for South Florida.

64. In determining whether a plan amendment is "in compliance" the determination must be based upon a consideration of the comprehensive plan in its entirety, including any amendments thereto. Department of Community Affairs v. Lee County, 12 FALR 3755, 3756-57 (Fla. Admin. Comm. 1990).

D. Ms. Edn's Challenge.

65. Ms. Edn's petition to intervene in this case is not as precise as it should be concerning the basis for her challenge. Neither the County nor the Department, however, filed a motion for a more definite statement. Consequently, Ms. Edn's petition has been read as liberally as possible. At the same time, every effort has been made to insure that the County is not placed in the position of having to defend against an issue which the County was not properly put on notice that Ms. Edn was raising.

66. Generally, Ms. Edn has alleged in her petition to intervene that the Challenged Amendment is not "in compliance" for the following reasons:

a. The Challenged Amendment is inconsistent with the following County Plan policies:

08.01.10 Local government shall require existing development on septic tanks and private wells to hook up to centralized sewer and water facilities as they become available.

08.01.04 In order to protect the health safety and welfare of Broward County's residents, development should not be permitted in those portions of Broward County with inadequate potable water and wastewater treatment facilities.

08.01.09 Private septic tanks and wells in Broward County should be phased out and replaced with centralized water and wastewater systems where necessary to protect the health safety, and welfare of Broward County's residents. This amendment area is down gradient from an identified EPA Superfund site which has shown contamination extending to this area.

See Rule 9J-5.005(5), Florida Administrative Code.

b. The Challenged Amendment is not supported by data and analysis as required by Rule 9J-5.005(2), Florida Administrative Code, and Section 163.3177(6), Florida Statutes, (1992 Supp.) and is inconsistent with portions of Section 163.3177(6), Florida Statutes (1992 Supp.):

(1) With regard to the Future Land Use Element required by Section 163.3177(6)(a), Florida Statutes (1992 Supp.), Ms. Edn has alleged that the Challenged Amendment is inconsistent with Rules 9J-5.006(2)(b), (3)(c)3 and

(3)(c) 6, Florida Administrative Code. In particular, Ms. Edn has alleged that the use of septic systems and wells is inappropriate and not supported by data and analysis of soil suitability.

(2) With regard to the Sanitary Sewer, Solid Waste, Drainage, Potable Water and Natural Groundwater Aquifer Recharge Element of Section 163.3177(6)(c), Florida Statutes (1992 Supp.), Ms. Edn has alleged that the Challenged Amendment is inconsistent with Rules 9J-5.011(1)(f)3 and (2)(c)4, Florida Administrative Code. In particular, Ms. Edn has suggested that the Challenged Amendment fails to protect the Biscayne Aquifer.

(3) With regard to the Conservation Element of Section 163.3177(6)(d)1, Florida Statutes (1992 Supp.), Ms. Edn has alleged that the Challenged Amendment is inconsistent with Rules 9J-5.013(1)(b) and (2)(b)2, Florida Administrative Code. In particular, Ms. Edn has alleged that existing and planned water wells and cones of influence of adjacent areas are not shown.

c. The Challenge Amendment is contrary to Rule 9J-5.0055, Florida Administrative Code.

d. The Challenged Amendment is inconsistent with the State comprehensive plan "in that it allows continued use of septic tank systems and private wells . . ." See Rule 9J-5.021, Florida Administrative Code.

e. The Challenged Amendment is inconsistent with Policy 13.4.10 of the regional policy plan "in that it allows continued use of septic tank systems and private wells . . ." See Rule 9J-5.021, Florida Administrative Code.

67. Ms. Edn has also cited a number of rules chapters of the Department and chapters of Florida Statutes which she contends are violated by the Challenged Amendment. For example, Ms. Edn has alleged that the Challenged Amendment is not in compliance with "Department 9J-5 . . ." Ms. Edn's reference to Chapter 9J-5, Florida Administrative Code, and other broad references to chapters of Florida Statutes or Department rules, without further allegation, fails to put the County on notice of what issue(s) she is raising.

68. Although not clearly raised in her petition, Ms. Edn attached a Department Technical Amendment to her petition in which "urban sprawl" is discussed. The Department addressed the issue of urban sprawl in its proposed recommended order. Therefore, a determination of whether Ms. Edn proved that the Challenged Amendment encourages the proliferation of urban sprawl contrary to Rule 9J-5.006(3)(b)7, Florida Administrative Code, and Section 163.3177(6)(a), Florida Statutes (1992 Supp.), will be made in this Recommended Order.

69. In the proposed recommended order filed by Ms. Edn, she has for the first time cited several specific rules not cited in her petition. Many of those rules deal with general subjects not mentioned in any manner in her petition. For example, Ms. Edn has cited Rule 9J-5.010, Florida Administrative Code, and alleged that the Challenged Amendment "does not allow for low or moderate income housing. . ." Ms. Edn's petition does not address low or moderate income housing in any way. Ms. Edn's petition is limited to issues concerning the provision of sewer and water, and matters related thereto. Issues raised, and rules and statutes cited, in Ms. Edn's proposed recommended order which are not raised or cited in her petition have not be addressed in this Recommended Order.

E. Ms. Edn's Explanation of the Deficiencies of the Challenged Amendment.

70. The allegations contained in the petition filed by Ms. Edn in this case consist generally of conclusionary statements. For example, Ms. Edn alleges that "[t]he amendment PC 92-20 is inconsistent with Broward County Comprehensive Plan Policies . . ." and those policies are then quoted. With few exceptions, the petition does not contain further explanation of why Ms. Edn believes that the Challenged Amendment is inconsistent with the policies she has cited or why she believes that the other rules and statutes she has cited in her petition have not been complied with by the County.

71. The presentation of Ms. Edn's case shed little light on the specific basis for her allegations. Ms. Edn's case consisted of the introduction into evidence of 26 exhibits consisting of numerous pages of documents. No testimony to explain these exhibits was offered by Ms. Edn. It is, of course, acceptable to present evidence without further explanation during the final hearing, but at some point in the proceeding some explanation of what the party offering the evidence believes has been proven by the evidence is necessary. In this case, the opportunity to explain the evidence was afforded to Ms. Edn through her proposed recommended order.

72. Ms. Edn's proposed recommended order, while containing a few more specific allegations, mainly states general conclusions and includes citations to several exhibits offered by Ms. Edn. Ms. Edn has not cited specific portions of the various rules and statutes she believes have been violated. Nor has she referred to specific evidence which she believes supports a finding that a specific portion of a rule or statute has been violated.

73. In order to address each issue apparently raised by Ms. Edn, the undersigned, in large part, would be required to guess what it is that Ms. Edn believes is deficient about the Challenged Amendment. To do so would be to act, in effect, as an advocate in this proceeding. That is not the role of the undersigned.

74. In order to meet her burden of proof in this proceeding, Ms. Edn should have cited specific provisions of the rules or statutes she believes have been violated, explained what the County specifically did that was inconsistent with the rule or statute cited and cite with specificity to the evidence that supports her position. Having failed to do so, the undersigned is unable in large part to address Ms. Edn's allegations with any specificity other than to note that she simply failed to meet her burden of proof.

F. Inconsistency with Policies 08.01.04, 08.01.09 and 08.01.10.

75. Rule 9J-5.005(5), Florida Administrative Code, specifies that plans be internally consistent:

(5) Internal Consistency.

(a) The required elements and any optional elements shall be consistent with each other. All elements of a particular comprehensive plan shall follow the same general format . . . . Where data are relevant to several elements, the same data shall be used,

including population estimates and projections.

(b) Each map depicting future conditions must reflect goals, objectives, and policies within all elements and each such map must be contained within the comprehensive plan.

76. One of the mandatory elements which must be included in each plan is the Future Land Use Element. Section 163.3177(6)(a), Florida Statutes (1992 Supp.). Pursuant to Chapter 9J-5, Florida Administrative Code, each plan must include, among other things, goals, objectives and policies relating to each element, procedures for monitoring and evaluating of the plan and required maps showing future conditions.

77. Ms. Edn has alleged that the Challenged Amendment is inconsistent with three policies of the County Plan: 08.01.04, 08.01.09 and 08.01.10.

78. Policy 08.01.04 of the County Plan provides the following:

POLICY 08.01.04 In order to protect the health, safety, and welfare of Broward County's residents, development should not be permitted in those portions of Broward County with inadequate potable water and wastewater treatment facilities.

79. The evidence in this case failed to prove that development in the area impacted by the Challenged Amendment is being permitted "with inadequate potable water and wastewater treatment facilities." All that was proved was that potable water is being provided by well and that sewage is being treated by septic tank. The evidence failed to prove that the wells and septic tanks are not adequate.

80. The evidence proved that the amendment will increase the adequacy of potable water and sewer treatment facilities by insuring reduced use of sewage and water based upon the reduced densities of the Challenged Amendment.

81. Policy 08.01.09 of the County Plan provides the following:

POLICY 08.01.09 Private septic tanks and wells in Broward County should be phased out and replaced with centralized water and wastewater systems, where necessary, to protect the health, safety, and welfare of Broward County's residents.

82. The evidence in this case failed to prove that it is "necessary, to protect the health, safety, and welfare of Broward County's residents" to eliminate the private septic tanks and wells in the area impacted by the Challenged Amendment. No evidence was presented that proved that the existing septic tanks and wells are not adequate.

83. Policy 08.01.10 of the County Plan provides the following:

POLICY 08.01.10 Local government entities shall require existing development on septic tanks and private wells to hook up to centralized sewer and water facilities as they become available.

84. Ms. Edn has argued that other developments which have been the subject of plan amendments have been required to hook up to centralized sewer and water facilities. The evidence failed to prove, however, that those amendments involve facts similar to this matter or that the circumstances of this matter warrant or require the same action taken on those amendments. More importantly, the evidence failed to prove that centralized sewer and water facilities are "available" to be hooked up to in the area of the Challenged Amendment.

85. Based upon the foregoing, the evidence has failed to prove that the Challenged Amendment is inconsistent with any policy of the County Plan.

86. The evidence has also failed to prove, to the extent that Ms. Edn has made such allegations, that the County Plan lacks any required objective, goal or policy.

87. In her proposed recommended order, Ms. Edn for the first time has alleged that the Challenged Amendment is inconsistent with Objective 08.03.00 of the County Plan. Having failed to include any reference to Objective 08.03.00 of the County Plan in her petition to intervene, her argument concerning this Objective is rejected.

G. The Future Land Use Element.

88. With regard to the Future Land Use Element, Ms. Edn has alleged that the Challenged Amendment is inconsistent with Section 163.3177(6)(a), Florida Statutes (1992 Supp.), because of the lack of "suitability for septic systems and potable water", and Rules 9J-5.006(2)(b), (3)(c)3 and (3)(c)6, Florida Administrative Code.

89. Section 163.3177(6)(a), Florida Statutes (1992 Supp.), requires the following:

. . . . The future land use plan shall be based upon surveys, studies, and data regarding the area, including the amount of land required to accommodate anticipated growth; the projected population of the area; the character of undeveloped land; the availability of public services; and the need for redevelopment, including the renewal of blighted areas and the elimination of nonconforming uses which are inconsistent with character of the community. . . .

90. The evidence failed to prove that surveys, studies and data required by Section 163.3177(6)(a), Florida Statutes (1992 Supp.), were not provided with regard to the County Plan and the Challenged Amendment.

91. Rule 9J-5.006(2)(b), Florida Administrative Code, requires, in pertinent part, that a local government's determination concerning future land uses should include compliance with the following:

(2) Land Use Analysis Requirements. The element shall be based upon the following analyses which support the comprehensive plan pursuant to Subsection 9J-5.005(2).

. . . .  
(b) An analysis of the character and magnitude of existing vacant or undeveloped land in order to determine its suitability for use, including where available:

1. Gross vacant or undeveloped land area, as indicated in Paragraph (1)(b);
2. Soils;
3. Topography;
4. Natural resources; and
5. Historic resources;

. . . .

92. The evidence failed to prove that the Challenged Amendment is inconsistent with this requirement of the rule. The evidence proved that the County considered the matters set out in Rule 9J-5.006(2)(b), Florida Administrative Code, and provided data and analysis to the Department to support the amendment.

93. Rule 9J-5.006(3)(c)3 and 6, Florida Administrative Code, requires the following:

(c) The element shall contain one or more policies for each objective which address implementation activities for the:

. . . .

3. Provision that facilities and services meet the locally established level of service standards, and are available concurrent with the impacts of development, or that development orders and permits are specifically conditioned on the availability of the facilities and services necessary to serve the proposed development; and that facilities that provide utility service to the various land uses are authorized at the time as the land uses are authorized;

. . . .

6. Protection of potable water wellfields, and environmentally sensitive land;

. . . .



94. The evidence proved that the County Plan's Future Land Use Element includes policies for each objective which address implementation activities as required by Rule 9J-5.006(3)(c)3 and 6, Florida Administrative Code. The evidence failed to prove that the Challenged Amendment is inconsistent with these requirements of the rule or any polices included in the County Plan.

95. The evidence also proved that the area impacted by the Challenged Amendment is not within a wellfield of the County. Ms. Edn failed to prove the contrary. The evidence also failed to prove that the Challenged Amendment will effect environmentally sensitive land. Therefore, the evidence failed to prove that the Challenged Amendment is inconsistent with Rule 9J-5.006(3)(c)6, Florida Administrative Code.

H. Sanitary Sewer, Solid Waste, Drainage, Potable Water and Natural Groundwater Aquifer Recharge Element.

96. Section 163.3177(6)(c), Florida Statutes (1992 Supp.), provides that comprehensive plans shall include the following:

(c) A general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element correlated to principles and guidelines for future land use, indicating ways to provide for future potable water, drainage, sanitary sewer, solid waste, and aquifer recharge protection requirements for the area. The element may be a detailed engineering plan including a topographic map depicting areas of prime groundwater recharge. The element shall describe the problems and needs and the general facilities and will be required for solution of the problems and needs. The element shall also include a topographic map depicting any areas adopted by a regional water management district as prime groundwater recharge areas for the Floridan or Biscayne aquifers, pursuant to s. 373.0395. these areas shall be given special consideration when the local government is engaged in zoning or considering future land use for said designated areas. For areas served by septic tanks, soil surveys shall be provided which indicate the suitability of soils for septic tanks.

97. The County Plan includes a general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element. That element describes the problems and needs and the general facilities required to deal with those problems and needs. The evidence failed to prove that the Challenged Amendment is contrary to the sanitary sewer, solid waste, drainage potable water, and natural groundwater aquifer recharge element.

98. The evidence failed to prove that the area effected by the Challenged Amendment is not included on a topographic map depicting areas of prime groundwater recharge for the Floridan or Biscayne aquifers.

99. The evidence failed to prove that the County did not provide, or consider, soil surveys indicating the suitability of the soils in the area effected by the Challenged Amendment for septic tanks.

100. Finally, the evidence failed to prove that the effected area is an area of prime groundwater recharge for the Floridan or Biscayne aquifers or that soils in the area are not suitable for septic tanks.

101. Rule 9J-5.011, Florida Administrative Code, sets out minimum requirements concerning the sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element. Ms. Edn alleged that the Challenged Amendment violates Rule 9J-5.011(1)(f)3, Florida Administrative Code, by failing to provide data and analysis, and Rule 9J-5.011(2)(c)4, Florida Administrative Code, by failing "to show the availability of suitable land for utility facilities." Other than citing several exhibits offered into evidence, Ms. Edn has failed to explain in any particularity why she believes these rule provisions have been violated. More importantly, the evidence failed to support her assertions.

#### I. Conservation Element.

102. Section 163.3177(6)(d)1, Florida Statutes, provides that comprehensive plans shall include the following:

(d) A conservation element for the conservation, use, and protection of natural resources in the area, including air, water, water recharge areas, wetlands, waterwells, estuarine marshes, soils, beaches, shores, flood plains, rivers, bays lakes, harbors, forests, fisheries and wildlife, marine habitat, minerals, and other natural and environmental resources. Local governments shall assess their current, as well as projected water needs and resources for a 10-year period. This information shall be submitted to the appropriate agencies. The land use map or map series contained in the future land use element shall generally identify and depict the following:

1. Existing and planned waterwells and cones of influence where applicable.

103. The County Plan contains a conservation element. Evidence presented by the County indicated that the impacted area is not within an existing or planned waterfield or cone of influence. Ms. Edn failed to prove the contrary.

104. Rule 9J-5.013, Florida Administrative Code, sets out minimum requirements concerning the conservation element. Ms. Edn has alleged that the Challenged Amendment violates Rule 9J-5.013(1)(b), Florida Administrative Code, because the "County failed to show know [sic] pollution problems." Ms. Edn also alleged that the Challenged Amendment violates Rule 9J-5.013(2)(b)2, Florida Administrative Code, because the "County failed to protect the quality of water resources." The evidence failed to prove both assertions.

J. Concurrency Requirements.

105. Ms. Edn alleged that the Challenge Amendment fails to comply with Rule 9J-5.0055, Florida Administrative Code. This rule requires that the County adopt a concurrency management system and that prior to the issuance of a development order, the concurrency management system must insure that the order maintain the level of service standards for potable water and sanitary sewer.

106. The evidence failed to prove that the Challenged Amendment is in any way inconsistent with Rule 9J-5.0055, Florida Administrative Code.

K. The State Comprehensive Plan and the Regional Comprehensive Policy Plan.

107. The State comprehensive plan is found in Chapter 187, Florida Statutes, and constitutes a "direction-setting document" providing "long-range policy guidance for the orderly social, economic, and physical growth of the state. Section 187.101, Florida Statutes (1991).

108. The applicable regional policy plan is the 1991 Regional Plan for South Florida of the South Florida Regional Planning Council. See Section 186.508, Florida Statutes (1992 Supp.), and Rule 29K-5.001, Florida Administrative Code.

109. In order to be considered consistent with the State plan and the Regional Plan, the County Plan, as amended, must be "compatible with" and "further" those plans. "Compatible with" means "not in conflict with" and "further" means "to take action in the direction of realizing." Section 163.3177(10(a), Florida Statutes (1992 Supp.).

110. The evidence in this case failed to prove that the County Plan, as amended by the Challenged Amendment, is inconsistent with any goal of the State plan.

111. Goal 13.4.10 of the Regional Plan provides the following:

Within the study area of the Southwest Broward/Northwest Dade Subregional Study, any existing or new user of on-site disposal systems in Broward County and within the Dade County urban development boundary should be required to hook up to a centralized wastewater collection when available.

112. The evidence failed to prove that centralized wastewater collection is "available" to require existing or new users of on-site disposal systems in the area of the Challenged Amendment to hook up to.

113. The evidence failed to prove that the Challenged Amendment is inconsistent with the Regional Plan.

L. Urban Sprawl.

114. Pursuant to Section 163.3177(6)(a), Florida Statutes (1992 Supp.), and Rule 9J-5.006(3)(b)7, Florida Administrative Code, comprehensive plans are required to discourage the proliferation of "urban sprawl".

115. Based upon the County Plan, as amended by the Challenged Amendment, and an application of the indicators of urban sprawl, it is concluded that the evidence has failed to prove that the Challenged Amendment fails to discourage the proliferation of urban sprawl.

M. Conclusion.

116. Based upon the foregoing, it is concluded that the evidence has failed to prove that the Challenged Amendment is not "in compliance" as defined in Section 163.3184(1)(b), Florida Statutes (1992 Supp.).

RECOMMENDED ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Administration Commission enter a Final Order finding that the Broward County Comprehensive Plan as amended by ordinance number 92-50, including the Challenged Amendment, is "in compliance", within the meaning of Section 163.3184(1)(b), Florida Statutes (1992 Supp.).

DONE AND ENTERED this 12th day of October, 1993, in Tallahassee, Florida.

---

LARRY J. SARTIN  
Hearing Officer  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-1550  
(904) 488-9675

Filed with the Clerk of the  
Division of Administrative Hearings  
this 12th day of October, 1993.

APPENDIX TO THE RECOMMENDED ORDER IN CASE NO. 93-0977GM

The parties have submitted proposed findings of fact. It has been noted below which proposed findings of fact have been generally accepted and the paragraph number(s) in the Recommended Order where they have been accepted, if any. Those proposed findings of fact which have been rejected and the reason for their rejection have also been noted.

The Department's Proposed Findings of Fact

- 1 Accepted in 1.
- 2 Accepted in 2.
- 3 Accepted in 3-4.
- 4 Accepted in 5-6.
- 5 Accepted in 7-8.
- 6 Accepted in 9.
- 7 Accepted in 10.
- 8 Accepted in 11.
- 9 Accepted in 12.
- 10 Accepted in 13.

11 Hereby accepted.  
12 Hereby accepted.  
13 Accepted in 16-17.  
14 Accepted in 18.  
15 Accepted in 19.  
16 Accepted in 20.  
17 Accepted in 28.  
18 Hereby accepted.  
19 Accepted in 34.  
20 Accepted in 35.  
21 Accepted in 36.  
22 Accepted in 37.  
23 Accepted in 39.  
24 Accepted in 41.  
25 Accepted in 34, 36, 38 and 40.  
26 Hereby accepted.  
27 Accepted in 15.  
28 Accepted in 14.  
29 Accepted in 14.  
30 Accepted in 21-22.  
31 Accepted in 14.  
32 Accepted in 30 and hereby accepted.  
33 Accepted in 48.  
34 Accepted in 50.  
35 Accepted in 50.  
36 Accepted in 51-52.  
37 Accepted in 46-47.

The County's Proposed Findings of Fact

1 Accepted in 3.  
2 Accepted in 1.  
3 Accepted in 2.  
4 Accepted in 16.  
5 Accepted in 28.  
6 Accepted in 21 and 23.  
7 Accepted in 24-25.  
8 Accepted in 30.  
9 Accepted in 24-25.  
10 See 30.  
11 Hereby accepted.  
12 Accepted in 22.  
13 Accepted in 28.  
14 Accepted in 36-37.  
15 Accepted in 27 and 38-39.  
16 Accepted in 40-41.

Ms. Edn's Proposed Findings of Fact

A.

1 The first sentence is accepted in 3. The rest of this paragraph is  
argument and not supported by the weight of the evidence.  
2 Accepted in 2.  
3 Accepted in 1.

B.

1 Not supported by the weight of the evidence.

1(A) Not supported by the weight of the evidence except as to what policy 08.01.04 provides. See 14.

1(B) Not supported by the weight of the evidence except as to what policy 08.01.09 provides. See 14.

1(C) Not supported by the weight of the evidence except as to what policy 08.01.10 provides. See 14.

1(D) Not relevant. Objective 08.03.00 was not cited in the petition filed by Ms. Edn. Additionally, to the extent that these proposed findings deal with urban sprawl, they are not supported by the weight of the evidence.

COPIES FURNISHED:

Linda Loomis Shelley, Secretary  
Department of Community Affairs  
2740 Centerview Drive  
Tallahassee, FL 32399-2100

Dan Stengle, General Counsel  
Department of Community Affairs  
2740 Centerview Drive  
Tallahassee, FL 32399-2100

Brigette A. Ffolkes  
Assistant General Counsel  
Karen Brodeen  
Assistant General Counsel  
Cristina E. Brochin  
Assistant General Counsel  
Department of Community Affairs  
2740 Centerview Drive  
Tallahassee, Florida 32399-2100

John Copelan, Jr., Esquire  
Broward County Attorney  
Sharon L. Cruz  
Deputy County Attorney  
Daniel E. Taylor  
Assistant County Attorney  
115 South Andrews Avenue  
Room 423  
Fort Lauderdale, Florida 33301

Susan Edn  
8881 S.W. 49th Court  
Cooper City, Florida 33328

The Honorable Gerald F. Thompson  
Chairman, Broward County Board of  
County Commissioners  
115 South Andrews Avenue  
Room 429  
Fort Lauderdale, Florida 33301

David K. Coburn, Secretary  
Fla. Land & Water Adj. comm.  
Executive Office of the Governor  
311 Carlton Building  
Tallahassee, FL 32301

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.