STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA ROCK INDUSTRIES,	)	
Petitioner,	)	
	)	
vs.	)	Case No. 99-0147
	)	
CITRUS COUNTY,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

This cause came on for consideration upon Respondent's Motion to Dismiss. Oral argument was heard in Tallahassee, Florida, on April 8, 1999, by Ella Jane P. Davis, Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Clark Stillwell, Esquire
Brannen, Stillwell & Perrin
Post Office Box 250
Inverness, Florida 34451-0250

For Respondent: Thomas Pelham, Esquire
Apgar & Pelham
909 East Park Avenue
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

May this appeal be dismissed as moot due to the impossibility of the development order being granted?

PRELIMINARY STATEMENT

This cause was referred to the Division of Administrative Hearings on or about January 11, 1999, pursuant to the Citrus

County Land Development Code, providing for administrative appeals of certain land use and development decisions and a December 1, 1998, contract between Citrus County and the Division of Administrative Hearings to provide Administrative Law Judges for such appeals.

Pursuant to Sections 2450-53, and 2500 of the Citrus County Land Development Code, the Administrative Law Judge's powers, duties, and jurisdiction and the scope and standard of review are more limited than in proceedings pursuant to Chapter 120, Florida Statutes, as more fully set out in the following Conclusions of Law. However, any decision here is referred back to the Citrus County Department of Development Services for entry of a final order. Therefore, this is a Recommended Order.

The case was transmitted, with most of the record intact and with Appellant/Petitioner Florida Rock's Brief already filed, to the Division of Administrative Hearings on January 13, 1999.

On January 14, 1999, Appellee/Respondent Citrus County filed its Answer Brief, Motion to Strike Portions of Appellant's Brief, and Motion to Dismiss for Mootness.

A telephonic conference was held January 20, 1999, for pre-hearing and scheduling purposes, and a February 2, 1999, Order devised a time-line for narrowing the issues, clarifying all pleadings, and completing the record on appeal.

On February 22, 1999, Florida Rock filed its Response to Motion to Dismiss, and the parties filed their Joint Stipulation

as to Jurisdiction, Scope of Hearing, and Standard of Review.

On February 25, 1999, Florida Rock filed a Notice of Additional Authority.

On March 1, 1999, Citrus County filed its Reply to the Response and requested oral argument.

On March 17, 1999, an Administrative and Scheduling Order was entered. It provided, in pertinent part,

> [I]t is FOUND, DETERMINED, and ORDERED:
>
> 1. Heatherwood Community Owners Association, Inc. withdrew its Petition/Motion to Intervene prior to referral of this cause to the Division of Administrative Hearings, and therefore, Heatherwood Community Owners Association, Inc., has no part in these proceedings.
>
> 2. No other potential intervenors have been identified.
>
> 3. The parties have entered into a Stipulation as to Jurisdiction, Scope of Hearing, and Standard of Review. Upon consideration thereof and comparison with the copy of relevant portions of the Citrus County Land Development Code (LDC) provided, the parties' stipulation is recognized as the "law of the case," thus far. In an abundance of caution, and for clarity of the record, a copy of this stipulation is attached and incorporated herein by reference.
>
> 4. At this time, Citrus County's Motion to Dismiss for Mootness; Florida Rock's Response, Notice of Filing Additional Authority, FAX of further authority; and Citrus County's Reply to Response remain pending.
>
> 5. By telephonic conference call on March 11, 1999, Florida Rock has waived the opportunity to file a written response to Citrus County's Reply to Response to the

> Motion to Dismiss, and the parties have stipulated to oral argument on Citrus County's Motion to Dismiss for Mootness at 2:00 p.m., April 8, 1999, at the Division of Administrative Hearings, the DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida.

Oral argument was heard on April 8, 1999. At that time, the parties stipulated to certain facts. A court reporter was present. The proceeding has not been transcribed, but the undersigned has reviewed the audio tapes. This Recommended Order is entered upon undisputed facts.

FINDINGS OF FACT

1. This case involves Florida Rock's May 20, 1992, application for a development order to the Citrus County Department of Development Services (LDDS or Department) for a mining operation.

2. Sometime after 1980, the real property at issue had been designated "extractive" on the Future Land Use Map (FLUM).

3. Citrus County's 1986 Comprehensive Plan designated Florida Rock's real property as "extractive."

4. In 1990, after the State of Florida, Department of Community Affairs challenged the "extractive" designation in the County's 1989 plan amendments, the site continued to be designated "extractive." Citrus County simultaneously enacted its Citrus County Land Development Code (LDC or Code). At all such times, zoning and all maps also embraced the same "extractive" designation.

5. Citrus County maintains two sets of land use maps. The Comprehensive Land Use Plan (CLUP or Comprehensive Plan) has a FLUM (a generalized land use map) and the LDC has attached to it atlas maps on a smaller scale. The LDC maps are identical to the county tax assessor tax maps and show individual parcels/lots of record. Such parcels defined by the Comprehensive Plan and LDC text have a land use designation as associated with each.

6. Mining operations are permitted on real property designated "extractive."

7. Under the LDC, when an application is submitted, it must be reviewed for completeness and the applicant notified within three days of whether the application is deemed complete or incomplete. If the application is deemed incomplete, the applicant must be advised of how the application should be amended or supplemented in order to be deemed complete for technical review. The applicant then may amend or supplement the application.

8. Once a determination of completeness has been made, a technical review must be completed by each member of the technical review team within ten days, and thereafter, a series of committee meetings and public hearings may follow. During this portion of the procedure, amendments to the application may be required before the development order is ultimately granted or denied.

9. Citrus County's land use amendment process began on April 10, 1992, before Florida Rock's application was submitted to the LDDS. Florida Rock had actual notice on April 10, 1992, that a change in its property designation from "extractive" to "rural residential" was pending, but no moratorium on development orders was imposed. Thus, the "rush to the Commission" began.[1]

10. On May 20, 1992, Florida Rock's application for a development order to permit mining on its real property was submitted to the Citrus County LDDS.

11. The Department made four sequential determinations of incompleteness. At no time did Florida Rock ever amend its application or submit any supplemental material.

12. On December 22, 1992, Citrus County's Board of County Commissioners adopted Ordinance 92-A73, to change the designation of the subject real property on the Comprehensive Plan from "extractive" to "rural residential." The ordinance does not recite any retroactive effect. No moratorium on development orders was imposed.

13. Mining operations are prohibited on real property designated as "rural residential."

14. On December 28, 1992, the Department made the determination of incompleteness which gave rise to this instant proceeding.

15. Florida Rock has not affirmatively plead and has not proven that the Department made any of its incompleteness

determinations arbitrarily, capriciously, discriminatorily, in bad faith or solely for purposes of delaying the process of a technical review on the merits of the project. In the absence of any formal allegation and affirmative proof, no improper motive or improper purpose by the Department can be found.[2]

16. The December 28, 1992, determination of incompleteness noted, in the following terms, the refusal of the applicant to supply certain assurances:

> 1. The applicant is exempt from Section 4344 of the LDC only in regards to the bonafide [sic] agricultural or forestry purposes. Commercial forestry involves the harvesting or marketable timber not the wholesale clearing of all vegetation. Therefore, the impact on protected trees as defined by Section 4342.A and 4344.B needs to be addressed as it regards compliance with Section 4344 of the LDC. The application needs to reflect how this will be accomplished. Contrary to your statement, this item was previously referenced as Item 11 in my letter of May 29, 1992. While vegetative removal of unprotected trees as defined in Section 4343.A.6. of the LDC is acceptable, the issue of protected trees as defined in Section 4344.B of the LDC is still unaddressed in your application submittal.
>
> 2. The submitted site plan indicates a setback of less than the 3000 feet from residentially committed areas as required by Section 4525.A.8.1 and 4531.E.1. of the LDC regarding expansion of existing mines. Interpretation of the LDC is addressed in Section 1410 of the LDC and so the attached interpretation is not applicable. Please revise your site plan to reflect this set back or resubmit your application after vesting pursuant to Section 3160 through 3163 of the LDC has been determined.
>
> 3. Pursuant to Section 380.06(4)(b)F.S., Citrus County believes that Florida Rock

> Industries operations within Hernando/Citrus Counties may exceed DRI threshold. Therefore, please provide a letter from DCA resolving this matter. In regard to your position that DCA has not formally requested a binding letter, please note that the above referenced citation specifies the state land planning agency or local government with jurisdiction over the land on which a development is proposed may require a developer to obtain a binding letter. Based on information made available to this Department, we believe a determination is called for.
>
> 4. In regards to the requested items 23 through 34 of my letter of May 29, 1992, please be advised that Section 4659.F. of the LDC requires proof of compliance with all applicable Citrus County regulations and policies. This includes the Comprehensive Plan (C.O. 89-04) and its amendments. The information requested is to assure that the proposed development will be in compliance with the Comprehensive Plan.

17. None of the reasons listed in the December 28, 1992, determination of incompleteness specifically stated that Florida Rock could not qualify for a development order for mining because its real property had just become designated by the December 22, 1992, ordinance as "rural residential," instead of "extractive." Indeed, the December 28, 1992, determination of incompleteness did not mention the ordinance change at all. However, its fourth paragraph concerns the requirement that an applicant establish its real property's consistency with the Comprehensive Plan. The County has taken the position that, without using the terms "extractive use" or "rural residential," paragraph four encompasses the change of ordinance as well as all matters pertaining to the Comprehensive Plan.

18. Under the statutes in effect on December 22, 1992, Ordinance 92-A73 was not effective until filed with the Secretary of State. (See the face of the ordinance). The exact date of its filing was not stipulated, but it was agreed that filing occurred sometime in December 1992.

19. Under Florida's growth management process, the newly adopted ordinance also was transmitted to the State of Florida, Department of Community Affairs, which would then issue a report before the new ordinance became part of the Citrus County Comprehensive Plan.[3]

20. On January 3, 1993, Florida Rock challenged, pursuant to Section 163.3184(9), Florida Statutes, the new ordinance as it progressed through the Florida Department of Community Affairs' review process.

21. On January 19, 1993, Citrus County's LDDS sent a letter to Florida Rock, further interpreting its December 28, 1992, determination of incompleteness. That letter also made no specific mention of the ordinance amendment and did not amend the fourth paragraph of the incompleteness determination. It provided, in pertinent part:

> For the record, my letter of December 28, 1992, was not a "Denial" but rather a determination of incompleteness pursuant to Section 2222.B.1 of the Land Development Code. In response to your question of January 12, 1993, I was not persuaded by your argument in regards to access by way of Parcel 22100 lying in Section 36, Township 20 South, Range 19 East, but did recognize the driveway onto County Road 581.

22. Florida Rock declined to amend its application or supply the information requested.

23. On January 26, 1993, Florida Rock initiated the instant administrative appeal of the December 28, 1992, determination of incompleteness. However, by agreement of Florida Rock and Citrus County, the appeal was abated until January 13, 1999 (see the Preliminary Statement), when it was transferred from a local hearing officer to the Division of Administrative Hearings.

24. Florida Rock's challenge of the ordinance before the Florida Department of Community Affairs also did not progress in a timely manner. On February 6, 1998, Florida Rock's challenge to the new ordinance was dismissed. The effect thereof is that the Florida Department of Community Affairs has found, and entered a Final Order pronouncing, Citrus County Ordinance 92-A73 to be in compliance with Chapter 163, Florida Statutes, pertaining to Florida's Local Government Comprehensive Planning and Land Development Act. That Final Order, as final agency action, was not appealed.

25. By any interpretation, Citrus County's Comprehensive Plan, embracing the new ordinance's land use designation of Florida Rock's property as "rural residential" has been in effect since February 1998, as have been coordinated zoning, FLUM, and LDC atlas maps.

26. Since December 22, 1992, the ordinance has designated Florida Rock's proposed site as "rural residential," which precludes the proposed mining operation.

27. Since February 1998, the Comprehensive Plan, FLUM, and LDC atlas maps have all embraced, and currently all of them now embrace, the ordinance, and all of them prohibit mining or "extractive use" of the real property in issue.

CONCLUSIONS OF LAW

28. The Division of Administrative Hearings has jurisdiction of this cause, pursuant to the Citrus County Land Development Code and Citrus County's contract with the Division of Administrative Hearings.

29. Under this arrangement and pursuant to LDC Sections 2500G. and 2500H., jurisdiction of the Administrative Law Judge is appellate in nature and must be exercised in accordance with the rules set forth therein. Under Section 2500G., the standard of review to be applied is,

> 2. The Hearing Officer [Administrative Law Judge] shall have the authority to review questions of law only, including interpretations of this LDC and any constitution, ordinance, statute, law, or the rule or regulation of binding legal force. For this purpose, an allegation that a particular application before the decision-maker is not supported by competent substantial evidence in the record as a whole is deemed to be a question of law. The Hearing Officer may not reweigh the evidence but must decide only whether any reasonable construction of the evidence supports the decision under review [e.g. the December 28,

1992 determination of incompleteness]
(Emphasis supplied.)

30. Herein, we do not have an appeal of an order granting or denying Florida Rock's development order application following full processing by the County LDDS. Rather, it is an appeal of an (in)completeness determination.

31. Florida Rock asserts that if there is an appellate finding, on the merits, that its application is complete, then, because the application must have been complete upon submittal before December 22, 1992, (the date the ordinance was enacted), the application must be returned to the Citrus County LDDS for processing and review under the ordinances, maps, and Comprehensive Plan as they existed with the "extractive" use designation before the ordinance was enacted.

32. As a factual corollary to the foregoing legal theme, Florida Rock asserts that in the normal course of events, <u>if</u> Citrus County had deemed its application "complete" when it was submitted on May 20, 1992, or "complete" even on December 28, 1992, its application would have resulted in a favorable development order being issued within 30 days, i.e., before the passage of the ordinance/plan amendment on December 22, 1992, or at least prior to the date that the Comprehensive Plan and FLUM simultaneously restricted the site to "rural residential" use.

33. However, Florida Rock's prognosis of rapid and certain approval of its application is speculative.

34. LCD Sections 2222 C.-I., set out the Department's review procedure after a determination of completeness, as follows:

> C. The reviewing officer shall transmit one copy of the application, together with supporting documentation, to each member of the TRT, who shall have 10 working days to complete review of the application.
>
> D. The reviewing officer shall schedule consideration of the application and establish the response date for the TRT.
>
> E. If the application requires consideration by the PDRB or by the BCC, the reviewing officer shall indicate the tentative meeting dates at which the application will be considered by each body following consideration and recommendation by the Technical Review Team.
>
> F. If an application requires a public hearing and notice, the reviewing officer shall insure that the applicant complies with public notice requirements of Section 2600 of this LDC.
>
> G. Recommendations and decisions rendered by each reviewing agency shall be made in writing and based upon the application, supporting documentation, compliance with standards and requirements of this LDC, comments from reviewers, and approvals required by other agencies. Written recommendations shall be provided to the reviewing officer in writing or via electronic means by the end of the response date. Failure to reply within the established review period may constitute grounds for acceptance in lieu of the missing technical review(s) as determined by the Director of Department of Development Services or designee.
>
> H. Applications shall be approved, approved with conditions, or denied by the reviewing agency. Notice of the decisions shall be

> provided to the applicant within five working days following the established response date.
>
> I. Development orders (final site plan or final plat) shall not be issued until specified conditions have been satisfied. Approval with conditions of preliminary plats or final site plans shall expire 180 days from the date the applicant has been notified of the approval with conditions by the Department of Development Services.

35. Considering that the determination of incompleteness (see Findings of Fact 16 and 21) appears to list other deficiencies besides just Comprehensive Plan problems and that the LDC calls for a technical review to be completed by each member of the technical review team within ten days of a determination of completeness, possibly to be followed by a series of committee meetings and public hearings, there is no certainty that Florida Rock would have successfully negotiated the next stages for approval of its project before the newly-adopted ordinance was embraced by the Comprehensive Plan and FLUM. Certainly, the delay before the Department of Community Affairs which was created by Florida Rock's delay in prosecution of its appeal of the ordinance is no indication of how fast that agency and the growth management process could have moved.

36. No bad faith or intentional delay by the County's LDDS has been plead or demonstrated, but as part of its appeal on the merits, Florida Rock contends that the requirements of the fourth paragraph of the December 28, 1992, determination of incompleteness were invalid and were never applicable to its

application because its application should have been reviewed under Chapter 2, instead of under Chapter 4, of the LDC. However, even in the light most favorable to Florida Rock, the foregoing dispute amounts to a good faith dispute with the Department about the meaning, interpretation, or application of the County's LDC, not bad faith by the County in processing Florida Rock's application. The Department's interpretation of its own County Code is entitled to great weight, and appellate review under either LDC section would still require that the applicant's site plan meet zoning ordinances, CLUP, and FLUM at the time of the final approval of the development order. Assuming, arguendo, but not pre-judging,[4] that Florida Rock can establish the completeness of its application in this instant appellate proceeding, any technical review would have to begin more than a year after all parts of the growth management scheme have been in sync.

37. Citrus County's Motion to Dismiss alleges that, regardless of whether or not Florida Rock can establish that its application was "complete" before December 22, 1992, the instant appeal of the December 28, 1992, determination of incompleteness should be dismissed as moot, because Citrus County cannot now grant Florida Rock's application. Citrus County reasons that Section 163.3194(1), Florida Statutes, now prohibits such approval, and that the application's 1992 site plan is not consistent with the most recent and current Comprehensive Plan.

38. The County relies on Sections 163.3161(5) and 163.3194(1), Florida Statutes, which provide,

> Section 163.3161(5)
> It is the intent of this act that adopted comprehensive plans shall have the legal status set out in this act and that no public or private development shall be permitted except in conformity with comprehensive plans, or elements or portions thereof, prepared and adopted in conformity with this act.
>
> Section 163.3194(1)(a)
> After a comprehensive plan, or element or portion thereof, has been adopted in conformity with this act, all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan or element, shall be consistent with such plan or element as adopted. (Emphasis supplied).

39. Florida courts have described the doctrine of mootness as follows:

> The case becomes moot, for purposes of appeal, where, by a change of circumstances prior to the appellate decision, an intervening event makes its impossible for the court to grant a party any effectual relief.
>
> It is the function of a judicial tribunal to decide actual controversies by a Judgment which can be carried into effect, and not to give opinions on moot questions, or to declare principles or rules of law which cannot effect the matter in issue.

Montgomery v. Department of Health and Rehabilitative Services, 468 So. 2d 1014 (Fla. 1st DCA 1985); Lund v. Department of Health, 708 So. 2d 645 (Fla. 1st DCA 1998). Also, a moot cause

should be dismissed. Godwin v. State, 593 So. 2d 211 (Fla. 1992).

40. For the reasons set out below, the Motion to Dismiss is well-taken.

41. LDC Section 2222 B.2, provides specific guidelines as to what occurs when a development order application is received for processing.

> B. Within three working days from the date of submission, the reviewing officer (a representative of the Department of Development Services) shall determine whether an application is complete.
>
> 1. If the application is incomplete (required items are not provided) or otherwise does not conform to the submission requirements of this Code, the applicant shall be notified in writing. The application shall not be processed and shall be returned to the applicant for revision and resubmission.
>
> 2. If the application is complete and in conformance with the submission requirements of this Code, the application shall be accepted. The date of acceptance shall be indicated in the application form and the applicant notified. The date of acceptance is the official date of application. (Emphasis supplied).

42. Such a provision is subject to abuse and some planning entities may consider that public policy militates against it, but Citrus County has affirmatively enacted such provision, which has been in effect since 1990.[5] Under it, the Department never accepted Florida Rock's application as being complete. It has

repeatedly returned the application for resubmission with the additional required information. Therefore, under the clear meaning of LDC Section 2222 B.2., Florida Rock's application's status is as if it had never been submitted. Thus, even if Florida Rock's application were now deemed complete by a determination on the merits in this proceeding, the date of its "acceptance" by the County would still be long after the effective date that all parts of the growth management process designating the property "rural residential" were fully in effect.

43. Even if Florida Rock's application were deemed complete in this quasi-appellate proceeding, the application would still have to go through the Department's arduous technical review stage, and today it could never be approved. At the present time, Sections 163.3161(5) and 163.3194(1)(a), Florida Statutes, prohibit Citrus County from approving development orders that are not in compliance with its current Comprehensive Plan. Moreover, Sections 2221 and 2221 E. of the LDC, require submittal of an approved preliminary site plan, pursuant to Section 2230. Florida Rock's May 20, 1992, site plan is now out of sync with the County's Comprehensive Plan designation of "rural residential" use. See Sections 2232 B. 2. e. and g. of the LDC.

44. The court in Machado v. Musgrove, 519 So. 2d 629 (Fla. 3rd DCA 1987), interpreted this statutory consistency requirement. It held that an applicant has the burden of showing

"by competent substantial evidence that the proposed development conformed strictly to the Comprehensive Plan and its elements." The decision has been cited with approval by the Florida Supreme Court in Board of County Commissioners of Brevard County v. Snyder, 627 So. 2d 469 (Fla. 1993) and Martin County v. Yusem, 690 So. 2d 1288 (Fla. 1997), which noted that the Machado court had found "that a local land use plan is like a constitution for all future development within the governmental boundary."

45. I have considered Florida Rock's reliance on Florida cases, City of Margate v. Amoco Oil Company, 546 So. 2d 1091 (Fla. 4th DCA 1989) and Southern Cooperative Development Fund v. Driggers, 696 F.2d 1347 (11th Circuit 1983). I conclude that the better line of cases establish the general rule that the law in effect at the time a final judgment is entered, not the law in effect when an application is filed, controls disposition of an application, unless there is a finding of bad faith, unreasonable refusal, or delay. See Town of Longboat Key v. Lands End Ltd, 433 So. 2d 574 (Fla. 2d DCA 1983); City of Boynton Beach v. Carroll, 272 So. 2d 171 (Fla. 4th DCA 1973); Dade County v. Jason, 278 So. 2d 311 (Fla. 3d DCA 1973); City of Coral Gables v. Sakolsky, 215 So. 2d 329 (Fla. 3d DCA 1968); and Davidson v. City of Coral Gables, 119 So. 2d 704 (Fla. 3rd DCA 1960).

46. Unlike the scenarios in the cases relied upon by Florida Rock, there is no affirmative allegation or proof herein

that Citrus County acted arbitrarily, capriciously, discriminatorily, or in bad faith.

47. Florida Rock's Florida cases do not apply here, because Citrus County has not found nor admitted that Florida Rock's application is complete; Florida Rock's application was not fully processed as were the applications in Amoco Oil and Driggers; there is no evidence of bad faith on the part of Citrus County; the County did not unilaterally delay this appeal, but rather the parties, by agreement, allowed it to languish without disposition for six years, indeed a year beyond the time when all parts of the Florida growth management arrangement were in place; and finally, unlike the situation in Driggers, there is no provision in Citrus County's Comprehensive Plan which provides that the Plan Amendment is not applicable to previously-filed applications. The exception in Davidson does not support the holdings in Amoco Oil and Driggers.

48. Florida Rock's reliance on Gardens Country Club, Inc., v. Palm Beach County, 488 So. 2d 590 (Fla. 4th DCA 1991), is misplaced. The case is distinguishable for most of the foregoing reasons. Additionally, Section 163.3197, Florida Statutes, is inapplicable to the instant situation, because Citrus County's Comprehensive Plan, with the designation "extractive," which was in effect when Florida Rock submitted its application, was adopted in 1989/1990. Thus, we are not faced here with a situation "prior to the adoption of a revised plan [in accordance

with the procedures required by State law] pursuant to Section 163.3167(2)." Therefore, Section 163.3197 does not apply.

49. In Smith v. City of Clearwater, 383 So. 2d 681 (Fla. 2d DCA 1980), pet. dismissed, 403 So. 2d 407 (Fla. 1981), the court held that the applicant was entitled to obtain a building permit within the provisions of existing zoning so long as a rezoning ordinance precluding the intended use was not pending when a proper application was made; that to be "pending," the change need only to be actively pursued by the appropriate administrative department and the council be aware that such efforts are going forward; and that to be "pending," it is not essential for the applicant to be advised of the pending rezoning. Herein, Florida Rock had actual notice on April 10, 1992, that the designation change was in the amendment process. This was three weeks before Florida Rock submitted its application on May 20, 1992. After the ordinance was passed, Florida Rock had the opportunity both to take the instant appeal of the incompleteness determination and to appeal the designation change in the ordinance itself. Neither of these "bites at the apple" were ardently prosecuted, and now all aspects of the new Comprehensive Plan are fully in effect. Smith gives Florida Rock's position no support.

50. To the degree Section 163.3194(1)(b), Florida Statutes, pertaining to what happens while parts of the Plan are not in sync, may ever have been applicable, it is now inapplicable.

RECOMMENDATION

Upon the foregoing findings of fact and conclusions of law, it is

RECOMMENDED that Citrus County Department of Land Development Services enter a final order dismissing the appeal for mootness.

DONE AND ENTERED this 4th day of June, 1999, in Tallahassee, Leon County, Florida.

ELLA JANE P. DAVIS
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of June, 1999.

ENDNOTES

[1]/ In 1990, concurrent with its 1989/1990 Comprehensive Plan amendments, Citrus County also adopted its LDC with a specific provision, Section 2222B.2, which may have been intended to prevent such "races" between developers and county planners. See Finding of Fact 4, and the Conclusions of Law, infra.

[2]/ In fairness to Florida Rock, is must be noted that the "appellate process" of this instant cause does not lend itself to any formal legal discovery process by which facts of bad faith, etc., could be fully developed. However, from the May 20, 1992 application submittal, through the subsequent correspondence and argumentation on the sequential incompleteness determinations, and even after the December 28, 1992, incompleteness

determination and January 19, 1993, letter (see Finding of Fact 21, infra.) no bad faith or unfair dealing has come to light.

[3]/ The County argued that under the statutes in effect on December 22, 1992, amendments to a Comprehensive Plan occurred on the effective date of the ordinance and that it was not until sometime in 1993 that the Legislature made the amendments effective only after review by the State of Florida Department of Community Affairs (DCA). Florida Rock argued that under the review system of the DCA, no change in the County's Comprehensive Plan was pending when the December 28, 1992, determination was made. No legislative history on these assertions was provided by either party. However, it is clear both that the County submitted the ordinance/plan amendment to the DCA in December 1992 and that it began to treat it as already in effect in April or May of 1993.

[4]/ Due to the severely limited standard of proof in these proceedings,(see Conclusion of Law 29), possibly the only test on the merits of completeness would be to determine whether the December 28, 1992, determination of incompleteness requested additional information that the Department, in its expertise, could reasonably consider necessary to demonstrate that Florida Rock's application was ready to go before the technical review team.

[5]/ See above, Endnote 1 on the purpose of this LDC section, and Finding of Fact 15 and Conclusion of Law 36 on the absence of abuse in this case.

COPIES FURNISHED:

Clark Stillwell, Esquire
Brannen, Stillwell & Perrin
Post Office Box 250
Inverness, Florida 34451-0250

Thomas Pelham, Esquire
Apgar & Pelham
909 East Park Avenue
Tallahassee, Florida 32301

Richard Wm. Wesch, Esquire
New Lecanto Government Building
3600 West Sovereign Path, Room 270
Lecanto, Florida 34461

Gary W. Maidhof, Director
Citrus County Department of
Development Services
Suite 109
3600 West Sovereign Path
Lecanto, Florida 34461-8070

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.