STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

W. T. COX, JR., Individually and as Trustee; PRICECO; AGNES T. MAY; JOHN B. WHITAKER; and BETTY SUE WHITAKER,	)	
Petitioners,	)	
vs.	)	Case No. 01-0461
LAKE COUNTY,	)	
Respondent.	)	

RECOMMENDED ORDER

Pursuant to notice, this matter was heard on May 23, 2001, in Tavares, Florida, by Donald R. Alexander, the assigned Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioners: Timothy A. Smith, Esquire
Akerman, Senterfitt & Eidson, P.A.
255 South Orange Avenue, 17th Floor
Orlando, Florida 32801-3414

For Respondent: Melanie N. Marsh, Esquire
Assistant County Attorney
Post Office Box 7800
Tavares, Florida 32778-7800

STATEMENT OF THE ISSUE

Whether Petitioners' Notice of Proposed Non-Substantial Change should be approved, thereby extending the commencement

date and the first two phasing deadlines in their Development Order by four years and 364 days, and extending the termination date by eighteen months less two days.

PRELIMINARY STATEMENT

This matter began on November 6, 2000, when Petitioners, W. T. Cox, Jr., individually and as Trustee, Priceco, Agnes T. May, John B. Whitaker, and Betty Sue Whitaker, filed a Notice of Appeal with the Florida Land and Water Adjudicatory Commission seeking to challenge a decision by Respondent, Lake County, denying Petitioners' Notice of Proposed Non-Substantial Change to a Development Order. By the change, Petitioners sought to extend the build-out dates and all related deadlines in their Development Order by four years and 364 days. On January 31, 2001, the appeal was forwarded to the Division of Administrative Hearings with a request that further proceedings be held.

By Notice of Hearing dated February 9, 2001, the matter was scheduled for final hearing on May 15, 2001, in Tavares, Florida. On the undersigned's own motion, the hearing was rescheduled to May 23, 2001, at the same location.

At the final hearing, Petitioners presented the testimony of Stephen H. Price, an attorney and son of one of the owners; Hester Lilly, an administrative assistant to one of the owners; Philip Tatich, a real estate attorney and trustee for

one of the owners; Steven C. Ruoff, a realtor and accepted as an expert in real estate marketing, including the marketing of large tracts of land for development as PUDs or DRIs; and Greg A. Beliveau, a certified planner and accepted as an expert in urban and regional planning. Also, they offered Petitioners' Exhibits 1-63, which were received in evidence. Respondent presented the testimony of Jeffrey S. Richardson, the County's chief planner and accepted as an expert in urban and regional planning.

The Transcript of the hearing (two volumes) was filed on June 21, 2001. Proposed Findings of Fact and Conclusions of Law were filed by Respondent and Petitioners on July 3 and 5, 2001, respectively, and they have been considered by the undersigned in the preparation of this Recommended Order.

FINDINGS OF FACT

Based upon all of the evidence, the following findings of fact are determined:

a. Background

1. In this land use dispute, Petitioners, W. T. Cox, Jr., individually and as Trustee, Priceco (a Florida general partnership), Agnes T. May, John B. Whitaker, and Betty Sue Whitaker, have challenged a decision by Respondent, Lake County (County), which denied their Notice of Proposed Non-Substantial Change (NOPC). If approved, the NOPC would extend

by four years and 364 days the commencement date and the first two phasing deadlines on a proposed project on their land, along with an extension of the termination date by eighteen months less two days.

2. Petitioners are the owners of several parcels of property which make up a 1,433-acre tract of land east of the City of Clermont and the Florida Turnpike and just west of Lake Apopka in Lake County, Florida, known as Sugarloaf Mountain. Much, if not most, of the land was formerly orange groves, until a freeze destroyed the trees. W. T. Cox, Jr. is the principal landowner in the group, with 900 of the 1,433 total acres for the project. Petitioners intend to sell their separate parcels of property as a single parcel to a developer who will build a large planned unit development on the property.

3. Efforts to initially develop the property began on February 19, 1991, when the County approved Planned Unit Development Ordinace No. 9-91 for Sugarloaf Mountain (Sugarloaf PUD). The Sugarloaf PUD contained no commencement or termination date requirements or limitations.

4. On July 26, 1994, the County issued the Development Order for the Sugarloaf Mountain Development of Regional Impact (DO). An appeal of the DO was taken by the Department of Community Affairs (DCA) on September 23, 1994. By

agreement of the parties, the matter was submitted to binding arbitration, and the sole issue was whether the project was vested. This appeal was resolved by an Arbitrator's Order dated October 16, 1995, which found that the property was vested by common law, and that the project was accordingly exempted from the density and intensity provisions of the County's then current Comprehensive Plan.

5. On January 16, 1996, Petitioners and the County entered into an agreement, recorded in the public records, modifying the DO to conform to the terms of the settlement with the DCA. Under the terms of the original DO, Petitioners were obligated to "substantially proceed" with development within five years of the effective date of the DO (commencement date); otherwise, the development approval would terminate. As a result of the arbitration, this date was extended to December 18, 2000.

6. The term "substantially proceed" is defined in the DO to mean "that the developer [has] constructed . . . improvements that can be expected to generate at least 392 ADT [average daily trips] . . . representing five percent of the first phase of the development." This requirement translates into approximately 40 conventional single-family homes, or 69 single-family homes for retirees. However, one could not construct such homes before preparing a capital improvements

plan, and then providing substantial infrastructure improvements in accordance with that plan, including onsite road improvements, a stormwater management system, and a water and sewer system for all or most of the project. Therefore, all of these improvements would have to have been constructed along with at least 40 homes by December 18, 2000 (the commencement date), for the owners to have substantially proceeded within the meaning of the DO, and to have had the right to continue to develop the property.

7. Under Section V of the DO, the commencement date "may be extended upon Lake County's finding of excusable delay, and no adverse impacts resulting from the delay, in any proposed development activity, consistent with the substantial deviation provisions of subsection 380.06(19), Florida Statutes." However, the DO does not define the term "excusable delay," or provide any criteria for applying this provision.

8. Due to various circumstances described in greater detail below, development had not yet substantially proceeded by January 2000. Accordingly, on January 19, 2000, or eleven months prior to the required commencement date, Petitioners filed their NOPC with the County seeking to extend all deadlines by five years less one day. As required by law, copies were also filed with the East Central Florida Regional

Planning Commission (ECFRPC) and the DCA. As later slightly modified at the request of the DCA, the NOPC requested an extension of the commencement date and the first two phasing deadlines by five years less one day, along with an extension of the termination date by eighteen months less two days.

9. No substantive amendments were proposed in the NOPC. That is, Petitioners did not request any amendment affecting any of the criteria listed in the DCA's Substantial Deviation Determination Chart, and all existing land use entitlement quantities would remain unchanged.

10. After reviewing the NOPC, on June 22, 2000, the ECFRPC advised the County by letter that because Section 380.06(19)(c), Florida Statutes, provided that "an extension of less than five years is not a substantial deviation," it concluded that "these proposed changes do not result in an automatic substantial deviation determination pursuant to the threshold criteria of section 380.06(19), Florida Statutes, nor is it expected that it will cause new or increased impacts to regional resources or facilities when considered independently or cumulatively with prior project changes." Therefore, the ECFRPC did not "recommend that this proposal be submitted for additional regional review by this agency."

11. On February 29, 2000, the DCA advised the County by letter that "the proposed extension of the date of the build-

out is not a substantial deviation and is not subject to a public hearing."

12. The County also agreed that the NOPC was a nonsubstantial deviation and therefore it did not require further DRI review. However, the County required the NOPC to be considered by its Board of County Commissioners (Board) at a public meeting. Accordingly, on June 15, 2000, the County placed the NOPC on its agenda for a public meeting on September 26, 2000. At a meeting on September 19, 2000, counsel for Petitioners requested a continuance due to the unavailability of several key witnesses on the subject of excusable delay. A request for a 60-day continuance was again made at the outset of the meeting on September 26, 2000. Both requests for a continuance were denied and Petitioners were directed to present their case without the benefit of such witnesses.

13. Speaking in opposition to the NOPC were the County's senior director of growth management who pointed out generally that the area in question was largely agricultural in nature and the proposed intensity of the project was incompatible with adjacent and adjoining land uses; that the 1991 PUD was inconsistent with the comprehensive plan; that the general welfare of the citizens should be taken into account when considering the request; and that the applicant had not met

the burden of demonstrating substantial development. In addition, a number of area residents and representatives of organizations also spoke in opposition to the extension. They generally opposed a large development in that area of the County.

14. Speaking in support of the NOPC were Cecilia Bonifay, Petitioners' counsel; Steven C. Ruoff, a realtor involved in the project; Steven H. Price, an attorney and the son of Karick Price, one of the owners; and John Reaves, a potential buyer of the property. Those persons generally pointed out that the principal owner (W. T. Cox, Jr.) was elderly and in poor health, and that because of restrictions in the original DO and the property's unusual location, the owners had experienced difficulty in marketing the property to a developer. They further pointed out that the property was then under contract with a new developer, but that insufficient time remained to comply with the commencement date.

15. Thereafter, by a 5-0 vote, the County denied the NOPC. Although the reasons for the denial were not clear, the minutes of the meeting reflect that one Board member's decision was based on the fact that he was unhappy with the "proposed densities" of the project. Likewise, a second member concluded that "the densities are currently too high"

and that "there has not been substantial proceeding on the project." A third member also concluded that the applicant had not "proceeded with the development." No reasons were given by the other two members. Excusable delay was mentioned by only one member, but the minutes do not reflect that excusable delay was a consideration in that member's vote. It is also fair to infer that at least some of the Board members were unhappy with the earlier decision approving the PUD in 1991, a decision made when the Board had a mostly different member composition.

16. A formal order memorializing the Board's decision was never prepared. Relying on the minutes of the meeting as the "order," on November 6, 2000, or within 45 days, Petitioners filed their Petition for Appeal of a Development Order with the Florida Land and Water Adjudicatory Commission (Commission). Because Petitioners contended that the Board hearing was neither fair nor complete, they requested that the instant proceeding be conducted de novo, rather than simply a review of the record below.

b. Criteria for an extension and the Board's past practice

17. Section V of the DO provides the only criteria for granting an extension. That provision reads in relevant part as follows:

> [The expiration date] may be extended on Lake County's finding of excusable delay, and no adverse impacts resulting from the delay, in any proposed development activity, consistent with the substantial deviation provisions of subsection 380.06(19), Florida Statutes.

18. The County has no other criteria defining the standards to be used in determining whether "excusable delay" has been shown by an applicant. Indeed, its Comprehensive Plan and Land Development Regulations do not contain any definitions or criteria. Further, the Board has never made any express findings on excusable delay or stated any criteria for determining it in any amended development orders resulting from extensions granted in other cases.

19. At the same time, there are no standards enuciated in Chapter 380, Florida Statutes, nor are there any rules on the subject. A request for an extension of the build-out and commencement dates of a development order is subject to review by the DCA and the regional planning council under the substantial deviation provisions of Subsection 380.06(19), Florida Statutes. However, if as here, the proposed request is for an extension of one day less than five years, it is conclusively not a substantial deviation under the statute. For this reason, the practice of the DCA and ECFRPC has been to grant such extensions automatically.

20. The Board has approved extensions of various deadlines in four DRIs over the seven years before the current request was heard by the Board. There is no evidence that the Board has ever denied such a request. Based on this consistent practice, Petitioners reasonably inferred in 1999 that obtaining the Board's approval of their request would be routine.

21. On October 26, 1993, the Board approved a 54-month extension for the Monterey/Royal Highlands DRI (Monterey). In that case, the original owner (and applicant for an extension) had sold the property to a new developer but then had to foreclose on it when the buyer defaulted and went bankrupt. Because of the automatic stay under the Bankruptcy Code, the original owner could not re-obtain or exercise any control over the property until the conclusion of bankruptcy proceedings. In its approval, the Board recited the bankruptcy as the reason for no construction having been undertaken yet, but made no mention of excusable delay.

22. In another case in 1994 involving the Plantation at Leesburg DRI (Plantation), the Board granted a request for an extension of one day less than five years. While the DRI admittedly did not include any language requiring a showing of excusable delay, the minutes of the meeting reflect no discussion of any standard for granting an extension. The

staff report did note, however, that the project was vested and that the request was not a substantial deviation, even though it included a revision of the master plan of the DRI.

23. In 1997, the Board granted an extension for the Southlake Florida Quality Development (Southlake), which was subject to requirements similar to those for DRIs. There, without any mention of excusable delay, the Board approved a staff recommendation that a 10-year extension be granted for the purpose of "allow[ing] for continuation and completion of the project on a more realistic basis" than originally proposed. Like the Monterey and Plantation extensions, the Board did not employ any stated standard in reaching its decision on the Southlake extension.

24. In March 2000, the Board approved an extension for the Pennbrooke Fairways DRI (Pennbrooke), a project which had already constructed some 400 units, a golf course, and other amenities. The Pennbrooke development order contained an "excusable delay" standard almost identical to the one in issue here. In recommending approval of an extension of five years less a day, the staff noted that the project was vested, that the request was for a nonsubstantial amendment, and that the developer was requesting the extension because of "changing economic and other conditions." The recommendation was accepted, but the minutes of the meeting do not reflect

that there was any discussion of the merits of the requested extension or any mention of excusable delay.

25. In each of the four cases, either the minutes or the staff reports emphasized that the requested extensions were nonsubstantial amendments to the original approvals, and some mention is made of the fact that the projects were vested, though without explanation of the weight given that factor, or any other. In three of the four cases, the requested extension was for less than five years (while the fourth was for ten). Although three of the four development orders include an excusable delay standard, all four cases omit any findings on excusable delay or any other standard for an extension. Admittedly, some development had taken place in three of the four cases, but the County concedes it had not reached the level specified in the development orders, and there is no indication in the record that the County relied on this fact in determining whether to grant an extension. Finally, even though none of the cases makes clear the Board's basis for approving an extension, in two cases the reason given by the applicant was lack of control over the property due to bankruptcy, in another case the applicant cited the need for a more realistic schedule for construction, and in the remaining case the applicant cited "the other changing economic and other conditions."

26. Although the County's practice in granting extensions, and denying this one, has not been clear and consistent, it does show that before the instant decision the standard was not strict and the bar was not high. Indeed, the County generally took into account a project's vested status and the finding of the state agencies that a request was not a substantial deviation. The Board never made findings on excusable delay and never formulated or followed any criteria for determining it. Nor did the Board consider whether adverse impacts would result from the delay, or whether circumstances had changed enough to warrant further review, as specified by the standard in each development order.

c. The applicant's excusable delay.

27. Although Petitioners did not begin construction within five years of obtaining the DO, they did make an effort to implement the DO but were unable to do so at once, for two reasons. First, the health of the principal owner and leader of the group, W. T. Cox, Jr., had grown increasingly impaired during 1996, the first year under the DO, impeding communications and decision-making in the group. Second, through discussions with County officials, the owners learned that they had insufficient resources to carry out the development by themselves. They then concluded that they must market the property so as to attract a joint venturer who

could bring substantially more financial resources and development experience to the venture, or to sell the property outright to a large development company with the necessary resources.

28. The leader of the group from its inception was Mr. Cox, who had approached Mr. Karick Price (the owner of 500 acres) with the original idea for the development. Mr. Cox had substantial development experience and access to financial resources. However, at about the same time the DO became effective in late 1995, Mr. Cox's health began to deteriorate, along with his ability to conduct business. In 1996, he suffered a stroke, and his condition worsened. In 1997, it became necessary for Mr. Cox to rely almost exclusively on a local attorney, Phillip Tatich, to assist him in his work activities. Mr. Tatich was later appointed a co-trustee of Mr. Cox's living trust in February 1998, after which he took over Mr. Cox's responsibilities in the group.

29. During those same two years after the effective date of the DO, Mr. Price's health also deteriorated (due to multiple sclerosis), and his son Steven was asked to take over the responsibility for the family's interests in the DRI. Although Steven Price is an attorney, he does not specialize in land use or have experience in developing property.

Consequently, he deferred to Mr. Cox, whose own health was on the decline.

30. After Mr. Tatich became co-trustee for Mr. Cox in early 1998, he began to familiarize himself with the various properties in Mr. Cox's portfolio. By July 1998, Mr. Tatich was fully knowledgeable about the requirements of the DO and the options available to Petitioners.

31. Despite the health problems with Mr. Cox, during 1996 and 1997, the owners were not idle. First, in early 1996 they negotiated an agreement with the DCA which clarified the meaning of several requirements in the DO. They also attempted to complete the sale of the property to a Euro-Canadian group of investors. After that deal fell through, Petitioners began to negotiate with the Barclay group, which resulted in a signed contract, but did not lead to a closing. At about the same time, a DRI expert advised Petitioners about the DO's requirements for capital improvements, the lack of clarity about the extent of those requirements, and the need for prompt action to meet the commencement date.

32. Based on the expert's report, Petitioners decided that they had to focus their efforts on marketing the property, or to sell the property to a developer who could make use of the DRI entitlements. Given the proximity of the commencement date, Petitioners elected to market the property,

hoping to attract a joint venturer to provide the experience and funding they lacked.

33. In September 1997, Petitioners signed a formal listing agreement with Realvest Partners, Inc. (Realvest), a Maitland, Florida firm that specializes in appraising and developing large tracts of land for development purposes. Realvest did everything reasonable to market the property. Among other things, the listing broker (Mr. Ruoff) persuaded a number of other landowners to agree to an assemblage of their properties with the Sugarloaf property, for purposes of marketing an even larger tract (4,000 acres) that would have direct access to the Florida Turnpike and adjoin the city limits of Minneola and Clermont.

34. Mr. Ruoff met more than 100 times with prospective buyers and showed the property at least 50 times over the two years that he marketed the property. This work generated a number of offers, including offers from Arvida and the Del Webb Corporation, each of which had the resources to develop such a large tract of property. Although each company came close to reaching a signed contract with the owners of the assemblage, both deals fell through because of the unreasonable demands of one of the assemblage owners (not a Petitioner). Neither company was willing to purchase the

Sugarloaf property by itself, primarily because of its lack of access to major roads.

35. Despite these failures, Petitioners continued to search for a buyer for the Sugarloaf property, and they negotiated with several other groups. After 6 to 8 months of negotiations, the Groner-Reaves group (in which Arnold Palmer is associated) signed a purchase contract in June 2000, which remains pending until this proceeding is concluded.

36. Although the County witness asserted that the property was "unsalable," the owners were not responsible for that characteristic of the property, and they did all that they could do to sell their property alone and in an assemblage. As noted above, they eventually succeeded in securing a purchase contract. The unsalability of the property confirms the fact that a delay in selling the property was beyond Petitioners' control and thus excusable.

37. Petitioners' decision not to start construction was reasonable even after Mr. Tatich joined the group as Mr. Cox's trustee. This is because in February 1998, he lacked the knowledge to make a sensible recommendation. After learning of the DO's requirements, he concurred in the owners' previous conclusion that without Mr. Cox, the other group members lacked the resources and experience to substantially proceed with construction on their own.

38. In addition, even assuming that Petitioners could have mustered the enormous amount of resources required just to proceed with construction and meet the commencement date, starting construction would have established a particular pattern of development that could have clashed with the plans of some prospective purchasers in what was already a very narrow market.

39. In summary, the delay in development activity was excusable due to the health impairment of Mr. Cox, the lack of financial resources and development experience of the other owners, the complexity of the DO and the unusual capital costs associated with the DRI, and the difficult marketing conditions for the property. All of these reasons exemplify factors beyond the control of the owners, and some of them were unforseen.

d. No adverse impacts

40. Petitioners also demonstrated that no adverse impacts would result from the delay. The request changes no substantive condition of the DO and generates no new impact of any kind. Also, Petitioners rebutted the County's own contrary evidence on this issue. At the hearing, the County speculated that the delay might cause a potential adverse impact on the nearby roads by delaying the time when the owners would have to pay for the expensive offsite road

improvements on County Roads 561, 561A, and 455, as well as for a Turnpike interchange. The County reasoned that while the development is continuing in the surrounding area, traffic generated by such offsite development is increasing and could possibly exceed the established level of service for each of those roads before Sugarloaf makes the improvements.

41. Petitioners established that the County's concern was no more than speculation and that the roads in question have more than enough capacity to absorb growth well above the combined current rate in the area and proposed buildout for Phase I of 660 houses over the next five years. Moreover, whatever impacts have occurred in the past five years are not attributable to Sugarloaf, which has generated no traffic. Therefore, no adverse impacts will occur by virtue of granting the request.

CONCLUSIONS OF LAW

42. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties hereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2000).

43. Section 380.07(1), Florida Statutes (2000), authorizes the filing of an administrative appeal from "any development order . . . in regard to any development of regional impact." Here, Petitioners have filed an appeal of

the County's denial of their request to extend the DO. The written minutes of the meeting in which the County denied the request constitute the development order under appeal.

44. Because the parties were unable to agree that the hearing before the County was fair and complete, the matter has been tried as a de novo case. See Rule 42-2.002(1)(b), Florida Administrative Code.

45. As the parties asserting the affirmative that the denial of their request did not comport with the law, Petitioners bear the burden of proving by a preponderance of the evidence that the requested NOPC should be approved. Young v. Dep't of Comm. Affairs, 625 So. 2d 831, 835 (Fla. 1993).

46. Section 380.07(5), Florida Statutes (2000), provides the criteria for decision in an administrative appeal such as this. That statute reads as follows:

> (5) The Florida Land and Water Adjudicatory Commission shall issue a decision granting or denying permission to develop pursuant to the standards of this chapter and may attach such conditions or restrictions to its decisions.

47. Chapter 380, Florida Statutes, provides the general criteria while the DO provides the specific standard for extending its terms. However, at the hearing and in the prehearing stipulation, the County raised no issue concerning

the compliance of the requested extension with any of the general criteria, including consistency with the County's comprehensive plan and land development regulations, neither of which specifically addresses DRI extensions or imposes any substantive requirements on them. Thus, the parties agree that the only pertinent standard is in Section V of the DO, which requires a finding of excusable delay and the absence of adverse impacts from the delay.

48. The County concedes that it has no express criteria for determining when excusable delay has been shown. However, it contends that implied criteria for excusable delay may be derived from past actions of the Board. More specifically, in three of the four cases in which an extension of deadlines in a DO has been granted, construction had already commenced to some degree, and that it can be fairly implied that in order to show excusable delay, some construction must be in place. From this, the County concludes that unless Petitioners could demonstrate that construction had begun, as they obviously failed to do, "no other excuse was valid." This contention squares with comments made by two Board members at the meeting on September 26, 2000, that Petitioners "had not substantially proceeded with the development" and that "there has not been substantial proceeding on the project," as reasons for the denial.

49. But requiring Petitioners to substantially proceed as a condition of showing excusable delay would render nugatory the provision on extensions in the DO, at least for extensions of the commencement date. In other words, had the owners substantially proceeded, they would have been entitled to continue developing the property without an extension until the termination date.

50. In addition, the record shows that it was unreasonable for the owners to commence development on the project simply to show excusable delay. Even if Petitioners had the enormous amount of resources necessary to construct the capital improvements before minimal development could occur, in all likelihood this would have jeopardized their efforts to then sell the property to a prospective purchaser with different development plans.

51. Alternatively, the County contends that the evidence presented by Petitioners does not amount to excusable delay, or show that no adverse impacts will occur. First, the County has argued that the health conditions of Mr. Cox did not affect Petitioners' ability to develop the property, especially since Mr. Tatich was appointed a co-trustee of the property almost three years prior to the termination date of the DRI. The County also suggests that Petitioners' failure to meet the commencement date was due to their own negligence

since they refused to sell their property at a discounted price, or to sell a small part of the land in order to "jump-start" the project, when efforts to sell at a higher price were unsuccessful. The County further contends that after various marketing efforts failed, Petitioners should have pursued physical development of the property in order to meet the deadline. Finally, on the issue of adverse impacts, the County asserts that impacts to the surrounding road system will likely result from the delay.

52. As to these contentions, it was found that Mr. Tatich did not become familiar with the requirements of the DO until at least mid-1998; from that point on, he concurred in the group's decision that they lacked the necessary resources to develop the property themselves, and that the property should be marketed or sold to a third party. As to the second contention, the County has cited no authority for the proposition that negligence (and thus a lack of excusable delay) can be imputed to an owner who declines to sell his property at a discounted price simply to avoid a commencement date in the DO. Further, as noted above, the evidence shows that Petitioners lacked the financial resources to build the infrastructure necessary for the first phase of development to meet the commencement date of the DO. Even if they could have, starting construction would have established

a particular pattern of development that would likely clash with the plans of prospective purchasers. Finally, the evidence demonstrates that the request changes no substantive condition of the DO, and that the roads in question have more than enough capacity to absorb growth well above the combined current rate and proposed build-out for Phase I of 660 houses over the next five years.

53. The term "excusable delay" is not defined, and there are no standards that have been enunciated by the County. Within the context of the DO, the most reasonable and logical meaning of the term is a postponement of development activity resulting from extenuating circumstances that constitute a good and sufficient reason, or justification, to exempt the delay from the consequences that would otherwise apply. In view of the County's past practice in applying the standard of excusable delay, it is unnecessary to resort to principles of statutory construction to understand the core meaning of the term. Here, the problem is not with any ambiguity in the term, but rather with the lack of express criteria for determining it. Indeed, the County's consistent practice has been to require little or no justification for extending a DRI, without ever making findings on excusable delay.

54. For the reasons expressed in the Findings of Fact, it is concluded that the owners have met their burden of proof

and shown compliance with the standard in the DO for approving the requested extension. That is to say, Petitioners have demonstrated excusable delay and that an extension will not cause an adverse impact. Therefore, the request should be approved.

55. Finally, Petitioners' Motion to Strike or Exclude From Evidence is granted. The motion is directed to a number of letters from area residents which were submitted after the record in this matter was closed. Those documents have not been considered by the undersigned in the preparation of this Recommended Order.

RECOMMENDATION

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

RECOMMENDED that the Florida Land and Water Adjudicatory Commission issue a final order approving Petitioners' Notice of Proposed Non-Substantial Change.

DONE AND ENTERED this 25th day of July, 2001, in Tallahassee, Leon County, Florida.

_____
DONALD R. ALEXANDER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(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 25th day of July, 2001.

COPIES FURNISHED:

Donna Arduin, Secretary
Florida Land and Water Adjudicatory Commission
Office of the Governor
Room 2105, The Capitol
Tallahassee, Florida 32399-0001

Charles T. Canady, General Counsel
Office of the Governor
Room 209, The Capitol
Tallahassee, Florida 32399-0001

Timothy A. Smith, Esquire
Akerman, Senterfitt & Eidson, P.A.
255 South Orange Avenue, 17th Floor
Orlando, Florida 32801-3414

Melanie N. Marsh, Esquire
Post Office Box 7800
Tavares, Florida 32778-7800

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 agency that will issue the final order in this case.