

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

REGAL LAKELAND,)	
)	
Petitioner,)	
)	
vs.)	Case No. 01-4495
)	
GENERAL MOTORS CORPORATION AND)	
BIG OAKS BUICK PONTIAC GMC,)	
INC.,)	
)	
Respondents.)	
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CANNON AUTOMOTIVE GROUP, INC.,)	
)	
Petitioner,)	
)	
vs.)	Case No. 01-4650
)	
GENERAL MOTORS CORPORATION AND)	
BIG OAKS BUICK PONTIAC GMC,)	
INC.,)	
)	
Respondents.)	
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RECOMMENDED ORDER

Pursuant to notice, this cause came before the Division of Administrative Hearings for a final hearing on May 24, 2002, in Lakeland, Florida, before Administrative Law Judge, Fred L. Buckine.

APPEARANCES

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STATEMENT OF THE ISSUES

The issues for determination are whether, as General Motors Corporation contends in its notice letter to the Department of Highway Safety and Motor Vehicles (the "Department"), the proposed relocation of Big Oaks Buick Pontiac GMC, Inc. ("Big Oaks") is exempt from the requirements of Section 320.642, Florida Statutes, pursuant to Subsection 320.642(5)(a), which provides that relocations within two miles of its existing dealership location are not to be considered an additional motor vehicle dealership, or whether, as Petitioners contend, the relocation is to a site more than two miles from the existing dealership, the proposed relocation constitutes an additional dealership, and the proposed action may only be taken after fulfilling the requirements of Section 320.642, Florida Statutes.

PRELIMINARY STATEMENT

The Agency referrals for the above-styled cases were filed on November 19, 2001, and December 5, 2001, respectively. On December 18, 2001, an Order to Show Cause was entered in DOAH Case No. 01-4650 requiring the parties to show cause, no later than December 30, 2001, why this case should not be consolidated with DOAH Case No. 01-4495. On December 27, 2001, DOAH Case No. 01-4495 was scheduled for final hearing on May 22 through 24, 2002, in Tallahassee, Florida. On January 2, 2002, a Motion for Enlargement of Time to Respond to Order to Show Cause was granted, extending the time to January 18, 2002. On February 14, 2002, the Order consolidating the above-styled cases was entered. On May 10, 2002, an Amended Notice of Hearing was issued, scheduling the consolidated cases for final hearing on May 24, 2002, in Lakeland, Florida. On May 20, 2002, Cannon Automotive Group, Inc., filed its memorandum of law in support of determination that the proposed relocation is greater than two miles. On May 21, 2002, General Motors Corporation filed its memorandum of law on the two-mile exemption.

At the final hearing, Respondents presented the testimony of Gregory Prather, qualified by stipulation as an expert professional land surveyor; John Giovaneti, the president and owner of Big Oaks; and Kelly S. Roth, general manager of Big Oaks. Respondents introduced into evidence four exhibits

(R-1 through R-4) which were admitted without objection.

Petitioners presented the testimony of Robert DuBois, qualified by stipulation as an expert professional land surveyor, and introduced into evidence as Exhibits P-A and P-B, which were admitted without objection.

The hearing was recorded electronically and transcribed. The Transcript, agreed to by the parties, was filed on June 28, 2002. A Joint Motion for Enlargement of Time to file Proposed Recommended Orders was granted, setting the date for filing proposed recommended orders on July 12, 2002.

On July 16, 2002, the undersigned issued an Order requiring Petitioners to file one additional copy of Petitioners' Exhibit P-A, and requiring Respondents to file one copy of Respondents' Exhibit R-3 within 20 days from the date of the Order. On August 2, 2002, Petitioners and Respondents filed the additional surveys containing measurement of the two-mile exemption per the instructions contained in Finding of Fact 10 herein, as requested, and they are marked (Court Exhibit A, composite, consisting of exhibits P-A and R-3). All memoranda of law, Proposed Recommended Orders, and other pleadings have been considered in rendering this Recommended Order.

FINDINGS OF FACT

Based upon observation of the witnesses while testifying, review of the Transcript and review of the exhibits in evidence

and the pleadings contained in the file, the following relevant and material facts are found.

1. Respondent, Big Oaks, is a franchised motor vehicle dealer, owning and operating an existing dealership situated on a four and one-half-acre tract of land and seeks to relocate the dealership to a twenty-acre tract of land pursuant to the exemption provided in Subsection 320.642(5)(a), Florida Statutes.

2. Big Oaks' existing dealership is located at 255 West Van Fleet Drive, Bartow, Florida, where all of its business, service, and operational functions are conducted.

3. Big Oaks proposes to relocate its dealership to a twenty-acre site situated and abutting U.S. Highway 98, in Bartow, Florida, north of the present location. All dealership business functions are to be conducted on the proposed site.

4. To qualify for relocation pursuant to the exemption provision stated above, Big Oaks must relocate by a straight-line measurement within two miles of its existing location. Big Oaks measured the distance of the two-mile exemption by starting at the nearest point of its existing four and one-half-acre tract of land nearest to the proposed site and going in a straight line to the nearest point on the twenty-acre tract of land. This method of measurement, nearest point on existing

tract to nearest proposed point of the proposed tract, resulted in a computed distance of 9,995 feet or 1.89 miles. (Exhibit R-3)

5. Petitioners, Regal Lakeland and Cannon Automotive Group, Inc., are franchised motor vehicle dealers, owners and operators of same-line dealerships, and competitors with Big Oaks. Petitioners opposed Big Oaks' relocation, contending that the proposed relocation is not within the two-mile exemption provision provided by Subsection 320.642(5)(a), Florida Statutes.

6. Petitioners, using a two-mile straight-line method of measurement from existing dealership site to proposed dealership site (Exhibit P-B), selected four different starting points on the existing site to four different points on the proposed site with the following results:

(a) starting at the furthest point of Big Oaks' existing site and measuring to the furthest point of Big Oaks' proposed site resulted in a distance of 2.28 miles;

(b) starting at the nearest point of Big Oaks' existing site and measuring to the nearest point of Big Oaks' proposed site resulted in a distance of 1.89 miles;

(c) starting at the center of Big Oaks' existing main building and measuring to the center of Big Oaks' proposed showroom building resulted in a distance of 2.20 miles; and

(d) starting at the center drive into Big Oaks' existing site and measuring to the center drive of Big Oaks' proposed access road resulted in a distance of 2.04 miles.

7. Petitioners contend that a "center-point-to-center-point" method of measurement to measure the two-mile relocation exemption should be used. Starting at the center-point of Big Oaks' existing building on the existing site and measuring to the center-point of a proposed "showroom" building on Big Oaks' proposed relocation site (Exhibit P-B) as shown on the site plan, Petitioners' center-point-to-center-point method of measuring resulted in a distance of 2.11 miles.

8. The parties are in agreement that neither the Florida Statutes nor the Florida Administrative Code adopted by the Department provide guidance for measurement of the two-mile exemption concerning relocation from an existing parcel of land to a proposed parcel of land, each of different size and shape.

9. The results of Big Oaks' proposed method of measuring the two-mile exemption and the results of Petitioners' several methods of measuring the two-mile exemption demonstrate the need for an objective and all-inclusive method of measurement, one that when applied will result in a measurement of the current exemption relocation application and measurement of future exemption relocation applications in an equal and all-inclusive manner.

10. At the request of the undersigned, the parties submitted exhibits (Court Exhibit A, composite) depicting an encircled center-point land tract to encircled center-point land tract method to measure the "within 2 miles" exemption. The measurement process is as follows:

(1) identify the geographical center of the existing land tract site from the land survey corner marker¹ and encircle the land tract of the existing dealership site;

(2) draw a two-mile straight-line radius² in the direction of the proposed relocation land tract site;

(3) identify the geographical center of the proposed land tract from the land survey corner maker and encircle the proposed land tract dealership site; and

(4) should any part of the encircled proposed site extend beyond the two-mile straight-line radius, the proposed relocation site is not "within 2 miles" of its existing land site location³. Should the encircled proposed site not extend beyond the two-mile straight-line radius, the proposed relocation is "within 2 miles" of its existing location.

11. Accordingly, and in accordance with the above encircled center-point to encircled center-point method of measurement, Big Oaks' relocation to the proposed site herein above identified is not "within 2 miles" of Big Oaks' existing dealership site and, therefore, does not meet the limiting condition for the relocation exemption.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over the parties to this cause and over the subject matter of this cause. Subsection 120.57(1) and Section 320.642, Florida Statutes.

13. The Legislature has determined that "maintaining competition" among franchised motor vehicle dealers and manufactures is of primary concern. Accordingly, when one seeks to establish or relocate a dealership, the pole star of the process is to maintain competition among franchised dealerships. Section 320.605, Florida Statutes, states:

320.605 Legislative intent.-

It is the intent of the Legislature to protect the public health, safety, and welfare of the citizens of the state by regulating the licensing of motor vehicle dealers and manufacturers, maintaining competition, providing consumer protection and fair trade and providing minorities with opportunities for full participation as motor vehicle dealers.

14. Relocation of a franchised dealership has a direct impact, financial and otherwise, on every other franchised dealership within the specific areas identified by the statute below. Accordingly, the statutory processes for establishment of and/or for relocation of a franchised dealership are detailed and specific and, therefore, strictly construed. Subsection 320.642(1), Florida Statutes, provides:

(1) Any licensee who proposes to establish an additional motor vehicle dealership or permit the relocation of an existing dealer to a location within a community or territory where the same line-make vehicle is presently represented by a franchised motor vehicle dealer or dealers shall give written notice of its intention by certified mail to the department. Such notice shall state:

(a) The specific location at which the additional or relocated motor vehicle dealership will be established.

(b) The date on or after which the licensee intends to be engaged in business with the additional or relocated motor vehicle dealer at the proposed location.

(c) The identity of all motor vehicle dealers who are franchised to sell the same line-make vehicle with licensed locations in the county or any contiguous county to the county where the additional or relocated motor vehicle dealer is proposed to be located.

(d) The names and addresses of the dealer-operator and principal investors in the proposed additional or relocated motor vehicle dealership.

Immediately upon receipt of such notice, the department shall cause a notice to be published in the Florida Administrative Weekly. The published notice shall state that a petition or complaint by any dealer with standing to protest pursuant to subsection (3) must be filed not more than 30 days from the date of publication of the notice in the Florida Administrative Weekly. . . .

15. Petitioners, franchised dealerships of the same line-make vehicles as Big Oaks, have standing to protest Big Oaks'

intended relocation from its existing site to a proposed site pursuant to the exemption of Subsection 320.642(5)(a), Florida Statutes, and to require Big Oaks to comply with Subsections 320.642(1) through 320.642(4), Florida Statutes.

16. Subsections 320.642(2) through 320.642(5), Florida Statutes, provide:

(2)(a) An application for a motor vehicle dealer license in any community or territory shall be denied when:

1. A timely protest is filed by a presently existing franchised motor vehicle dealer with standing to protest as defined in subsection (3); and

2. The licensee fails to show that the existing franchised dealer or dealers who register new motor vehicle retail sales or retail leases of the same line-make in the community or territory of the proposed dealership are not providing adequate representation of such line-make motor vehicles in such community or territory. The burden of proof in establishing inadequate representation shall be on the licensee.

(b) In determining whether the existing franchised motor vehicle dealer or dealers are providing adequate representation in the community or territory for the line-make, the department may consider evidence which may include, but is not limited to:

1. The impact of the establishment of the proposed or relocated dealer on the consumers, public interest, existing dealers, and the licensee; provided, however, that financial impact may only be

considered with respect to the protesting dealer or dealers.

2. The size and permanency of investment reasonably made and reasonable obligations incurred by the existing dealer or dealers to perform their obligations under the dealer agreement.

3. The reasonably expected market penetration of the line-make motor vehicle for the community or territory involved, after consideration of all factors which may affect said penetration, including, but not limited to, demographic factors such as age, income, education, size class preference, product popularity, retail lease transactions, or other factors affecting sales to consumers of the community or territory.

4. Any actions by the licensees in denying its existing dealer or dealers of the same line-make the opportunity for reasonable growth, market expansion, or relocation, including the availability of line-make vehicles in keeping with the reasonable expectations of the licensee in providing an adequate number of dealers in the community or territory.

5. Any attempts by the licensee to coerce the existing dealer or dealers into consenting to additional or relocated franchises of the same line-make in the community or territory.

6. Distance, travel time, traffic patterns, and accessibility between the existing dealer or dealers of the same line-make and the location of the proposed additional or relocated dealer.

7. Whether benefits to consumers will likely occur from the establishment or relocation of the dealership which the protesting dealer or dealers prove cannot be

obtained by other geographic or demographic changes or expected changes in the community or territory.

8. Whether the protesting dealer or dealers are in substantial compliance with their dealer agreement.

9. Whether there is adequate interbrand and intrabrand competition with respect to said line-make in the community or territory and adequately convenient consumer care for the motor vehicles of the line-make, including the adequacy of sales and service facilities.

10. Whether the establishment or relocation of the proposed dealership appears to be warranted and justified based on economic and marketing conditions pertinent to dealers competing in the community or territory, including anticipated future changes.

11. The volume of registrations and service business transacted by the existing dealer or dealers of the same line-make in the relevant community or territory of the proposed dealership.

(3) An existing franchised motor vehicle dealer or dealers shall have standing to protest a proposed additional or relocated motor vehicle dealer where the existing motor vehicle dealer or dealers have a franchise agreement for the same line-make vehicle to be sold by the proposed additional or relocated motor vehicle dealer and are physically located so as to meet or satisfy any of the following requirements or conditions:

(a) If the proposed additional or relocated motor vehicle dealer is to be located in a county with a population of less than 300,000 according to the most recent data of the United States Census

Bureau or the data of the Bureau of Economic and Business Research of the University of Florida:

1. The proposed additional or relocated motor vehicle dealer is to be located in the area designated or described as the area of responsibility, or such similarly designated area, including the entire area designated as a multiple-point area, in the franchise agreement or in any related document or commitment with the existing motor vehicle dealer or dealers of the same line-make as such agreement existed upon October 1, 1988;

2. The existing motor vehicle dealer or dealers of the same line-make have a licensed franchise location within a radius of 20 miles of the location of the proposed additional or relocated motor vehicle dealer; or

3. Any existing motor vehicle dealer or dealers of the same line-make can establish that during any 12-month period of the 36-month period preceding the filing of the licensee's application for the proposed dealership, such dealer or its predecessor made 25 percent of its retail sales of new motor vehicles to persons whose registered household addresses were located within a radius of 20 miles of the location of the proposed additional or relocated motor vehicle dealer; provided such existing dealer is located in the same county or any county contiguous to the county where the additional or relocated dealer is proposed to be located.

(b) If the proposed additional or relocated motor vehicle dealer is to be located in a county with a population of more than 300,000 according to the most recent data of the United States Census Bureau or the data of the Bureau of Economic and Business Research of the University of Florida:

1. Any existing motor vehicle dealer or dealers of the same line-make have a licensed franchise location within a radius of 12.5 miles of the location of the proposed additional or relocated motor vehicle dealer; or

2. Any existing motor vehicle dealer or dealers of the same line-make can establish that during any 12-month period of the 36-month period preceding the filing of the licensee's application for the proposed dealership, such dealer or its predecessor made 25 percent of its retail sales of new motor vehicles to persons whose registered household addresses were located within a radius of 12.5 miles of the location of the proposed additional or relocated motor vehicle dealer; provided such existing dealer is located in the same county or any county contiguous to the county where the additional or relocated dealer is proposed to be located.

(4) The department's decision to deny issuance of a license under this section shall remain in effect for a period of 12 months. The department shall not issue a license for the proposed additional or relocated motor vehicle dealer until a final decision by the department is rendered determining that the application for the motor vehicle dealer's license should be granted.

(5) The opening or reopening of the same or a successor motor vehicle dealer within 12 months shall not be considered an additional motor vehicle dealer subject to protest within the meaning of this section, if:

(a) The opening or reopening is within the same or an adjacent county, is within 2 miles of the former motor vehicle dealer location,

(b) The proposed location is further from each existing dealer of the same line-make than the prior location is from each dealer of the same line-make within 25 miles of the new location,

(c) The opening or reopening is within 6 miles of the prior location and, if any existing motor vehicle dealer of the same line-make is located within 15 miles of the former location, the proposed location is no closer to any existing dealer of the same line-make, or

(d) The opening or reopening is within 6 miles of the prior location and, if all existing motor vehicle dealers of the same line-make are beyond 15 miles of the former location, the proposed location is further than 15 miles from any existing motor vehicle dealer of the same line-make.

Any other such opening or reopening shall constitute an additional motor vehicle dealer within the meaning of this section.
(emphasis added)

17. The first issue to address is one of statutory construction. It is true that Subsection 320.642(5)(a), Florida Statutes, does not prescribe how the "within 2 miles" of existing dealership location in the statute shall be measured. However, in the absence of anything in the statute to the contrary, the undersigned finds that the legislative intent was that this distance of "2 miles" meant "2 miles" in a straight line from the existing dealership location to the proposed dealership location.

18. In statutory construction, courts have assumed that when the Legislature used certain exact words or exact phrases in the various subsections of a statute to mean the same thing, and in a broad sense the subsections of the chapter are in pari material and should, to the extent that understanding of one subsection may aid in interpretation of the other subsection, be read and considered together. See Goldstein v. Acme Concrete Corp., 103 So. 2d 202 (Fla. 1958). Applying the above assumption of the court to reading the above statute from Subsections 320.642(2) through 320.642(5), places in context the legislative concerns with maintaining competition between same line franchised dealerships and the restrictive limitation to be read in the relocation exemption of Subsection 320.642(5)(a), Florida Statutes.

19. The contention of Big Oaks is that in the phrase "within 2 miles of the former motor vehicle dealer location," the word "location" meant the legal description of the legal boundary of the dealership property reflecting that the relevant point of origin for measurement of the two-mile distance should be the property's boundary rather than a particular building or other point within the boundary.

20. Big Oaks also contends that any measuring scheme that requires the entire proposed site to be within the two-mile ring would violate sound principles of statutory construction; that

measuring the distance between a particular building is contrary to the statute and the evidence; and a center-to-center measurement would reduce the two-mile ring and would invite methodology disputes whenever the property is irregular in shape.

21. Big Oaks is correct in its contention that the word "location" means the legal description of the legal boundary of the dealership property. By identifying the geographical center-point of the legal description of the existing and of the proposed dealership sites, encircling each site could accommodate large, small and irregular shaped sites, thereby maintaining the integrity of both the legislative intent of maintaining competition among same-line dealerships and the relocation of the dealer's total business and service functions, within a two-mile straight-line measurement from the existing site, in toto.

22. Big Oaks' second contention, that any requirement for the proposed relocation site to be entirely within the two-mile ring would violate sound principles of statutory construction, misses the mark and ignores the intent of the Legislature to maintain competition among same-line dealerships.

23. Applying the above statutory construction to Subsections 320.642(2)(a) through 320.642(3), Florida Statutes, above, the Legislature used the term "within a radius of . . ."

in Subsections (3), (3)(b), 3(b)1., (3)(b)2., (5)(a), (5)(b), and (5)(c), in the restrictive sense, evidencing an intent to limit relocation of a same-line dealership to "within" a specific distance from its existing dealership location. Conversely, in Subsection (5)(d), the Legislature's use of the words "further than . . ." evidences the intent of a non-restrictive use of the limiting term "within." (Emphasis added)

24. Based upon the Findings of Fact herein above, a plain reading demonstrates that the legislative intent of Subsection 320.642(5)(a), Florida Statutes, to exempt same-line dealerships seeking to relocate from challenges by other same-line dealerships, only if and when the proposed relocation site⁴ is within the specific distance of "2 miles" from the existing site. All other relocation applicants must comply with requirements contained in Subsections 320.642(1) through 320.6421(4), Florida Statutes.

25. The carefully drawn exemption provision of Subsection 320.642(5)(a), Florida Statutes, reflects a deliberate legislative choice to afford the benefit of this narrow two-mile exemption to existing same-line dealerships, like Big Oaks, and afford competitive protection to other same-line dealerships, like Petitioners, who would be subjected to territorial intrusions by another same-line dealership relocation absent the safeguards and opportunity to challenge such same-line

relocation specified in Subsections 320.642(1) through 320.642(4), Florida Statutes.

26. Big Oaks further contends that measuring from the nearest corner to nearest corner is the simplest and most precise way to satisfy the statutory requirements for exemption, citing State ex rel. Fronton Exhibition Co. v. Stein, 198 So. 82 (Fla. 1940). Big Oaks' proposed measuring method, nearest corner to nearest corner, ignores not only the legislative intended purpose of maintaining competition by the limiting distance of the exemption provision but also ignores the reality of irregular shapes and varying acreage sizes of present and future dealership sites upon which relocation is sought. Conversely, the encircled radius of the existing site, a straight-line two-mile, to the encircled radius of the proposed site method of measurement is equally applicable to all relocation applications, accommodating any and all irregular shaped acreage and acreage different sizes of both existing and proposed particles of land.

27. In Fronton, the Court was confronted with a statute that provided that no permit shall be issued for operation of a Jai-a-Lai Fronton to be constructed or operated "within 1,000 feet of any existing church or public school," and held that the distance of "1,000 feet" meant 1,000 feet measured in a straight line. Addressing this matter, the Court was confronted first

with statutory construction, and concluded that the legislative intent was that the "distance of one thousand feet meant one thousand feet in a straight line." Also, true in the case at bar, "within 2 miles" contained in Subsection 320.642(5)(a), Florida Statutes, means a two-mile straight-line measurement.

28. The Court in Fronton went on to address the application of the prohibition of no construction within 1,000 feet of public school. In doing so, the Court employed an analysis of the functions of a "public school." With particular note that "the word 'school' is a generic term, denoting 'an institution or place for instruction or education, or the collective body of instructors and pupils in any such place or institution'; that a school is not measured by walls of a building; that two or more schools may exist in one building; and that it is 'a place where systematic instruction in useful branches is given by methods common to schools and institutions of learning,'" Id. at 87. The Fronton Court adopted the broadest functional definition of a public school to mean the physical land dimensions necessary for the performance of all "school functions" of the school under consideration. The Court adopted the definition of "school" as found by the Supreme Court of Kansas, In re Sanders, 53 Kan. 191, 36P, 384, 349, 23 L.R.A. 603, as "Any place or means of discipline, improvement,

instruction, or training," including "school," "school center," "school plant" and "school site." Id.

29. Subsections 320.60(11)(a) and (b), Florida Statutes, defines not only motor vehicle dealer but also lists those functions engaged in by each motor vehicle dealer as follows:

(11)(a) "Motor vehicle dealer" means any person, firm, company, corporation, or other entity, who,

1. Is licensed pursuant to s. 320.27 as a "franchised motor vehicle dealer" and, for commission, money, or other things of value, repairs or services motor vehicles or used motor vehicles pursuant to an agreement as defined in subsection (1), or

2. Who sells, exchanges, buys, leases or rents, or offers, or attempts to negotiate a sale or exchange of any interest in, motor vehicles, or

3. Who is engaged wholly or in part in the business of selling motor vehicles, whether or not such motor vehicles are owned by such person, firm, company, or corporation.

(b) Any person who repairs or services three or more motor vehicles or used motor vehicles as set forth in paragraph (a), or who buys, sells, or deals in three or more motor vehicles in any 12-month period or who offers or displays for sale three or more motor vehicles in any 12-month period shall be prima facie presumed to be a motor vehicle dealer. The terms "selling" and "sale" include lease-purchase transactions."

30. Applying the functional definition analysis to the case at bar, the term "motor vehicle dealer" as defined

hereinabove, includes functions to be conducted by a motor vehicle dealer or could be conducted by a motor vehicle dealer on a specific site, and all functions conducted or could be conducted by a motor vehicle dealer on a proposed site. The exemption allows for all functions of a franchised motor vehicle dealer, not just a building or a specific location on a site, to move from an existing location to a proposed location, limited only by a straight-line two-mile distance.

31. Thus, to measure from any selected point of the existing dealership site to any selected point on the proposed dealership site, other than the encircled radius of existing sites and the encircled radius of proposed sites, would be contrary to the "within 2 miles" limitation as provided by the exemption provision herein under considered.

32. In the case at bar, accepting the method of measuring the two-mile exemption advanced by Big Oaks, the proposed relocation site is located at a distance less than two miles from the existing dealership site. Conversely, accepting the method of measuring the two-mile exemption advanced by Petitioners, the proposed relocation is located at a distance greater than two miles from the existing dealership site. Each result is dependent wholly upon the initial selection of a desired starting point on the existing site and selection of the desired reference-point on the proposed site. The result of

those methods of measurement, advantage to the proposed relocating dealership and/or disadvantage of same-line competitors, is clearly not the legislative intent of exemption from the rigorous requirements of Section 320.642(1), Florida Statutes.

33. In the case at bar, the proposed relocation site of the Big Oaks' dealership, identified by its encircled geographical center-point legal description, lies at a distance greater than the limiting two-mile straight-line distance from the Big Oaks dealership's existing land tract also identified by its encircled geographical center-point legal description; therefore, the relocation site proposed by Big Oaks does not qualify for the exemption as provided in Subsection 320.642(5)(a), Florida Statutes.

34. Based upon the Findings of Fact herein above, Big Oaks', a franchised dealership, proposed relocation is not within the two-mile straight-line measurement exemption and would constitute an additional dealership within the meaning of Section 320.642, Florida Statutes.

35. Therefore, prior to relocation taking place, Big Oaks and General Motors Corporation and the Department shall be required to comply with the notice requirements providing same-line franchised dealerships an opportunity to demand an

establishment determination as authorized by Section 320.642, Florida Statutes.

RECOMMENDATION

It is RECOMMENDED that the Department of Highway Safety and Motor Vehicles enter a final order DISMISSING the Protests filed in this cause as premature, and ORDER the proposed additional dealership be noticed as required by Section 320.642, Florida Statutes.

DONE AND ENTERED this ____ day of August, 2002, in Tallahassee, Leon County, Florida.

FRED L. BUCKINE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this ____ day of August, 2002.

ENDNOTES

1/ Corner marker is the point that every Florida licensed land surveyor begins his or her land survey. See Exhibit R-2, "Beginning at the northeast corner of the northeast quarter" Contrary to Big Oaks' contention that location of the center-point of a parcel is different for each parcel of land and unreliable, the geographical center point for each parcel is different but can be determined for every parcel of land surveyed by a Florida licensed land surveyor.

2/ Radius means a line segment that joins the center with any other point on its circumference and/or a line segment that joins the center of a sphere with any point on its surface and/or a line segment that joins the center of a regular polygon to any of its vertices [polygon]: a closed plane figure bounded by three or more line segments. American Heritage Dictionary, page 1077 and page 1016.

3/ Location, within the context of this Recommended Order, means a tract of land that has been surveyed and marked off. American Heritage Dictionary, page 765.

4/ Site means the place of plot of land where something was, is, or is to be located. American Heritage Dictionary, page 1210.

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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.