STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SALLY O'CONNELL; DONNA MELZER; and MARTIN COUNTY CONSERVATION ALLIANCE,	)	
Petitioners,	)	
vs.	)	Case No. 01-4826GM
DEPARTMENT OF COMMUNITY AFFAIRS and MARTIN COUNTY,	)	
Respondents,	)	
and	)	
DICK BLYDENSTEIN and ECONOMIC COUNCIL OF MARTIN COUNTY,	)	
Intervenors.	)	

RECOMMENDED ORDER

Pursuant to notice, this matter was heard before the Division of Administrative Hearings by its assigned Administrative Law Judge, Donald R. Alexander, on March 5-8, April 30, and May 1, 2002, in Stuart, Florida.

APPEARANCES

For Petitioners: Richard J. Grosso, Esquire
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For Respondent: (DCA)	Colin M. Roopnarine, Esquire Department of Community Affairs 2555 Shumard Oak Boulevard Tallahassee, Florida 32399-2100
For Respondent: (County)	David A. Acton,, Esquire Office of County Attorney 2401 Southeast Monterey Road Stuart, Florida 34996-3322
For Intervenor: (Blydenstein)	Johnathan A. Ferguson, Esquire Ruden, McClosky, Smith, Shuster & Russell, P.A. 145 Northwest Central Park Plaza Suite 200 Port St. Lucie, Florida 34986-2482
For Intervenor: (ECMC)	Linda R. McCann, Esquire Royal Palm Financial Center 789 South Federal Highway, Suite 310 Stuart, Florida 34994-2962

STATEMENT OF THE ISSUE

The issue is whether plan amendments 00-1, 97-4, and 01-7 adopted by Ordinance No. 598 on September 25, 2001, are in compliance.

PRELIMINARY STATEMENT

This matter began on September 20, 2001, when Respondent, Martin County, adopted Ordinance No. 598 approving certain amendments to its Comprehensive Plan. After Respondent, Department of Community Affairs, published a Notice of Intent to find the plan amendments in compliance, on December 7, 2001, Petitioners, Donna Melzer, Sally O'Connell, and Martin County Conservation Alliance, Inc., filed a Petition for

Formal Administrative Hearing challenging the plan amendments on numerous grounds. The matter was forwarded to the Division of Administrative Hearings on December 13, 2001, with a request that an Administrative Law Judge be assigned to conduct a hearing. On December 20, 2001, Petitioners filed an Amended Petition for Formal Administrative Hearing. By Orders dated January 22 and February 5, 2002, Intervenors, Dick Blydenstein and Economic Council of Martin County, were authorized to intervene in this proceeding. Intervention by Economic Council of Martin County was reconfirmed by Order dated February 14, 2002, after Petitioners moved to dismiss that Intervenor.

By Notice of Hearing dated January 11, 2002, a final hearing was scheduled on March 5-8, 2002, in Stuart, Florida. A continued hearing was also held on April 30 and May 1, 2002, at the same location. On February 14, 2002, a Notice of Demand for Expeditious Resolution under Section 163.3189(3), Florida Statutes (2001), was filed by Martin County. Because the final hearing was already scheduled within 30 days of the filing of that paper, no action on the Notice was necessary.

At the final hearing, Petitioners presented the testimony of Nicky van Vonno, director of growth management for Martin County; Fred Goodrow, an urban planning consultant and accepted as an expert; Donna Melzer, a former County

Commissioner; Charles L. Pattison, executive director of 1000 Friends of Florida; Dr. Arthur C. Nelson, a professional planner and accepted as an expert; Sally O'Connell; Harry W. King, a planner with Martin County; Roger Wilburn, a community program administrator with the Department of Community Affairs; and Margaret Hurchalla, a former County Commissioner and accepted as an expert. Also, they offered Petitioners' Exhibits 6, 9, 13, 28, 32-38, 42, 42C, 49, 51, 58, 59, 90, 98, 99, and 103. All were received in evidence. Respondent, Department of Community Affairs, presented the testimony of Roger Wilburn, a community program administrator accepted as an expert. Also, it offered Department Exhibits 1-5 and 6A-D, which were received in evidence. Respondent, Martin County, presented the testimony of William H. Fruth, an economic planner; Nicki van Vonno, director of growth management for Martin County and accepted as an expert; Ted Astolfi, a member of the Martin County Business Development Board and accepted as an expert; and Dr. Merle F. Dimbath, an economic consultant and accepted as an expert. Also, it offered County Exhibits 1-16 and 17A-C. All were received in evidence. Intervenor, Economic Council of Martin County, presented the testimony of Charlene Hoag, its executive director, and offered Intervenor's Exhibits 1-6, which were received in evidence.

Finally, the parties offered Joint Exhibits 1-6, which were received in evidence.

Although prepared on an earlier date, the Transcript of the hearing (12 volumes) was not filed with the undersigned until September 16, 2002, while the original exhibits were not filed until September 17, 2002. By agreement of the parties, the time for filing proposed findings of fact and conclusions of law was extended to September 12, 2002. All parties, except Economic Council of Martin County, submitted proposed orders, 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, Sally O'Connell (O'Connell), Donna Melzer (Melzer), and Martin County Conservation Alliance, Inc. (MCCA), contend that three amendments (Amendments 00-01, 01-7, and 97-4) to the Martin County Comprehensive Plan (Plan) adopted by Respondent, Martin County (County), are not in compliance. Amendment 00-01 makes certain textual changes to the Economic Element and Future Land Use Element (FLUE) of the Plan. Amendments 01-7 (also known as the Blydenstein amendment) and 97-4 (also known as

the Seven J amendment) amend the Future Land Use Map (FLUM) by changing the land use designation on property owned by Intervenor, Dick Blydenstein (Blydenstein), and Seven J's Investments, Inc., from Mobile Home Residential and Medium Density Residential, respectively, to General Commercial. The parties agree that the validity of Amendments 01-7 and 97-4 is contingent on whether Amendment 00-01 is in compliance.

2. On September 25, 2001, the County approved Ordinance No. 598, which adopted the foregoing amendments and three other FLUM amendments not relevant to this dispute. On November 16, 2001, Respondent, Department of Community Affairs (Department), the state agency charged with the responsibility of reviewing comprehensive land use plans and amendments, issued its Notice of Intent to find the amendments in compliance. In addition, an external review of the amendments was conducted by the Department of Transportation (DOT), the Treasure Coast Regional Planning Council, the Department of State, and the Department of Environmental Protection. Except for minor objections by DOT, which were satisfactorily resolved, no objections were filed by any reviewing agency.

3. On December 7, 2001, as later amended on December 20, 2001, Petitioners filed their Petition for Formal Administrative Hearing challenging the plan amendments. As

reflected in their unilateral Pre-Hearing Statement, Petitioners contend that:

> The data and analysis for the amendments was not available to the public throughout the review and adoption process.
>
> The conclusions about supply and demand for commercial land uses that underlie the adoption of the amendments to the Economic and Future Land Use Elements, and the "Blydenstein" and "7J" [FLUM] Amendments are not supported by the best available and professionally acceptable data and analysis. Instead of a deficit of, and need for, land available for commercial uses, there is a surplus of land available for such uses.
>
> The "Blydenstein" and "7J" [FLUM] Amendments are not supported by data and analysis concerning the availability of infrastructure, the character of the land and the need for redevelopment. The approval of these FLUM amendments is inconsistent with several provisions of Ch. 163, Fla. Stat., Rule 9J-5, F.A.C., and the Martin County Comprehensive Plan.

These allegations may be grouped into three broad categories: (1) that the data and analysis was not available for public inspection throughout the adoption process; (2) that the plan amendments are not based on the best available, professionally acceptable data and analysis; and (3) that the Blydenstein and Seven J amendments are not supported by data and analysis as they relate to infrastructure, character of land, and need for redevelopment and thus are inconsistent with relevant statutes, Department rules, and Comprehensive Plan provisions.

Although Petitioners have not addressed the first allegation in their Proposed Recommended Order, and have apparently abandoned that issue, in an abundance of caution, a brief discussion of that matter is presented below.

b. The parties

4. The Department is the state land planning agency responsible for reviewing and approving comprehensive plan amendments by local governments.

5. The County is a political subdivision of the State and is the local government which enacted the three plan amendments under review. The overall size of the County is approximately 538 square miles, with agricultural uses on 72 percent of the land, residential uses on 16 percent of the land, public conservation uses on 6.5 percent of the land, and other uses (such as commercial, industrial, and institutional) on the remaining 5.5 percent of the land. The current population is around 125,300 residents.

6. Blydenstein is the owner of the property that is the subject of Amendment 01-7. He submitted oral and written comments concerning Amendment 01-7 to the County during its adoption.

7. Melzer is a former County Commissioner who resides and owns property within the County. She is also the chairperson and member of the board of directors for MCCA.

Melzer presented comments in opposition to all three amendments during the time period beginning with the transmittal hearing for the plan amendments and ending with the adoption of those amendments.

8. O'Connell has resided and owned property in the County since 1984. She presented comments to the County in opposition to Amendments 00-01 and 97-4 (but not to Amendment 01-07) during the time period beginning with the transmittal hearing for the plan amendments and ending with the adoption of those amendments.

9. MCCA is a not-for-profit corporation first organized in 1965 and later incorporated in 1997 to advocate and promote the protection of the natural environment and quality of life in the County. The specific purpose of the corporation is to "conserve the natural resources of Martin County, to protect the native flora and fauna of Martin County, to maintain and improve the quality of life for all of the residents of Martin County, and to work to these ends."

10. The corporation holds monthly meetings and annual forums to educate its members and others about issues related to the County's growth management. In prior years, it has actively participated in the development of the County's Comprehensive Plan and actively advocated for a public land acquisition program in the County. Presently, there are 104

individual members (of whom 99 reside in the County), 9 delegates at large, and 20 corporate and non-profit corporate members. The latter group includes such organizations as 1000 Friends of Florida, the Marine Resources Council, and the Citizens Stormwater Protection Group, who also have individual members residing within the County. The parties have stipulated that MCCA made comments to the County in opposition to the three amendments and that a substantial number of MCCA members own businesses within the County. The record also shows that MCCA's Board of Directors passed an appropriate resolution authorizing MCCA to file this action.

11. Intervenor, the Economic Council of Martin County (ECMC), is a non-profit corporation whose mission is to dedicated to building a quality community which provides a healthy economy and protects the quality of life and to encourage the planned growth of the County. Like the MCCA, the ECMA has actively participated in the development of the Comprehensive Plan. Its members are individuals and businesses who reside, own property, and operate businesses within the County. The ECMC made comments to the County in support of the three amendments during the adoption of those amendments.

c. The Amendments

12. Amendment 00-01 represents a policy change by the County and amends the text of the Economic Element and FLUE to change the methodology for determining the need for commercial land within the County. Prior to the amendment, the County used a supply-demand equation based upon an "acreage per population" methodology to determine the amount of commercial land use necessary to serve the County. Under the old methodology, relevant portions of the FLUE, in conjunction with various provisions in the Economic Element, were used to establish a supply-demand equation that would determine whether the projected need for commercial lands by a future population of the County could be met by the current amount of designated lands. If the result of the equation was a surplus of commercial lands, that factor alone would require the denial of any request to redesignate land for commercial use, regardless of any other factor or circumstance. According to the repealed text of the Plan, this methodology produced a 1,131-acre surplus of commercial lands for the year 2010.

13. The County proposes to use a more flexible policy and guideline type of review to make this need determination. Rather than projecting future demand for commercial land based solely on a numerical calculation, the County will make that determination based on a number of factors which must be

weighed together, such as suitability, location, compatibility, community desire, and numerical need. It also proposes to change the manner in which numerical need is determined. Under the new methodology, the County will now use jobs and the amount of land needed to support those jobs. Put another way, commercial demand will be based on the projected number of jobs in the future. Using the new methodology, and after adding a 25 percent market factor, the County projects that in the year 2015 there will be a commercial land deficit of 112 acres.

14. To accomplish this change in policy, the amendment alters the text of the Economic Element and FLUE by moving some language from the goals, objectives, or policies sections of the elements to preliminary sections that contained summaries of the data and analysis relied upon for each element. It also eliminates certain language from the goals, objectives, and policies of the elements, or from the preceding sections containing summaries of data and analysis, where such language was redundant and already appeared elsewhere in the Plan. In contrast to the former provision, the new amendment makes a finding that "the raw data appears to show that there is a significant deficit of commercial land necessary to accommodate economic needs if Martin County's ten year trend toward retail/service jobs continues."

15. Amendment 01-07 pertains to a 27.8-acre triangular-shaped tract of land located less than a mile south of the center of the urban area of Indiantown, a small community in the southwestern part of the County. The property, which lies within the County's Primary Urban Service District, is bounded on the north by State Road 76, a major arterial roadway which connects Indiantown with Stuart, on the west by State Road 710, another major arterial roadway which connects Indiantown with Okeechobee and Palm Beach Counties, and on the east by Southwest Indiantown Avenue, which connects State Roads 76 and 710. The site is surrounded by vacant property, including Agriculture-designated land on three sides, and Estate Density Residential on the other. Immediately north of State Road 76 lies the C-44 Canal, a major waterway that connects Lake Okechobeee with the South Fork of the St. Lucie River and ultimately the Atlantic Ocean. A two-lane bridge (with no pedestrian walkway) provides automobile access from Indiantown to the Blydenstein property. The amendment changes the land use designation on the property from Mobile Home Residential (8 dwelling units per acre) to General Commercial. Even though the property is designated for use as a mobile home park, the property has been vacant and undeveloped for more than 20 years and is used principally for cattle grazing.

16. The Seven J property consists of 2.99 acres located just west of Jensen Beach in the northern part of the County at the intersection of U.S. Highway 1 and Westmoreland Boulevard, both major arterial roadways. The property is adjacent to a partially built Development of Regional Impact (DRI) known as the West Jensen DRI and is virtually surrounded by other commercial uses. The amendment changes the land use designation on the property from Medium Density Residential (8 dwelling units per acre) to General Commercial. Presently, a nursery, older residential homes, rental property, and wetlands are found on the property; the nearby property is primarily made up of both developed and undeveloped commercial land.

d. Availability of Data and Analysis

17. Rule 9J-5.005(1), Florida Administrative Code, requires in part that "[a]ll background data, studies, surveys, analyses, and inventory maps not adopted as part of the comprehensive plan shall be available for public inspection while the comprehensive plan is being considered for adoption and while it is in effect." Relying upon this provision, Petitioners have contended in their Unilateral Prehearing Stipulation that the County failed to make such data and analysis "available to the public throughout the review and adoption process."

18. At least one general source of data that was used by County experts was not physically present in the County offices for inspection by the public during the adoption process. That derivative data source was entitled "CEDDS 2000: the Complete Economic and Demographic Data Source" and was prepared by Woods and Poole Economics, a Washington, D.C. consulting firm. The data source was used by one of the County's experts (Dr. Nelson) "to generate [the] demand numbers" in his technical report. In order to inspect and review this data, Petitioners, like the County or any other interested person, would have had to purchase a copy from the authors. However, all of the data and analyses accumulated or generated by the County staff were available for public inspection during the time between the transmittal and adoption of the amendments under review. Further, Petitioners did not show how they were prejudiced by the failure of the County to maintain the Woods and Poole data in their offices.

19. The Department does not construe the foregoing rule as narrowly as Petitioners, that is, that every piece of data relied upon by a local government must be physically present in the jurisdiction of the local government. Indeed, the Department has never found a plan amendment out of compliance solely on the basis that data was not physically located at a local government's offices. Rather, it construes the rule

more broadly and considers the rule to have been satisfied so long as data and analyses are "available for public inspection," even if this means that derivative source data such as the Woods and Poole report must be purchased from out-of-state sources.

e. Were the plan amendments based on the best available, professionally acceptable data and analysis?

20. Petitioners contend that the plan amendments "are not supported by the best available and professionally acceptable data and analysis." As to this contention, Rule 9J-5.005(2)(a), Florida Administrative Code, sets forth a general directive that all plan provisions "be based upon relevant and appropriate data and analyses applicable to each element." In addition, the same rule requires that the data must be "collected and applied in a professionally acceptable manner."

21. Petitioners contend that the County's collection of data to support the amendments, and its analysis of that data, was not professionally acceptable, as required by the rule. More specifically, Petitioners contend that the County undercounted the commercial land inventory used in projecting future need by omitting between 80 and 100 acres of undeveloped commercial land from the West Jensen DRI, by failing to count commercial development allowed in industrial-

designated lands, and by failing to include 30 acres of land at the Witham Field airport which remains available for commercial development. They also contend that the County inadvertently failed to include more than 60 acres that were placed in the Commercial category by amendments to the FLUM in 1995 and 1996 and which remain undeveloped and available for new commercial development.

22. In support of the amendments, the County submitted to the Department more than 1,000 pages of supporting materials and maps, including 384 pages related to the FLUM amendments, 642 pages of revised supporting data for the text amendments, and 89 pages of public comments. In choosing the sources of data to support the plan, the County used generally accepted, nationally available data as the basis for its review and revision of the Plan. After reviewing the foregoing material, the Department found such data and analysis to be relevant and appropriate.

23. The County also generated extensive data from locally available information that is unique to the County, such as an inventory of the lands within the County that are designated for Commercial uses on the FLUM, but do not yet have any developed commercial uses on them.

24. As to one of Petitioners' contentions, the County agrees that its staff inadvertently omitted 60.4 acres of

commercial property which was changed to that designation by certain 1995-96 FLUM amendments. However, the greater weight of evidence shows that this omission was not significant in terms of the overall collection of data, and it did not render the gathering of the other data as professionally unacceptable.

25. Petitioners go on to contend that the analysis of the data (in determining the supply inventory) was flawed for a number of reasons. First, they argue that the undeveloped portions (around 70 acres or so) of the West Jensen DRI that are commercially-designated land should have been included in the commercial land inventory. The West Jensen DRI is an approximately 180-acre residential/commercial development with a large commercial component. Even though specific site plans have not been issued for some of the undeveloped property, the County excluded all of the undeveloped acreage because the property is dedicated under a master plan of development, and therefore it would be inappropriate to include it as vacant inventory. On this issue, the more persuasive evidence shows that the treatment of undeveloped land in a DRI (subject to a master plan of development) is a "close call" in the words of witness van Vonno, and that it is just as professionally acceptable to exclude this type of undeveloped land from vacant commercial inventory as it is to include it.

Therefore, by excluding the West Jensen DRI land from its inventory count, the County's analysis of the data was not flawed, as alleged by Petitioners.

26. The Plan itself does not allow commercial uses within the Industrial land category. However, the County's Land Development Regulations (LDRs) permit certain commercial uses on Industrial lands when done pursuant to specific overlay zoning. While the County (at the urging of the Department) intends to review (and perhaps repeal) these regulations in 2003, and possibly create a new mixed-use category, there are now instances where commercial uses are located on Industrial lands by virtue of the LDRs. Because of this anomaly, Petitioners contend that the County's analysis of the data was flawed because it failed to count vacant, surplus lands in the Industrial land use category that are available for commercial development.

27. Except for arbitrarily allocating all undeveloped industrial land to the commercial category, as Petitioners have proposed here, the evidence does not establish any reasonable basis for making an industrial/commercial division of industrial-designated lands for inventory purposes. Indeed, no witness cited to a similar allocation being made in any other local government's comprehensive plan as precedent for doing so here.

28. In those rare instances where the Plan itself permits multiple uses in a single land category, such as Commercial Office/Residential (an office and multi-family land use designation), the County used a supply figure that was derived from estimating how much land in this category was developed commercially as opposed to residential and allocating acreage from the category based on that percentage. No party has suggested that such a methodology be used here, particularly since the mixed use categories are distinguishable from single land use categories, such as Industrial and Commercial.

29. Moreover, the County has demonstrated a conscious effort to separate these two types of land uses (industrial and commercial) into separate and distinct categories, they are depicted separately on the County's FLUM, and the Plan has separate locational criteria for the siting of these lands.

30. Based on the foregoing, it is found that the County's analysis of the data was not flawed (or professionally unacceptable) because it failed to include undeveloped industrial lands in the commercial inventory.

31. Petitioners next contend that the County erred in its commercial inventory count by failing to include around 30 acres of vacant land located at Witham Field, a local airport. Under the present zoning scheme at the airport, only aviation-

related commercial uses are allowed, and thus the vacant land cannot be used for any other commercial purpose. Further, the airport is designated Institutional on the land use map, rather than Industrial, and it would be inappropriate to count vacant institutional lands in the commercial land inventory. Therefore, the exclusion of the Witham Field land from the commercial inventory did not render the County's analysis of the data professionally unacceptable.

32. Finally, the remaining contentions by Petitioners that the County understated its supply inventory for both commercial and industrial property have been considered and rejected.

33. In summary, it is found that the amendments are based on relevant and appropriate data and analyses, and that the data was collected and applied in a professionally acceptable manner.

f. The Blydenstein FLUM Amendment

34. Petitioners generally contend that there is no demonstrated need for the Blydenstein parcel to be redesignated as General Commercial, that the amendment is not based upon data and analysis, that the County failed to coordinate the land use with the availability of facilities and services, that the amendment is inconsistent with

redevelopment and infill policies, and that the amendment encourages urban sprawl.

35. The Blydenstein amendment reclassifies 28 acres to commercial use and will amount to 36 percent of the existing commercial development in downtown Indiantown. In terms of need, the County projects that only 17 acres of commercial development will be needed in Indiantown through the year 2015, and there presently exist around 186 acres of undeveloped commercial acreage in that community. At the same time, Amendment 00-01 reflects a deficit of 112 acres of commercial land in the County during the same time period. Although the local and countywide demand calculations are seemingly at odds, at least in the Indiantown area, there will be a surplus of unused commercial lands through the end of the current planning horizon, and thus there from that perspective there is no need for an additional 28 acres of commercial property in that locale.

36. Notwithstanding a lack of numerical need, that consideration is not the sole factor in determining whether the amendment should be approved. As noted earlier, in addition to need, the County considers such factors as the suitability of the property for change, locational criteria, and community desires in making this determination. Here, the subject property is suitable for commercial development

because of its location on two major arterial roadways and its ready access to a railroad and major waterway. Further, the property is located within the Primary Urban Services District, which is an area specifically designated for more intense, urban development. In addition, the current land use designation allows 8 residential units per acre, which is an "urban" type of designation. Finally, because there is vacant, undeveloped property surrounding the subject property, the redesignation of the property to General Commercial will not pose a compatibility problem with any residential areas. When these considerations are weighed with the need factor, it is found that the proposed land use change is appropriate.

37. The existing land use designation of Mobile Home Residential is a carryover land use designation which recognized the mobile home use that occurred on the property when the future land use maps were originally created. At the present time, all mobile home use has ceased and the property is vacant. The nearest residential neighborhood is located to the north across State Road 76 beyond the Canal and is at least 600 feet away. Because of the property's configuration and immediate proximity to major arterial roads, railroad tracks, and a canal, the greater weight of evidence shows that it is not suitable for residential development. These considerations support the County's determination that the

property has been inappropriately designated as residential for more than a decade.

38. Although the County did not conduct formal studies to determine whether the public facilities and services will be capable of serving the proposed change in land use, a general analysis of the availability and adequacy of public facilities was performed by its staff. That analysis reflects that the property lies within the service area of a local water and sewer utility and has access to two major roadways. Based on its proximity to major roadways and local public utilities, the County does not anticipate that the change in land use will adversely impact public facilities and services. To ensure that this does not occur, the County will require a traffic impact analysis at the time the parcel is submitted for development review.

39. Rule 9J-5.006(3)(b)8., Florida Administrative Code, requires that a plan "[d]iscourage the proliferation of urban sprawl." Leapfrog development is a form of urban sprawl and typically means leaping over a lower density development and placing higher density development just beyond the lower density development. Given the location of the Blydenstein property within the Primary Urban Services District, and the adjacent major arterial roads, railroad, and canal, the greater weight of evidence supports a finding that the

proposed land use change will not constitute leapfrog development.

40. The change in land use will not promote, allow, or designate urban development in radial, strip, isolated, or ribbon patterns; it will not result in the premature or poorly planned conversion of rural land; it will not discourage or inhibit infill or redevelopment of existing neighborhoods; it will not result in poor accessibility among linked or related land uses; and it will not result in a loss of significant amounts of functional open space. In the absence of these indicators, it is found that the amendment will not contribute to urban sprawl.

g. The Seven J FLUM Amendment

41. Like the Blydenstein amendment, Petitioners likewise contend that there is a lack of demonstrated need for the Seven J amendment; that the amendment lacks data and analysis; that the County failed to coordinate with the availability of services; that the amendment will promote urban sprawl; and that the amendment is internally inconsistent.

42. The Seven J property is surrounded by the partially built-out West Jensen DRI, is located within the County's Primary Urban Services District, and is considered to be in a "regional hub" of activity, that is, within the core of major commercial development in the northern part of the County.

Further, it is located on an eight-lane road at a major intersection (U.S. Highway 1 and Westmoreland Boulevard). Therefore, the change is compatible with surrounding existing and planned commercial uses, and the County's redesignation of the property from Medium Density Residential (8 units per acre) to General Commercial is appropriate. Further, the greater weight of evidence shows that because the property is located within the Primary Urban Services District, is near existing commercial and residential development, and urban services are already provided, the Amendment will not contribute to urban sprawl.

43. Finally, the greater weight of evidence supports a finding that the amendment is internally consistent and based on adequate data and analysis, contrary to Petitioners' assertions.

CONCLUSIONS OF LAW

44. 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.

45. O'Connell (except as to Amendment 01-7), Melzer, and Blydenstein reside, own property, or own or operate a business within the County and submitted oral or written comments, recommendations, or objections to the County during the adoption process of the amendments. Thus, they are affected

persons within the meaning of Section 163.3184(1)(a), Florida Statutes, and have standing to challenge the amendments.

46. It is concluded that MCCA and ECMC are "operating a business" within the County by conducting meetings and participating in governmental decisions and are therefore affected persons within the meaning of the law. See The Sierra Club v. St. Johns County and Dep't of Comm. Affairs, DOAH Case No. 01-1851GM (DCA July 30, 2002); 1000 Friends of Fla., Inc. and Audubon Society of the Everglades, Inc. v. Dep't of Comm. Affairs, DOAH Case No. 01-0781GM (DCA Dec. 28, 2001).

47. Section 163.3184(9), Florida Statutes, provides that when the Department has rendered a notice of intent to find a comprehensive plan provision to be in compliance, those provisions "shall be determined to be in compliance if the local government's determination is fairly debatable." Thus, Petitioners must bear the burden of proving beyond fair debate that the challenged amendments are not in compliance. This means that "if reasonable persons could differ as to its propriety," a plan amendment must be upheld. Martin County v. Yusem, 690 So. 2d 1288, 1295 (Fla. 1997).

48. The more persuasive evidence supports a conclusion that Petitioners have failed to prove beyond a fair debate that the three amendments are not in compliance.

49. Finally, Part VII of Ordinance No. 598 reads as follows:

> Special acts of the Florida Legislature applicable only to incorporated areas of Martin County, County ordinances and County resolutions or parts thereof, and other parts of the Martin County Comprehensive Growth Management Plan in conflict with this ordinance are hereby superceded by this ordinance to the extent of such conflict.

Petitioners contend that this provision "is vague concerning the legal effect and meaning of the amendments, and about which parts of the Plan it supercedes," and that it is inconsistent with the procedural requirements in Rule 9J-5.005(8)(b)-(d), Florida Administrative Code. However, the provision is simply a part of the enacting Ordinance which adopted the amendments and not a part of the plan amendments. As such, it is not subject to a compliance review. Therefore, assuming that Petitioners' fears are valid, a determination as to the meaning or effect of this provision would have to be made by a court of competent jurisdiction rather than by this forum.

RECOMMENDATION

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

RECOMMENDED that the Department of Community Affairs enter a final order determining that Martin County Plan Amendments 00-01, 01-07, and 97-4 are in compliance.

DONE AND ENTERED this 16th day of October, 2002, in Tallahassee, Leon County, Florida.

_____
DONALD R. ALEXANDER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of October, 2002.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

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