

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

C. B. SUBRAHMANYAM; BECKY)	
SUBRAHMANYAM; PREM SUBRAHMANYAM;)	
JOY SUBRAHMANYAM; ANGELA K. MAIGE;)	
CURTIS TURNAGE; MRS. TURNAGE; EDGAR)	
T. BRUCE; WILLIAM M. PORTER; PEGGY)	
ANN PORTER; and CARNELIA NELSON,)	
)	
Petitioners,)	
)	
vs.)	Case No. 02-3328
)	
LEON COUNTY AND CHARLES AND LINDA)	
WIMBERLY,)	
)	
Respondents.)	
_____)	

FINAL ORDER

Pursuant to notice, a formal hearing was held in this case on December 11 through 13, 2002, in Tallahassee, Leon County, Florida, before Florence Snyder Rivas, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioners:	Thomas G. Tomasello, Esquire Thomas G. Tomasello, P.A. Post Office Box 13148 Tallahassee, Florida 32317-3148
For Respondent Leon County:	Suzanne H. Schmith, Esquire Leon County 301 South Monroe Street Tallahassee, Florida 32301
For Respondent Charles and Linda Wimberly:	Brian Pappas, Esquire Post Office Box 416 Flagler Beach, Florida 32136

STATEMENT OF THE ISSUE

The issue for determination is whether Seminole Raceway, as proposed in Charles and Linda Wimberlys' Site and Development Plan and approved with conditions by the Leon County Development Review Committee (DRC), is consistent with the requirements of the 2010 Tallahassee-Leon County Comprehensive Plan (Comprehensive Plan) and is a permissible land use under applicable provisions of Chapter 10, Leon County Code (the Code).

PRELIMINARY STATEMENT

On July 17, 2002, Respondent Leon County (Leon County), acting through the DRC, granted approval of Respondents' Charles and Linda Wimberly's (the Wimberlys) Site and Development Plan for the Seminole Raceway Reconstruction and Reopening (Site and Development Plan or Seminole Raceway).

By Petition for Formal Hearing dated August 15, 2002, C. B. Subrahmanyam, Becky Subrahmanyam, Prem Subrahmanyam, Joy Subrahmanyam, Angela K. Maige, Curtis Turnage, Mrs. Turnage [sic], Edgar T. Bruce, William M. Porter, Peggy Ann Porter, and Carnelia Nelson (Petitioners) timely challenged the DRC's approval of the Site and Development Plan.

Exhibits were admitted in accordance with the Prehearing Stipulation dated December 4, 2002. Petitioners offered the testimony of Sam Casella (expert in urban planning); Peter Winter (expert in sound recording, analysis, and measurement);

and Major John Schmidt (Leon County Sheriff's Office). Becky Subrahmanyam testified in her own behalf.

Leon County presented the testimony of David McDevitt, (Director of Development Services for the Leon County Community Development Department); David Wayne Tedder (Division Manager of Current Planning for the Tallahassee-Leon County Planning Department, also qualified as an expert in state and local comprehensive planning and land development); Bill Douglas (professional engineer for the Site and Development Plan); and Bill Fuller and Elmer Sheffield (local drag racing enthusiasts). Charles Wimberly testified in his own behalf.

A five-volume transcript of the proceedings was filed on February 4, 2003. Thereafter, the parties timely filed proposed orders which have all been given careful consideration in the preparation of this final order.

Findings of Fact

The Parties:

1. The Wimberlys filed a Site and Development Plan with Leon County seeking to renovate, upgrade and eventually reopen on land they own (the Wimberly property) a for-profit facility to be known as Seminole Raceway.

2. Some of the Petitioners live on or own property which is immediately adjacent to and physically borders the Wimberly property. Other Petitioners live or own property within the immediate area of the Wimberly property. All Petitioners are opposed to the Site and Development Plan for Seminole Raceway.

3. Leon County is a unit of government having jurisdiction to regulate land use within its borders pursuant to Chapter 163 of the Florida Statutes.

4. The Wimberlys and Leon County stipulated that Petitioners have standing in this proceeding to challenge the Site and Development Plan.

The Wimberly Property and Surrounding Area:

5. The Wimberly property consists of two parcels on land located on the south side of State Road 20, Blountstown Highway, approximately six miles west of Tallahassee, and 2,400 feet west of Whispering Pines Drive.

6. The parcels are located in the Urban Fringe Zoning District (Urban Fringe) under the Code and the Comprehensive Plan.

7. The parcel with Tax I.D. number 22-33-20-602-0000 is the more westerly of the two parcels and is approximately 10.1 acres in size ("West Parcel"). The parcel with Tax I.D. number 22-33-20-605-0000 lies to the east of the West Parcel and is approximately 111.23 acres in size ("East Parcel").

8. The East Parcel touches and is contiguous with an area zoned Residential Preservation.

The Site and Development Plan for Seminole Raceway:

9. Pursuant to their Site and Development Plan, the Wimberlys' propose to renovate an abandoned dragstrip which operated on what is now the Wimberly property in the 1980s. The

Wimberlys propose to substantially upgrade and thereafter reopen the dragstrip under the name Seminole Raceway, which will be operated as a for-profit business providing drag racing in Leon County. Under the Wimberlys' business plan, the dragstrip would draw most of its customers from within a 100 mile radius.

10. The Site and Development Plan calls for a 2,640-foot paved dragstrip to be located on the West Parcel, running in a north-south direction. One-eighth of a mile of the dragstrip will be used for racing, while the remaining portion will serve as deceleration lanes. At its closest point, the dragstrip will be located 400 feet from the closest developed property.

11. Seminole Raceway will have an open-air grandstand which will, upon completion, seat as many as 1,080 spectators. The dimensions of the grandstands will be 25 feet by 213 feet.

12. The paved dragstrip measures 2,640 feet by 60 feet.

13. Plans call for six paved lanes leading to the dragstrip, which will be used as staging lanes where the racing cars will be paired up to race. These staging lanes are to be 50 feet wide and at least 200 feet long.

14. Plans also include a 600-square foot restroom building, modern concession facilities, and a gravel parking area with 383 parking spaces, including spaces for persons with disabilities. No other buildings are proposed.

15. As many as one hundred trucks and trailers may be used on any given day to transport race cars to the venue.

16. The Wimberlys propose to operate Seminole Raceway approximately 110 days per year, or about one third of each year. They would realize operating revenue from admission fees paid by members of the general public who wish to watch drag races, from fees paid by drivers wishing to race their cars, and by customers purchasing food and beverages at the concession stands.

17. The Wimberlys will provide off-duty police officers to maintain traffic and crowd control, and an ambulance will be stationed on the property during hours of operation in the event of an accident or medical emergency.

Parties' Positions Regarding Permitted Uses on the Wimberly Property:

18. Respondents contend that the proposed use of the Wimberly property, which lies entirely within the Urban Fringe, as Seminole Raceway, is an expressly authorized "active recreation" use under the Comprehensive Plan and Section 10-913 of the Code, and is not a "commercial" use as defined in the Comprehensive Plan and the Code. Respondents argue that Section 10-913(c) of the Code specifically authorizes, through "schedules of permitted uses" contained in Section 10-1203(a) of the Code, "commercial sports" in general and "dragstrips" in particular.

19. Petitioners contend that Seminole Raceway is, on the contrary, an impermissible commercial use under the

Comprehensive Plan and the Code and is, therefore, not a use which is permitted in the Urban Fringe.

Commercial Land Use Classification under the Comprehensive Plan:

20. The Comprehensive Plan, in its Future Land Use Element provision, classifies both proposed and existing land uses into the following categories: Commercial, Office, Residential, Recreational, Community Facilities, Light Industrial, and Heavy Industrial.

21. Petitioners' contention that Seminole Raceway is a Commercial land use is not persuasive in light of the definitions of the various types of Commercial uses defined in the Comprehensive Plan.

22. Commercial land use is defined in the Comprehensive Plan as "generally, an activity or business involving the sale of goods and/or services carried out for profit."

23. The Comprehensive Plan Glossary and Future Land Use Element Policy 3.1.2 further categorize the types of Commercial land uses as Minor, Neighborhood, Community, Regional and Highway, setting forth descriptive criteria as follows in paragraphs 24, 25, and 26.

24. Community Commercial: The major function of the Community Commercial land use type is to provide for the sale of retail goods such as clothing, variety items, appliances and furniture, hardware and home improvement items. Examples of leading types of tenants in the Community Commercial land use

type are a supermarket, drug store, minor department store, home improvement center, variety or discount center.

25. Regional Commercial: The Regional Commercial land use type includes the same functions as Community Commercial, only on a larger scale, providing a full range and variety of consumer goods for comparative shopping such as general merchandise, apparel, furniture and home furnishings. The example provided in the Comprehensive Plan of a leading tenant in a Regional Commercial land use is one or more full-line department stores.

26. Highway Commercial: Highway Commercial land use type provides for retail services designed for drive-in convenience to consumers. The examples provided in the Comprehensive Plan of leading tenants for Highway Commercial land use include: fast food franchises, liquor stores, automotive service centers, and convenience stores which may serve the immediate area, and also rely heavily on passerby traffic, as opposed to destination trade.

27. The parties correctly stipulated that Seminole Raceway was not a Minor Commercial land use type nor a Neighborhood Commercial land use type, and the record supports a finding that Seminole Raceway does not fall within the Comprehensive Plan's definition of Community, Regional, or Highway Commercial.

Recreation Land Use under the Comprehensive Plan:

28. The Recreation land use category under the Comprehensive Plan classifies existing and proposed Recreational uses as either "passive" or "active." The Comprehensive Plan defines Active Recreation land use as "those recreation lands and improvements that are facility-oriented."

29. The Comprehensive Plan does not define "facility-oriented," but Webster's II New Riverside University Dictionary defines "facility" as "something created to serve a particular function."

30. Petitioners correctly note that Seminole Raceway will have attributes of what is commonly understood to be a "commercial operation." It will charge an admission fee for spectators and a racing fee for race participants. Those attributes are not, however, included in the definition of "commercial" under the Comprehensive Plan.

31. In addition to its commonly understood commercial attributes, Seminole Raceway will also include attributes of recreational activities to which spectators are drawn. Seminole Raceway will provide recreational opportunities for amateur drag racers to race their cars in a controlled competitive environment and for drag racing fans to watch the competition.

32. These activities, despite their commercial aspects, are no different than many other recreational type operations which share the same commercial operation attributes, such as

bowling alleys, pool halls, swimming pools, batting cages, golf courses, driving ranges, and country clubs.

33. The Comprehensive Plan's drafters recognized that some land uses have attributes which fall within more than one of the land use categories outlines in the Comprehensive Plan. Thus, even though some recreational activities may include attributes commonly understood to be commercial, those activities had to be defined as one or the other; the alternative was to adopt yet another land use category. The drafters of the Comprehensive Plan elected to include facility-oriented recreational/sports activities in the recreation land use category. To locate such activities under Commercial would have been inconsistent with the definition of Commercial contained in the Comprehensive Plan.

34. Despite the commercial attributes of Seminole Raceway, the evidence established that it is not a Commercial land use as defined under the Comprehensive Plan; instead, it is facility-oriented recreation and, thus comes within the Comprehensive Plan's definition of "active recreation."

Commercial classifications under the Code:

35. The Code defines Commercial uses according to the same subcategories as the Comprehensive Plan: Minor, Neighborhood, Community, Highway and Regional.

36. The Code definitions for commercial-type uses reflect the same major function descriptions used for the Commercial

land use subcategories within the Comprehensive Plan as set forth in Paragraphs 24-27 above.

37. The record does not support a finding that Seminole Raceway falls within the Code's definition of Community, Regional, or Highway Commercial, and, the parties stipulated that it is neither Minor nor Neighborhood Commercial within the meaning of the Code.

Active recreation under the Code:

38. The Code provides definitions of commercial and active recreation land uses consistent with those in the Comprehensive Plan, but also recognizes that active recreation may be provided as a "service" with attributes of common commercial activity, but not as defined in the Code.

39. Thus the Code, like the Comprehensive Plan, recognizes that recreation may be provided by Leon County or by private enterprise.

40. The definition of "active recreation" in the Code includes examples of recreational activities which may be provided by the government or as "services." For example, a "swimming pool," one of the specific examples of a "recreational facility, active" included in the Code, is a recreation use which may be provided by Leon County or as a service by a private owner of a swimming pool open to the public for a fee.

41. Because recreation can be provided by Leon County or as a service, the Code provides a definition of "recreation service:"

Recreation services shall mean a commercial facility providing recreational activities to the general public for a fee, including, but not limited to, swimming pools, tennis clubs, public gymnasiums, racquetball courts, baseball hitting ranges, miniature golf, golf driving ranges, billiards or pool halls, dance schools or classes, skating rinks, racetracks, fitness centers, zoos, and indoor theaters. (Emphasis added)

42. The fact that the active recreation land use category is further defined in the Code to include "recreation services" and that the Code recognizes that such recreational activities can have many aspects of what is commonly understood to be commercial, does not detract from the DRC's conclusion that Seminole Raceway is an active recreation land use under the Code and not a commercial land use.

Allowance of Seminole Raceway in the Urban Fringe:

43. As noted previously, according to the Comprehensive Plan, Future Land Use Map, Seminole Raceway will be sited on property located in the Urban Fringe, a term which is defined consistently in the Comprehensive Plan's Future Land Use Element and in Section 10-913 of the Code.

44. The introduction to the Comprehensive Plan's Future Land Use Element summarizes the location of the district within Leon County, and generally describes the types, densities and intensities of development intended to be allowed in the Urban

Fringe. This summary does not exclude or prohibit Recreational uses; neither is it exhaustive of the uses permitted.

45. The Comprehensive Plan defines intensity of a development to include the development's use of, or demand on, facilities and services.

46. The summary further indicates that the Urban Fringe is appropriate for low density and low intensity developments. This is so because urban services are not readily available.

47. Examples of urban services include central sewer and water services.

48. Section 10-913 of the Code defines and describes the Urban Fringe as follows:

(a) Purpose and intent. The urban fringe zoning district is intended to provide for low-intensity development that can be accommodated without a full complement of urban services and infrastructure. The district is primarily intended to allow low-density residential development of no greater than one unit on three acres of land, agricultural, and silvicultural activities. Residential development will also be allowed to a net density of one unit per acre if clustered on 25 percent or less of the site (allowing a gross density of up to four units per acre on the developable portion of the site). The remaining undeveloped portion of cluster sites shall be preserved as undisturbed open (green) space until such time as these sites are included in the urban service area. Subsequent to these sites inclusion in the urban service area, review by the Board of County Commissioners may be requested to authorize development of these undisturbed open (green) spaces.

To conveniently serve area residents, smaller scale, low-intensity commercial development is permitted in this district. To maximize efficiency in the development of agricultural and silvicultural resources located within this zoning district and surrounding areas, agriculturally and silviculturally related industrial activities, such as milling, are permitted. Community facilities are also permitted in this district to serve the existing population as well as to accommodate anticipated population growth in areas designated for immediate inclusion (within a period of five years) in the urban service area.

(b) Allowable uses. For the purpose of this article, the following land use types are allowable in this zoning district and are controlled by the land use development standards of this article, the comprehensive plan and schedules of permitted uses.

- (1) Low-density residential.
- (2) Agricultural.
- (3) Silvicultural.
- (4) Light industry--Agriculturally and silviculturally related only.
- (5) Passive recreation.
- (6) Active recreation.
- (7) Minor commercial.
- (8) Neighborhood commercial.
- (9) Community services.
- (10) Light infrastructure.
- (11) Heavy infrastructure.

(c) List of permitted uses. See schedules of permitted uses, section 10-1203(a). Some of the uses on these schedules are itemized according to the Standard Industrial Code (SIC). Proposed activities and uses are indicated in the schedules. The activity or use may be classified as permitted, restricted or permitted through special exception, or not allowed.

(d) Development standards. All proposed development shall meet the commercial site location standards (section 10-922); buffer zone standards (section 10-923); the parking and loading requirements (division 7); and

the land use development criteria as specified in section 10-1203.

(e) Restricted uses. If uses are restricted according to the schedule of permitted uses, they must follow the general development guidelines for restricted uses as provided in division 5. Specific restricted uses are addressed below in division 8.

(1) Eating and drinking establishments (SIC 581). No drive-in or drive-thru facilities are permitted within this district.

(2) Laundry, cleaning and garment services (SIC 721). Does not include dry cleaning plant operations; pick-up stations only.

(3) Funeral services and crematoriums (SIC 726). This use requires 100 percent opacity buffer surrounding perimeter with exception of access point.

(Ord. No. 92-10, Section 2(4.3), 3-10-92)

49. Petitioners' argument seizes upon the phrase "low density residential development" in support of their passionately held view that a dragstrip could not possibly be consistent with the quiet, country lifestyle they have come to treasure in the years since the previous dragstrip closed. Their concern for their way of life is heartfelt and provokes great sympathy, but it cannot carry the day in these proceedings unless one overlooks the balance of the Code's definition of Urban Fringe and its allowable uses.

50. The definition, read as a whole, contemplates that for purposes of site and development review, it is adequate to indicate, as the Wimberlys have, that the proposed development's impact on the requirement for government services, such as water

and sewer, will be of low intensity. The Wimberlys' proposal is consistent with this requirement because they have shown a sufficient water supply for Seminole Raceway will be provided by an on-site well, and that sanitary sewage will be provided by an on-site septic system, and that these facilities are adequate for the proposed use.

51. In other words, the point of the Urban Fringe is not to protect residents from the crowds and noise generated by an active recreation facility such as Seminole Raceway, but to minimize the impact of development on government and the resulting costs to the taxpayers attributable to each development. Put another way, the Comprehensive Plan and the Code operate, with respect to the Wimberly property, to protect Leon County from having to provide urban infrastructure to support the types of development which the authors of the Comprehensive Plan deemed appropriate land uses in the Urban Fringe.

52. Of greater significance than the finding that Seminole Raceway is not inconsistent with the intended purpose of the Urban Fringe is the fact that Seminole Raceway falls within the criteria for active recreation and is thus one of the listed allowable uses in the Urban Fringe pursuant to Section 10-913(b) (6) of the Code. Because it is a defined allowable use, Seminole Raceway is an acceptable use of the Wimberly property.

53. The proposed use of the Wimberly property is also found in a more detailed and specific list of permitted uses for the Urban Fringe found in section 10-1203(a) of the Code.

54. Section 10-1111 of the Code provides specific requirements for Special Exception uses; there are no specific requirements applicable to Commercial Sports activities.

55. Section 10-1203(a) of the Code provides a list of more detailed and specific permitted uses by reference to the Standard Industrial Code ("SIC"), a code which lists broad land use types, such as residential, mining, etc., and then, within each broad category, lists numerous specific types of land uses by a classification number. These classification numbers are further broken down into sub-classification numbers.

56. Section 10.1203(a) of the Code goes on to indicate the type of land use the SIC-coded land use is under the Comprehensive Plan and whether the use is a "permitted" or "restricted" use, or a use by "special exception" in the Urban Fringe.

57. Section 10.1203(a) of the Code lists various SIC code numbers followed by the SIC's broad land uses and more specific land uses within those broad land uses which are considered to come within the allowable Comprehensive Plan land use categories for the Urban Fringe. For example, under the broad SIC land use of "Agricultural, Forestry, and Fishing" is listed the land use of "Agricultural production--Crops" which is designated SIC

code "01." According to Section 10-1203(a), this SIC land use code is a "permitted" use under the Comprehensive Plan land use category of Agriculture.

58. Land uses included in the SIC's broad category of "Recreation" are listed in Section 10-1203(a) of the Code and are designated as either falling within the Comprehensive Plan's passive or active recreation land use. All of these SIC recreation land uses are "permitted" within the Urban Fringe.

59. While a race track or, more specifically, a dragstrip is not listed under the SIC recreation category, the SIC code, like the Code, recognizes that recreation may be provided as "service." Thus, under the SIC broad land use category of "service" is included recreational activities operated for profit under the subcategory of "commercial sports," SIC category code 794. Consistent with the Code's recognition, through the definition of "recreation services," that recreational land uses may have commercial attributes, the SIC code includes commercially operated sports activities under services rather than under commercial.

60. Section 10-1203(a) of the Code, in including commercial sports from the SIC broad land use of services, indicates that such commercial sports are considered to fall within the active recreation land use allowable in the Urban Fringe and that they are allowed as a "special exception."

61. Seminole Raceway is a commercial sport within SIC code category 794 and is, therefore, allowed as an active recreation use within Urban Fringe. Any doubt about this conclusion is eliminated when SIC subcategory 7948 is reviewed. That subcategory, "Racing, Including Track Operations," specifically includes "Dragstrip Operation" as a commercial sports use.

62. Thus the operation of a dragstrip, even for commercial ends, is listed in Section 10-1203(a) of the Code as one of the types of active recreation land use allowable in the Urban Fringe.

Mitigation Agreed to by Respondents:

63. The parties have not cited any provision of the Comprehensive Plan or the Code which would require mitigation under the facts and circumstances of this case. Rather than require mitigation, public policy "encourages" it. Section 10-1405 of the Code reads, in pertinent part, as follows:

Applicants are encouraged to design innovative plats or site and development plans which, while meeting the requirements of this article and other applicable ordinances, take into account the individual characteristics and location of a particular piece of land so as to reduce adverse visual, noise, environmental, and/or traffic impacts on nearby property owners.

(Emphasis added)

64. In this case, Respondents have agreed to a variety of steps intended to mitigate the anticipated impacts of Seminole Raceway, including off-site noise, light, and traffic.

Consideration was given by Respondents to the fact that future

land use categories surrounding Seminole Raceway include Urban Fringe with a Residential Preservation Overlay, and Rural.

65. The purpose of a Residential Preservation Overlay is to protect existing stable and viable residential areas from incompatible land use intensities and density intrusions. Here, Respondents have expended considerable effort in addressing the impacts of noise, lighting and traffic.

Noise and lighting:

66. Although Leon County has not adopted a noise ordinance requiring noise generated by any type of development to be kept at or under maximum decibel levels, one of the conditions required as part of the Site and Development Plan approval for Seminole Raceway is:

Operation of the raceway and activities on its premises shall not create sound pressure levels in excess of 65 dBA as measured on residential property located within 1150 feet or further from the dragstrip, or operations of the raceway are subject to revocation or suspension by Leon County.

67. A noise study conducted at the request of Leon County prior to site plan approval found that the highest peak sound level generated by the track, as recorded on residential property 1150 feet east of the track, was 63.9 decibels. The study found that the average sound levels generated by the track at the same distance to residential property was 54.5 decibels.

68. The noise measurements were taken with two typical drag racing cars semi-stationery on the starting line with engines running at typical racing RPMs.

69. The noise study concluded that the anticipated noise levels from the track are below standards set by the Federal Housing and Urban Development Department, the Florida Statutes, and the Occupational Safety and Health Administration.

70. Additionally, as a condition of Site and Development Plan approval, Seminole Raceway must have an eight-foot high wooden fence immediately adjacent to and around the vehicle staging area, track, and pit area, on the eastern side of the site. This fence will be located between the track and the location of the noise measurement equipment for the sound study.

71. Noise measurements may also be affected or diffused by the location of trees or other vegetation between the source of the noise and the point of measurement. As a condition of approval, Seminole Raceway must provide a 30-foot wide Type D vegetative buffer between the parking area and the nearest property east of the dragstrip as such buffer is described in Section 10-923 of the Code. Thus, the Wimberlys will be required to provide for the planting of 12 canopy plants, eight understory plants and 36 shrubs per 100 linear feet of the buffer. This is the most dense type of buffer provided for in the Code.

72. Under the Code, a vegetative buffer is not required to be planted between existing Residential type land uses and proposed Recreational land uses; rather, Respondents have agreed to the Type D buffer to address anticipated noise impacts upon neighbors, including Petitioners.

73. As a further condition of development, the public address system for Seminole Raceway shall be limited to 85 decibels at the speaker and shall be directed away from residential lots.

74. Also, all lighting for Seminole Raceway must be placed so as not to directly illuminate any residentially developed property.

Traffic:

75. As a condition of approval, the Wimberlys must construct, on Highway 20, a left turn lane for traffic traveling west and a right turn lane for traffic traveling east to Seminole Raceway, install warning signs one-quarter mile in both directions from the entrance, and hire off-duty Leon County Sheriff's deputies to direct traffic during hours of operation, all in order to mitigate anticipated traffic impacts.

76. The Wimberlys are further required to perform a traffic study one year after Seminole Raceway becomes operational. Leon County may require additional improvements if warranted by the traffic study.

CONCLUSIONS OF LAW

77. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, this proceeding pursuant to Section 120.65(7), Florida Statutes, and Section 10-1485 of the Code.

78. Pursuant to subsection (H) of Section 1485 of the Code, the Site and Development Plan for Seminole Raceway must be approved if the Wimberlys demonstrate by a preponderance of the evidence that they are entitled to an approval.

79. For the reasons set forth in the Findings of Fact, Seminole Raceway is consistent with the Comprehensive Plan and complies with applicable provisions of the Code. More specifically, the evidence establishes that Seminole Raceway is an active recreation use allowable in the Urban Fringe. The mitigation requirements agreed to by Respondents, although not required, are intended to and will serve to lessen the impact of the facility on nearby residential properties, including those of the Petitioners.

80. The Wimberlys have carried their burden of proof under Section 10-1485 of the Code to demonstrate by a preponderance of the evidence that they are entitled to approval, a showing which Petitioners' evidence fails to overcome.

The Project is a Recreational Land Use:

81. The Local Government Comprehensive Planning and Land Development Regulation Act ("the Act"), Section 163.3161 et

seq., governs the adoption, amendment, and implementation of comprehensive plans by local governments in Florida.

82. The Act requires local governments to adopt and amend comprehensive plans, or elements thereof, to guide their future development and growth. Section 163.3167(1)(b), Florida Statutes (2002).

83. Section 163.3177, Florida Statutes, sets out the required and optional elements of a local comprehensive plan. Within the future land use element, a required element, local governments are required to establish the categories of uses of land, as well as provide on a map for the general distribution, location, and extent of the uses of land within the jurisdiction. Section 163.3177(6)(a), Florida Statutes (2002).

84. Section 163.3202, Florida Statutes, requires local governments to adopt land development regulations that implement the adopted comprehensive plan, including regulations for the use of land and water for those categories established in the future land use element of a comprehensive plan. Section 163.3202(2)(b), Florida Statutes (2002).

85. Therefore, it is not the function or the purpose of the land development regulations to establish land use categories outside of the comprehensive plan. The function of the land development regulations is to implement the comprehensive plan. Section 163.3213(1), Florida Statutes (2002).

86. Seminole Raceway does not meet the criteria established in the future land use element of the comprehensive plan for any subcategory of Commercial land use and thus cannot be categorized as a Commercial land use under the Comprehensive Plan.

87. The evidence supports a conclusion that Seminole Raceway will provide a full service facility for use by amateur drag racing enthusiasts and thus falls within the criteria of the land use subcategory "Active Recreation" established in the future land use element of the comprehensive plan.

The Project is allowed in the Urban Fringe:

88. It is a well-settled maxim of statutory construction that the more specific provisions of a regulation govern over the more general provisions. McKendry v. State, 641 So. 2d 45 (Fla. 1994). Therefore, the Goals, Objectives and Policies of the Comprehensive Plan govern over the more general descriptions or summaries of land use types found in the Future Land Use Element preceding the Goals, Objectives and Policies.

89. In this case, Seminole Raceway is an allowable use in the Urban Fringe even under the most general provisions of the Comprehensive Plan. As a low-intensity use without a demand for urban services, Seminole Raceway is allowable according to the general description of the Urban Fringe summarized in the introduction to that section of the Future Land Use Element.

90. More importantly, the Seminole Raceway is allowable under the specific policies of the Comprehensive Plan. Future Land Use Element Policy 1.4.5(d) states as follows:

The determination that a particular land use is permitted within a zoning district shall be made based upon a listing of allowable land uses within a zoning district or that an unlisted land use is substantially similar to allowable uses within the same district.

Comprehensive Plan, page I-43 (emphasis added). Therefore, for a determination of whether Seminole Raceway is allowed within the Urban Fringe, one must turn to the listing of allowable uses within the Code. This is consistent with the requirement of the Act that the Code establish the regulations governing the distribution of land use types within the land use districts established by the Comprehensive Plan. See Section 163.3213(1), Florida Statutes (2002).

91. Section 10-1203 of the Code, which further defines the uses allowable in the Urban Fringe pursuant to Section 10-913(b) of the Code, specifically includes dragstrip operations.

Mitigation of impacts:

92. Section 10-1405 of the Code, pertinent parts of which are fully set forth in Paragraph 62, above, articulates a public policy in which site and development plan "Applicants are encouraged to design innovative plats or site and development plans which . . . reduce adverse visual, noise, environmental, and/or traffic impacts on nearby property owners."

93. Neither the architects of the Comprehensive Plan nor the drafters of the Code required persons proposing to build active recreation facilities in the Urban Fringe--even facilities on the ambitious scale of Seminole Raceway--to eliminate offsite impacts, no matter how troubling they are to residents who wish for the neighborhood to remain as it has been.

94. The conditions agreed to by Respondents are plainly insufficient to satisfy Petitioners' desire to maintain the relative quiet of their neighborhood, yet they go further than the law requires to meet the aspirational "encouragement" standard set in Section 10-1405. More importantly for Petitioners, the conditions provide aggrieved parties with recourse in the event they are not fulfilled by the property owners.

95. In developing the conditions for Seminole Raceway, this aspect of the Comprehensive Plan is relevant:

Policy LU 2.1.1:

Protect existing residential areas from encroachment of incompatible uses that are destructive to the character and integrity of the residential environment.

Comprehensive Plan provisions and Land Development Regulations to accomplish this shall include, but are not limited to:

(a) Inclusion of a Residential Preservation category on the Future Land Use Map.

96. The remainder of the Policy speaks to limitations on future Commercial intensities adjoining low-density residential

areas (paragraph b), limitations on future high density residential adjoining low density residential areas (paragraph c), limitations on future light industry adjoining low to medium density residential areas (paragraph d), preclusion of future heavy industrial adjoining any residential area (paragraph e), and additional development requirements for allowed community facilities adjoining low density residential areas (paragraph f). None of these provisions applies to recreational uses adjoining residential areas and therefore they do not apply to Seminole Raceway.

97. To the extent, however, that they show an intent to buffer existing residential areas from the visual and sound impacts of adjoining uses, the Comprehensive Plan provides that the primary purpose of the Residential Preservation Overlay District is to "protect existing stable and viable residential areas from incompatible land use intensities and density intrusions." Comprehensive Plan Page I-12. Recognizing that the proposed dragstrip was specifically allowed on the Wimberly property, but also recognizing the proximity to a Residential Preservation land use district, as well as other residential areas zoned Urban Fringe and Rural, Leon County sought to mitigate anticipated impacts by imposing conditions which exceed the requirements of the Comprehensive Plan and the Code. Those conditions have been accepted by the Wimberlys.

98. Although Leon County has not adopted a noise ordinance, the conditions of development require that noise impacts to surrounding areas be mitigated by requiring a maximum average decibel level of 65 dBA on property within 1150 feet. The Site and Development Plan approval limits the days and hours of operation to, for example, restrict operation on school nights.

99. Further, Seminole Raceway is required to retain a 30-foot vegetative buffer between the parking area and the nearest residential lots and build a noise barrier on the perimeter of the track surrounding the spectator stands and vehicle staging area to further buffer noise impacts. Inasmuch as Section 10-923 of the Code requires no buffer between proposed active recreation uses and existing residential uses, the conditions of development exceeds the Code requirement for buffering. Further, the Type D buffer being required is the most densely vegetated buffering requirement in the Code.

100. The conditions of development relating to noise reduction meet the "encouragement" in Section 10-1405 of the Code to reduce visual and noise impacts of Seminole Raceway on nearby properties, the intent of Future Land Use Element Policy 2.1.1 to buffer residential areas from the visual and noise impacts of adjoining uses, and the general purpose of the Residential Preservation Overlay District to protect existing

residential areas from the impacts of incompatible land use intensities.

101. Although the does not set standards for lighting, the Site and Development Plan approval is conditioned upon lighting which does not directly illuminate surrounding residential properties. During permitting of Seminole Raceway, Leon County will develop a more specific requirement, the precise nature of which is beyond the scope of these proceedings.

102. Section 10-1526 of the Code reads, in pertinent part, as follows:

(e) No development shall be approved unless it has been designed so as to reasonably achieve the following:

(2) The prevention of traffic hazards and congestion which result from narrow or poorly aligned streets and from excessive exit and entrance points along major traffic arteries.

(3) The provision of safe and convenient traffic circulation, both vehicular and pedestrian, and the minimization of traffic impacts on the surrounding area.

103. Seminole Raceway's approval is further conditioned upon considerable improvements to Highway 20 to improve safety and mitigate traffic impacts. Additionally, Leon County has reserved an option to require additional transportation improvements based upon the outcome of a required traffic study to be conducted a year after Seminole Raceway opens.

104. Safety is also addressed by the requirement of off-duty deputies from the Leon County Sheriff's Office to assist in traffic control during hours of operation.

105. The conditions of development relating to traffic are sufficient to satisfy the aspirational "encouragement" standard of Section 10-1405 of the Code, and to meet the requirement in Section 10-1526 that the development be designed to reasonably achieve prevention of traffic hazards and congestion, safe and convenient traffic circulation and the minimization of traffic impacts on surrounding areas.

106. Petitioners are passionate in the belief that their quality of life will inevitably be diminished if Seminole Raceway opens as planned. Yet, Respondents have shown by a preponderance of the evidence that the Site and Development Plan is consistent with applicable policies of the Comprehensive Plan and is a permissible land use under applicable provisions of the Code. It follows that the Wimberlys are entitled as a matter of law to approval for the Site and Development Plan as approved by the DRC, with conditions, on July 17, 2002.

CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the application of Charles and Linda Wimberly for approval for Seminole Raceway is APPROVED with the conditions agreed to in the site plan and development plan.

DONE AND ORDERED this 4th day of March, 2003, in
Tallahassee, Leon County, Florida.

FLORENCE SNYDER RIVAS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 4th day of March, 2003.

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 10-1485, Leon County Code of Laws. Review proceedings are governed by the Florida Rules of Civil Procedure. Such proceedings are commenced by filing a petition for writ of certiorari with the clerk to the circuit court not later than 30 days after the decision of the Administrative Law Judge is filed with the clerk of the Leon County Board of County Commissioners.