IN THE SUPREME COURT
OF FLORIDA

CASE NO. 82,038

MONTICELLO DRUG COMPANY and
O'CONNOR DEVELOPMENT CORPORATION,

Petitioners,

vs.

LEON COUNTY,

Respondent.
_____/

RESPONDENT'S BRIEF ON JURISDICTION

WITH APPENDIX

DAVID LA CROIX, ESQ.
FL BAR NO. 0156740
Post Office Box 293
Tallahassee, Florida 32302
(904) 561-1229

ATTORNEY FOR RESPONDENT

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STATEMENT OF THE CASE

The Petitioner's Statement of the Case is accepted, except for its characterization of the District Court opinion. The Respondent also notes that, although the case is styled as having two Petitioners, only one of them actually filed a petition, as represented in the Petitioner's Statement of the Case. (See Appendix at A: 1-3)

STATEMENT OF THE FACTS

The Petitioner's Statement of the Facts is accepted with the following corrections and additions:

As outlined in the extensive statement of facts contained in the Respondent's Petition for Writ of Certiorari to the First District Court of Appeals (A: 4-70), the Petitioner and other owners who had applied for the rezoning did not "withdraw the request to rezone 10 acres of the property" as represented by the Petitioner.

The original request was to expand the land use plan map General Business designation so as to include all of the applicants' parcels and to rezone the entire property to the Limited Use zoning district. The Limited Use zoning district in the Leon County Zoning Ordinance permits an applicant to propose a rezoning to any other district but with self-imposed use limitations or site plan limitations, or both. (A: 71-2) The applicants' request, made at the public hearing before the Respondent, after two different applications had been advertised

and considered by the Planning Commission, was to make further changes to the site plan and permitted uses on different portions of the property, but this further revised application still included the entire 28 acres.

The Respondent did not file a motion to dismiss after this Court decided Leon County v. Parker, 566 So. 2d 1315 (Fla. 1st DCA 1990), as represented by the Petitioner. The Petitioner and five other parties originally filed in the Circuit Court a Complaint in two counts, one styled as a petition for writ of certiorari; the other, as a declaratory judgment action. Each count was supported by identical allegations; the Complaint specifically set out the motions of the Planning Commission and the Respondent and identified the comprehensive plan policies with which the application had been determined to be inconsistent; and the Complaint raised no issue except the plaintiffs' substantive disagreement with the Respondent's determination. On November 16, 1989, an Amended Complaint was filed by plaintiffs, which was essentially the same as the original Complaint but which substituted one party for four of the original plaintiffs.

On December 11, 1989, the Respondent filed a motion to dismiss, on grounds which included that the plaintiffs had not complied with the condition precedent to their exclusive remedy, a statutory action under Florida Statutes, Section 163.3215.

Thereafter, the plaintiffs filed Second and Third Amended Complaints, which merely reorganized and expanded upon the plaintiffs' original allegations relating to their disagreement

with the Respondent on the substantive issue of comprehensive plan inconsistency. Since the Circuit Court had denied the Respondent's motion to dismiss the First Amended Complaint, the Respondent filed answers and defenses to the subsequent amended complaints, including those raised in its motion to dismiss, and on August 15, 1990, it filed a notice of intent to rely on additional authority, including this Court's August 2, 1990 decision in Leon County v. Parker, supra.

After the Parker decision, on January 21, 1991, the plaintiffs filed their fourth amended complaint, titled Restated Complaint. In this Restated Complaint, the plaintiffs argued, for the first time, that they had been denied procedural due process because the Respondent would not accept their attempted last-minute revised application and remand it to the Planning Commission for public hearing and recommendation and because the Board did not make findings or specify any reason for its denial of the rezoning request.

After the Respondent again filed its answer and defenses, the Court Order entered on May 2, 1991 (A: 73-5): (A) specifically found that the plaintiffs' rezoning application was denied by the Respondent based on inconsistency with the Leon County Comprehensive Plan; (B) held that the denial of a rezoning application was a "development order" under Chapter 163, Florida Statutes; (C) held that the Respondent's decision as to inconsistency as to any development order is reviewable only pursuant to the statutory remedy provided in Fla. Stat., §163.3215, and that

the statutory cause of action required satisfaction of a condition precedent set out in the statute within thirty days after action is taken on the development order; and (D) specifically found that the plaintiffs had failed to satisfy the statutory condition precedent so as to be able to bring an action under Fla. Stat., §163.3215.

The Court went on to hold, however, that the plaintiffs would be deprived of due process if the thirty-day time period for complying with the statutory condition precedent began to run before the Respondent specified the reasons for the comprehensive plan inconsistency determination and notified the plaintiffs of such reasons. The Court then remanded the cause to the Respondent to set forth specifically the reasons for its comprehensive plan inconsistency determination and provide written notice to the plaintiffs of such reasons. On July 19, 1991, the Respondent filed with the Court its response to the remand order, respectfully declining to reconsider the rezoning application. (A: 76-119) In the Response, the Respondent pointed out to the Court that the record before the Court contained an 18-page professional planning staff analysis of the rezoning application, reviewing it against each element and policy of the County's Comprehensive Plan and concluding that the rezoning was inconsistent with specific plan policies; that the plaintiffs were present at the Planning Commission meeting at which this analysis was extensively discussed and at which the Planning Commission adopted a motion to recommend denial of the application because the rezoning included a larger area for commercial rezoning than shown on the comprehensive plan

land use map and because the rezoning was inconsistent with the comprehensive plan based on the staff analysis; that the specific comprehensive plan policies with which the rezoning was determined to be inconsistent were also set out in the staff and Planning Commission reports for the Respondent's public hearing on the rezoning, at which hearing the plaintiffs and their counsel were also present; and that the Respondent's specific motion which was approved was to adopt the Planning Commission's recommendation and deny the rezoning.

The Respondent's response to the remand order also pointed out that the plaintiffs had never been in doubt as to the specific comprehensive plan policies with which the requested rezoning was determined by the staff analysis to be inconsistent, in that they argued those specific policies at the Respondent's public hearing and had specifically identified them as the basis for the inconsistency determination in the original complaint and every amended complaint they filed in this action. This was the same staff inconsistency analysis the Planning Commission incorporated in its recommendation, which the Respondent specifically adopted.

SUMMARY OF ARGUMENT

The alleged conflict is with a statement which was dictum and not necessary to the determination of this cause. The District Court reversed because the Petitioner had failed to comply with a specific statutory condition precedent to an exclusive statutory action available to challenge the comprehensive plan inconsistency determination made as to the Petitioner's rezoning application, and because the statute specifically provides that it applies to decisions on rezonings, without regard to whether they are characterized as legislative actions or quasi-judicial ones. On that issue there is no conflict.

The Petitioner's claimed denial of due process, and its claimed right to file a petition for writ of certiorari based on a denial of due process in a quasi-judicial proceeding, were not raised in a petition for writ of certiorari within thirty days after the challenged decision, which is a jurisdictional requirement for certiorari. This issue was raised for the first time in an amended complaint filed sixteen months after the rezoning denial. Furthermore, the record shows clearly no denial of due process in the context of a rezoning, regardless of whether it is labeled as a legislative decision or a quasi-judicial one.

ARGUMENT

THE ALLEGED CONFLICT WITH SNYDER AND LEE COUNTY IS BASED ON DICTUM NOT NECESSARY TO THE DECISION IN THIS CASE.

In its opinion, the District Court did specifically disagree with and decline to follow Snyder v. Brevard County, 595 So. 2d 65 (Fla. 5th DCA 1991), jurisdiction accepted 605 So. 2d 1262 (Fla. 1992), and followed a long line of earlier decisions of its own and of this Court holding that the zoning and rezoning of property are legislative functions. This statement obviously also conflicts with Lee County v. Sunbelt Equities II, L.P., 18 F.L.W. 1260 (Fla. 2d DCA, May 14, 1993). This statement was, however, dictum and was not necessary to the District Court's decision in this case. Therefore, there is no direct conflict, and acceptance of jurisdiction by the Court in this case would not change the result.

The District Court in this case held that Florida Statutes, Section 163.3215, specifically provided, by its literal terms, an exclusive remedy for an adversely affected party, including a denied applicant, to challenge the comprehensive plan consistency of any development order; it held that Florida Statutes, Chapter 163, specifically included the approval or denial of a rezoning application in the definition of "development order;" it followed a long line of cases requiring strict compliance with conditions precedent to a statutory cause of action; and it concluded that the Petitioner had not complied with a required statutory condition precedent. The Court did not need to address at all the argument of the Petitioner that the rezoning denial was a quasi-judicial determination.

The Petitioner's argument that it was denied due process was not raised by the Petitioner until after the District Court decided Leon County v. Parker, 566 So. 2d 1315 (Fla. 1st DCA 1990), which made the Petitioner aware of the statutory condition precedent requirement. Then--not thirty days after the rezoning denial, which is a jurisdictional requirement for a petition for writ of certiorari, but sixteen months after that denial--the Petitioner added for the first time in an amended complaint a claimed denial of due process, alleging that it had not been adequately informed of the specific Comprehensive Plan policies on which its rezoning denial had been based (which were exactly the same policies the Petitioner itself identified and argued both at the public hearing before the Respondent and in the first Complaint filed by the Petitioner). This due process argument was a poor attempt to avoid the statutory condition precedent the Petitioner had failed to comply with, and it was used by the trial court as a basis for ordering the rezoning approved when the Respondent refused to reconsider the rezoning and start the clock running again for compliance with the statutory condition.

Had there been any denial of due process, the appropriate remedy would not have been an ordered approval of a rezoning inconsistent with the Respondent's Comprehensive Plan. The appropriate remedy would have been a final and appealable order, rather than an interlocutory one, requiring a new hearing consistent with the requirements of due process. The trial court would not, however, enter such a final order because the

Respondent's response to the trial court's interlocutory order made it clear there was no denial of due process.

The requirements of due process vary, depending on the circumstances, and the circumstances of this case were that the rezoning applicants were made aware all along, based on the 18-page planning staff analysis which was provided to the applicants and discussed extensively at two public hearings, of the specific comprehensive plan policies at issue. That is due process, regardless of whether the particular function being performed by the Respondent is given the label "legislative" or "quasi-judicial."

The Petitioner's argument as to its attempted last-minute revision is equally specious. The Petitioner cited two opinions in its jurisdictional brief which dealt with partial withdrawals of applications before various agencies; and it now misrepresents, for the first time, its amended-application request as having been one to withdraw its application as to ten acres of its property. The record clearly shows, however, that the application was still to have included, and to have rezoned to the Limited Use District, the entire 28 acres, but with a different site plan and pattern of permitted uses. The Petitioner has never cited a case holding that the due process clause forces a zoning authority to accept and process, advertise, and hold public hearings on successive amended applications, rather than simply require an applicant to withdraw an application, file a new one, and pay a new filing fee to cover the cost of processing, reviewing, and advertising the new proposal.

CONCLUSION

Based upon the authorities cited and the argument made herein, it is respectfully requested that this Court decline to accept jurisdiction of this case because there is no direct conflict, and the only conflict rests on dictum not necessary to the decision in this cause.

DATED this 9th day of August, 1993.

DAVID LA CROIX, ESQ.
Florida Bar No. 0156740
Post Office Box 293
Tallahassee, FL 32302
(904) 561-1229

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. first class mail, postage prepaid, to M. Stephen Turner and David K. Miller, Esq., Broad & Cassel, P.O. Box 11300, Tallahassee, Florida 32302, this 9th day of August, 1993.

David La Croix

IN THE FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

BOARD OF COUNTY COMMISSIONERS
OF LEON COUNTY,

Petitioner,

v.

Case No. 92-946

MONTICELLO DRUG COMPANY and
O'CONNOR DEVELOPMENT CORPORATION,

Respondents.
_____/

MOTION TO DISMISS PROCEEDINGS
AS TO MONTICELLO DRUG COMPANY

COMES NOW RESPONDENT, Monticello Drug Company (now known as The Monticello Companies), and moves the Court to dismiss this case as to it and says:

1. Respondent Monticello settled its disputes with Petitioner Leon County upon approval of a site plan development proposal for Monticello's subject property by the Leon County Commission on May 10, 1993. The approved settlement terms and conditions were incorporated into and made part of a stipulated final judgment in Leon County Circuit Court Case no. 91-972 on May 11, 1993.

2. O'Connor Development Corporation, the other respondent in this case, was not a party to the settlement. O'Connor claims an interest in parcels within the scope of the subject application which were not part of Monticello's property involved in the settlement.

3. Pursuant to the settlement terms, Monticello agreed to stipulate to dismissal of this case and release all claims connected with prior development applications.

4. Respondent Monticello was prepared to stipulate to a motion to dismiss this case as to itself. Monticello understood from the County's attorney in this case that he would immediately prepare and forward a dismissal stipulation for signature and submission to this Court. Monticello waited to receive this proposed submission, and on or about May 17, 1993, reconfirmed that it was forthcoming, but nothing was forwarded.

5. On May 21, 1993, the Court issued its opinion, which was received by Monticello on May 24, 1993.

6. Having settled its disputes with the County, Monticello has no further interest in these proceedings, and should be dismissed as a party from this case consistent with its settlement with the County.

7. In compliance with and in furtherance of the parties' agreed settlement, these proceedings and any future proceedings related to this case should be shown to continue only as to Respondent O'Connor Development Corporation.

Respectfully submitted,

M. Stephen Turner, P.A.
Fla. Bar No. 095691
BROAD & CASSEL
P.O. Drawer 11300
Tallahassee, Florida 32302
(904) 681-6810

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to David La Croix, Esq., Pennington, Wilkinson,, Dunlap, 3375-A Capital Circle, N.E. Tallahassee, Florida 32308, by U.S. mail this 3 day of June 1993.

David L. Miller
Attorney

cc: Mr. Herbert A. Thiele, III
Leon County Attorney

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA, FIRST DISTRICT

CASE NO. _____

BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, Defendant, Petitioner, V. MONTICELLO DRUG COMPANY, and O'CONNOR DEVELOPMENT CORPORATION, Plaintiffs, Respondents.	PETITION FOR WRIT OF CERTIORARI

Petitioner, BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY (hereinafter, "the Board"), hereby petitions this honorable Court for review, by writ of certiorari, of a Judgment of the Circuit Court of the Second Judicial Circuit, dated February 24, 1992, which granted a writ of certiorari and reversed a zoning decision of the Board. A copy of this Judgment Granting Writ of Certiorari is included in Board's Appendix filed herewith. (A: 1-10)

In entering such Judgment, the Circuit Court departed from the essential requirements of law, misapplied the law, and based its decision on erroneous rules of law. Furthermore, such Judgment is not supported by the evidence in the record and is directly contrary to controlling precedent of this Court and of the Supreme Court of Florida consistently holding that zoning and rezoning decisions are legislative determinations. In support thereof, the Board further says:

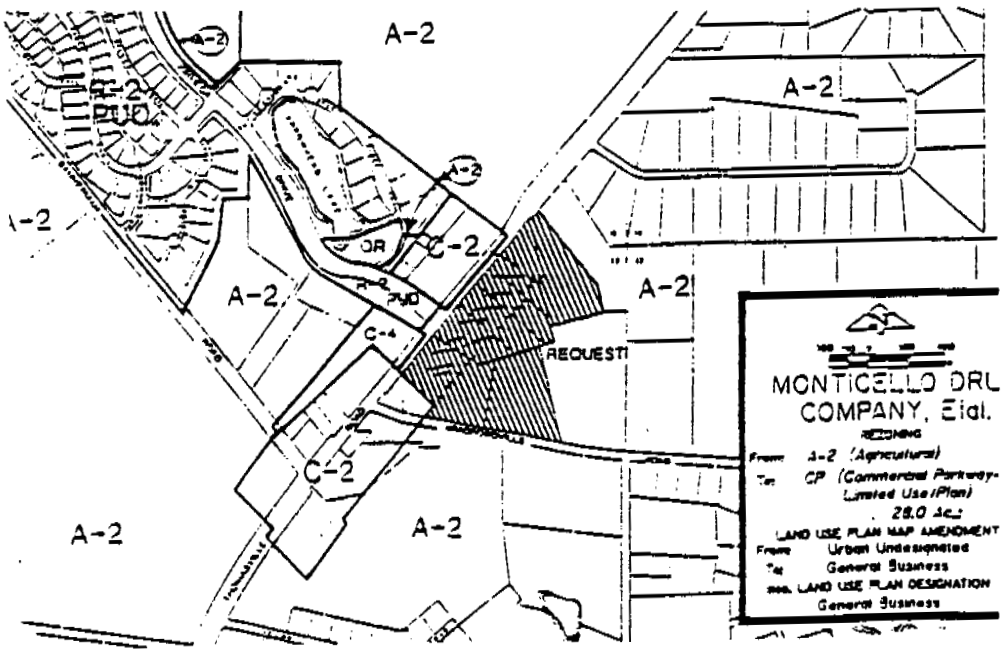
Jurisdiction

1. This Court has jurisdiction of the subject Petition for Writ of Certiorari pursuant to Fla. R. App. P. 9.030(b)(2)(A) and 9.100(a). In accordance with Fla. R. App. P. 9.100(e), an Appendix is filed contemporaneously herewith, and references to such Appendix are made in parentheses by the symbol "A:" followed by the appropriate page number(s).

Lower Court Proceedings and Relevant Facts

2. In 1989, the Respondents and others petitioned Leon County to rezone a parcel of land which included approximately 28 acres. (A: 20)

3. This parcel of land is located in what is known as the "Bradfordville area" and its approximate size and shape are as shown on the following map:

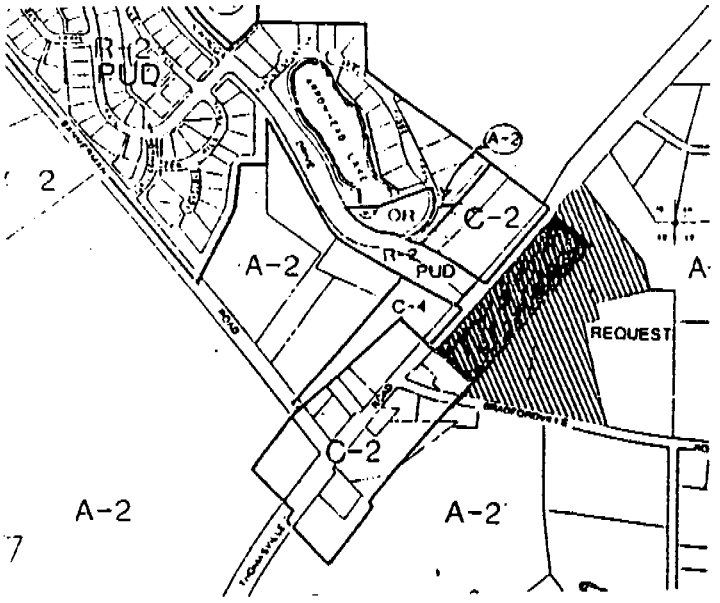


(A: 576)

5

4. The existing zoning of the entire parcel was A-2, Agricultural. (A: 575)

5. The existing land use plan map designation of the parcel was divided, with a portion fronting on Thomasville Road, approximately 40 to 50% of the parcel (A: 581), being designated as General Business and the remainder as Urban Undesignated (A: 581), as shown on the following map:

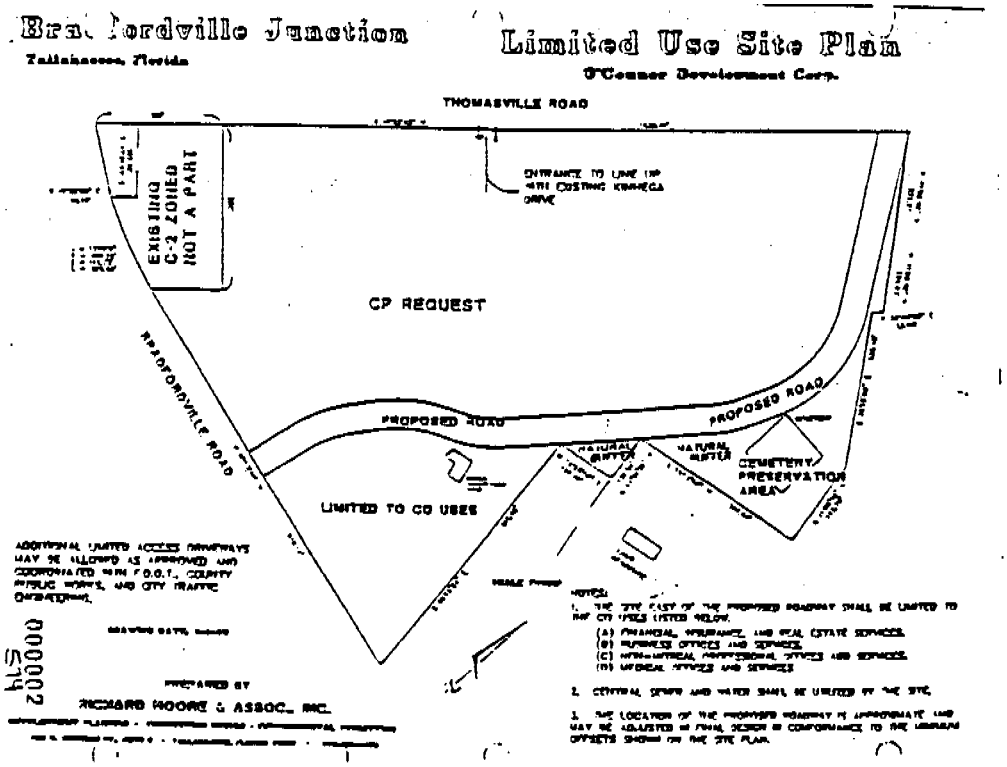


(A: 565)

6. The Respondents' request was to expand the land use plan map General Business designation so as to include all of the Respondents' parcel and to rezone the entire parcel to the Limited Use zoning district. (A: 575)

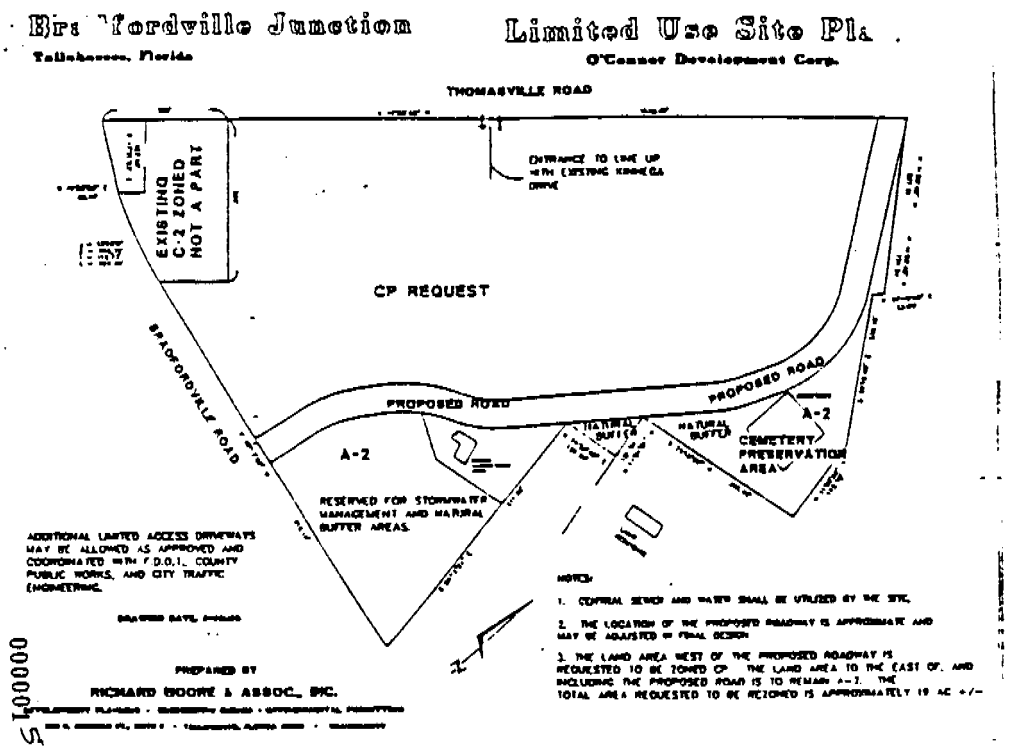
7. The Limited Use zoning district in the Leon County zoning ordinance permits an applicant to propose a rezoning to any other district but with self-imposed use limitations or site plan limitations, or both. See Section 6.26 of the Leon County Zoning Code. (A: 795-6)

8. The Respondents' original application was to rezone to the Limited Use C-2 district, with part of the property restricted to uses permitted in the CO district and with a minimal site plan. (A: 573) This request was modified to Limited Use CP district, with the same part of the land still limited to CO district uses and with a slightly revised site plan:



(A: 574)

9. At the hearing before the Board on this rezoning application, the Respondents attempted to further revise their application to Limited Use CP district and A-2 district, with basically the same site plan. This revised application was essentially the following:



(A: 596)

10. This last revised application (above) was for an expansion of the land use plan map General Business designation (presumably, only to the proposed road shown on the site plan); for a commercial designation of the Commercial Parkway (CP) zoning district on all of the parcel West of the proposed road; for the area East of the proposed road to remain zoned A-2 but to be used for buffer areas and stormwater management to support the commercial development; and for development in accordance with the conditions shown on the site plan. (A: 596)

11. While the Leon County Planning Commission reviewed the first revised application (A: 575), as required by ordinance and state statute, it had not reviewed the revision submitted to the Board. (A: 255-6, 268)

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12. After its public hearing on the original application (A: 679-81) and its review of the first revised application, the Leon County Planning Commission voted unanimously to recommend denial of the application. (A: 683-4, 686, 688) This recommendation was based on the rezoning being inconsistent with the Leon County Comprehensive Plan in accordance with a planning department staff analysis and the fact that the area requested to be rezoned commercial was larger than the general business area designated on the comprehensive plan land use map. (A: 686)

13. The staff analysis upon which the Planning Commission recommendation was based was a document prepared by professional staff planners analyzing the proposed development against every element and policy of the Leon County Comprehensive Plan, with the ultimate staff conclusion being that the rezoning was not consistent with the Plan. (A: 736-54)

14. The Board, after public hearing on September 26, 1989, voted to accept the recommendation of the Planning Commission and deny the request. (A: 637-8)

15. The record provided the Circuit Court in appendices filed by the parties disclosed the following:

A. The Respondents acquired their interest in the property knowing it was zoned A-2 and without protecting themselves by entering into a conditional contract and first applying for commercial rezoning. (A: 148)

B. The Respondents voluntarily refrained from

applying for rezoning while the area their property was in was under study by the Planning Commission (A: 148), no doubt hoping the results of the study would be more favorable to a commercial designation.

C. The results of the Planning Commission study were transmitted to the Board on August 8, 1990, at which time the Board chose to take no action on the Planning Commission's recommendations. (A: 690)

D. The Planning Commission's recommendations included: (a) the possible relocation of the Bradfordville Road intersection with Thomasville Road approximately 650 feet to the South (away from the Respondents' property) (A: 700-4); (b) total on-site retention of all stormwater for non-residential development or use of a drainage plan which increases neither rate nor volume of runoff (A: 705); and (c) preservation of the rural character of the Bradfordville area by such things as natural buffers for commercial uses of 150 feet in depth along Thomasville Road, of 150 feet in depth adjacent to all low-density residential developments, and of 25 to 50 feet in depth along Bradfordville Road, with such buffers not to be used for holding ponds or stormwater management. (A: 709)

E. In spite of the Respondents' allegation that their proposed rezoning complied with the Planning Commission's Bradfordville area recommendations (A: 13-

14, 148), none of the above-described features was included in any version of the proposed development. In fact, the proposal was to increase runoff volume into Lake Arrowhead (A: 621-4), and the only natural buffer areas proposed were to be used for stormwater retention, with no buffers at all for some low-density residential areas or for Thomasville and Bradfordville Roads. (A: 574)

F. While the proposed development included the use of central sewer facilities, in accordance with comprehensive plan requirements, the area could not presently be served since it is not within any approved sewer franchise area. (A: 582)

16. On October 26, 1989, one of the Respondents and four other parties filed in the Circuit Court a Complaint in two Counts, one styled as a petition for writ of certiorari; the other, as a declaratory judgment action. Each Count was supported by identical allegations; the Complaint specifically set out the motions of the Planning Commission and the Board and identified the comprehensive plan policies with which the application had been determined to be inconsistent; and the Complaint raised no issue except the Respondents' substantive disagreement with the Board's determination. (A: 11-63)

17. On November 16, 1989, an Amended Complaint was filed by Respondents, which was essentially the same as the original Complaint but which substituted one of the Respondents for

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four of the original plaintiffs. (A: 67-75)

18. On December 11, 1989, the Board filed a motion to dismiss, on grounds which included that the Amended Complaint did not identify any quasi-judicial act reviewable by petition for writ of certiorari; that the Respondents had not complied with the condition precedent to their exclusive remedy, a statutory action under Florida Statutes, Section 163.3215; and that the Board was not the proper defendant. (A: 76-104)

19. Thereafter, on February 1, 1990, the Respondents filed a Second Amended Complaint, which merely reorganized and expanded upon the Respondents' original allegations relating to their disagreement with the Board on the substantive issue of comprehensive plan inconsistency and, in anticipation of the pending adoption by Leon County of a new comprehensive plan, argued that whether their rezoning request is approvable should be controlled by applicable law at the time their request was denied. (A: 105-16)

20. After the Circuit Court's denial of the Board's motion to dismiss, the Board filed its answer and defenses on April 20, 1990. (A: 118-44)

21. Following a status conference, the Circuit Court permitted the Respondents to again amend their pleadings, and a Third Amended Complaint was filed on July 16, 1990. (A: 147-76) Again, no new grounds or cause of action was pleaded, and the Respondents' allegations were merely expanded upon, particularly in regard to their argument that the new Leon

County Comprehensive Plan adopted July 15, 1990, should not be applicable to their property or to the determination of this action. In addition, since the Board had repeatedly raised the fact that it was the wrong defendant, pursuant to Florida Statutes, Section 125.15, the Respondents now simply changed the style of the case in its Third Amended Complaint, naming Leon County as the defendant. (A: 147) However, the Respondents never filed any motion to add or substitute a party, never obtained any Court order authorizing the addition or substitution of a party, and never served Leon County as a defendant.

22. On August 2, 1990, the Board again filed an answer and defenses (A: 177-214); and on August 15, 1990, it filed a notice of intent to rely on additional authority, including this Court's August 2, 1990 decision in Leon County v. Parker, 566 So.2d 1315 (Fla. 1st DCA 1990). (A: 215-24)

23. On December 29, 1990, the Respondents filed a motion for leave to further amend their complaint, which was granted by the Court on January 11, 1991. (A: 243-54, 257-8)

24. On January 21, 1991, the Respondents filed their fourth amended complaint, titled Restated Complaint, raising new issues for the first time. In this Restated Complaint, the Respondents argued that the mandatory condition precedent of Fla. Stat., §163.3215, did not apply to them, or that they had substantially complied with it, or that it was simply an available administrative remedy which would have been futile.

The Respondents now also raised and argued, for the first time, that they had been denied procedural due process because the Board would not accept their attempted last-minute revised application and remand it to the Planning Commission for further public hearing and recommendation and because the Board did not make findings or specify any reason for its denial of the rezoning request. (A: 259-78)

25. After the Board again filed its answer and defenses (A: 337-403), and a hearing before the Circuit Court, the Court entered an Order on May 2, 1991, in which it:

A. Specifically found that the Respondents' rezoning application was denied by the Board based on inconsistency with the Leon County Comprehensive Plan (A: 416);

B. Held that the denial of a rezoning application was a "development order" under Chapter 163, Florida Statutes (A: 416-7);

C. Held that the Board's decision as to inconsistency as to any development order is reviewable only pursuant to the statutory remedy provided in Fla. Stat., §163.3215, and that the statutory cause of action required satisfaction of a condition precedent set out in the statute within thirty days after action is taken on the development order (A: 417); and

D. Specifically found that the Respondents had failed to satisfy the statutory condition precedent so

as to be able to bring an action under Fla. Stat., §163.3215. (A: 417)

The Court went on to hold, however, that, in the opinion of the Court, the Respondents would be deprived of due process if the thirty-day time period for complying with the statutory condition precedent began to run before the Board specified the reasons for the comprehensive plan inconsistency determination and notified the Respondents of such reasons. (A: 417)

26. In its May 2, 1991 Order, the Court then remanded the cause to the Board for the Board to set forth specifically the reasons for its comprehensive plan inconsistency determination and provide written notice to the Respondents of such reasons. (A: 417-18) The Court further held that, upon such notice being provided to the Respondents, they would have thirty days thereafter in which to comply with the statutory condition precedent. (A: 418)

27. On July 19, 1991, the Board filed with the Court its response to the remand order, respectfully declining to reconsider the Respondents' rezoning application. (A: 422-65) In the Response, the Board pointed out to the Court that the record before the Court contained an 18-page professional planning staff analysis of the rezoning application, reviewing it against each element and policy of the comprehensive plan and concluding that the rezoning was inconsistent with specific plan policies (A: 427-45); that the Respondents were

present at the Planning Commission meeting at which this analysis was extensively discussed and at which the Planning Commission adopted a motion to recommend denial of the application because the rezoning included a larger area for commercial rezoning than shown on the comprehensive plan land use map and because the rezoning was inconsistent with the comprehensive plan based on the staff analysis (A: 425, 450, 452); that the specific comprehensive plan policies with which the rezoning was determined to be inconsistent were also set out in the staff and Planning Commission reports for the Board's public hearing on the rezoning, at which hearing the Respondents and their counsel were also present (A: 425, 456-7); and that the Board's specific motion which was approved was to adopt the Planning Commission's recommendation and deny the rezoning. (A: 461)

28. The Board's response to the remand order also pointed out that the Respondents have never been in doubt as to the specific comprehensive plan policies with which the requested rezoning was determined by the staff analysis to be inconsistent, in that they argued those specific policies at the Board's public hearing and have specifically identified them as the basis for the inconsistency determination in the original complaint and every amended complaint they have filed in this action. (A: 425, 463-5) This was the same staff inconsistency analysis the Planning Commission incorporated in its recommendation, which the Board adopted.

29. Upon consideration of a motion by the Respondents to determine the adequacy of the Board's response to the remand order, on July 31, 1991 (A: 466-70), the Court viewed the Board's response as its compliance and permitted the Respondents to file any pleadings they deemed appropriate within twenty days thereafter. (A: 471)

30. The Respondents then attempted to treat the Board's response to the remand order as a "development order" under Fla. Stat., Ch. 163, and, on August 12, 1991, filed with the Board a "Verified Complaint" addressed to the Board's response. (A: 475-89) This "Verified Complaint" was not verified, however; it's execution was merely acknowledged by the signer, and that not even under oath. (A: 488)

31. No pleadings were filed by the Respondents within the twenty-day period provided for in the Court's July 31, 1991 Order; and the Board moved on August 22, 1991, to have the cause determined on the then-existing pleadings. (A: 472-4)

32. Without leave of Court, the Respondents filed a Fifth Amended Complaint, entitled "Complaint After Remand," on August 26, 1991 (A: 490-512); and the Board filed a motion to strike this complaint on August 28, 1991. (A: 513-6)

33. On September 25, 1991, the Respondents filed in the Court an "Amended Verification of Verified Complaint," dated that same day. (A: 520-1)

34. On October 8, 1991, the Court denied the Board's

motion to strike the Respondents' Complaint After Remand and gave the Respondents ten days thereafter in which to "cure the deficiency" in the notarization of the August 12, 1991 Verified Complaint and to file in the Court an Amended Complaint on Remand. (A: 522)

35. The Respondents took no further action with regard to their August 12, 1991 Verified Complaint and filed no further pleading in the Circuit Court.

36. On October 18, 1991, the Board filed an answer and defenses to the Fifth Amended Complaint (entitled "Complaint After Remand"), raising all of the same defenses it had consistently raised throughout this action and that the Complaint After Remand stated no cause of action. (A: 523-35) The Complaint After Remand in fact identified no plaintiff or defendant; identified no basis for the Court's jurisdiction; did not allege any compliance with the condition precedent of §163.3215, except for the deficient August 12 document; did not allege any denial of due process; did allege that the "Board's adopted findings and reasons" for denying the rezoning were not legally sufficient; simply continued to disagree with the Board's interpretation and application of various comprehensive plan policies; and requested a writ of certiorari reversing the Board's decision.

37. After oral argument, the Court entered a Final Judgment Granting Writ of Certiorari on February 24, 1992, in which it:

A. Held that the Board's action in denying the rezoning request was quasi-judicial in nature and reviewable by petition for writ of certiorari (A: 5-6);

B. Reversed the determination set out in its May 2, 1991 Order and found that there had been no "development order" by the Board (A: 6);

C. Held that, even if there had been a development order as to the rezoning application, the unverified "verified complaint" filed with the Board more than twenty-two months after the rezoning denial satisfied the condition precedent set out in Fla. Stat., §163.3215 (A: 6);

D. Held that the Board had denied the Respondents due process of law by failing to make any specific findings to support the denial of the rezoning application (A: 7);

E. Held that the Board had denied the Respondents due process of law by failing to consider the last-minute amended application filed by the Respondents at the advertised public hearing (A: 7-8); and

F. Held that the Board had unreasonably denied and unlawfully delayed the Respondents' rezoning application and that the Respondents' are entitled to develop their land in according to the comprehensive plan and regulations in effect when the application was denied. (A: 8)

38. In its Final Judgment, the Circuit Court quashed the Board's denial of the rezoning application and itself granted the amended rezoning application which the Respondents attempted to file at the public hearing on their previously-amended request. The Circuit Court further ordered the Board to treat the Respondents' lands as if they had been so rezoned on September 26, 1989, and to extend to the Respondents "all development rights with respect thereto" as if the application had been approved on September 26, 1989. (A: 9)

39. The Circuit Court did not, in its Final Judgment, find that the Respondents' requested rezoning was consistent with the former Leon County Comprehensive Plan in effect in September of 1989. However, the Court made certain factual findings which are supportive of the Respondents' interpretation of the comprehensive plan that the rezoning was consistent and granted the rezoning. (A: 1-4) While the Board believes that such findings are erroneous and that its determination of comprehensive plan inconsistency is supported by the record, by the specific wording of plan policies and limitations, and by its prior interpretations and applications of the same plan provisions to other development order requests, the substantive issue of comprehensive plan inconsistency will not be addressed by the Board in this Petition. This is so because the Board believes these issues were not properly before the Circuit Court for review and were not properly tried. Furthermore, the Board wishes to focus

on the broader and more significant issues of the nature of its exercise of the police power in zoning and rezoning; the proper method of reviewing plan consistency determinations under Fla. Stat., §163.3215; the nature of due process in the context of rezoning requests; and the authority of the courts to rezone and the effects of a judicial rezoning in the absence of any vested property right. As to the substantive issue of comprehensive plan inconsistency, suffice it to say that the Board's determination came before the Circuit Court cloaked with a presumption of correctness, and there is nothing in the record sufficient to overcome such presumption.

Argument

The Judgment of the Circuit Court does not comport with the essential requirements of law for the following reasons:

A. The Circuit Court has held that the decision of the Board, on an application for rezoning, was a quasi-judicial determination reviewable by petition for writ of certiorari, contrary to a consistent body of controlling precedent by this Court and the Florida Supreme Court.

B. The Circuit Court has held that the Board denied the Respondents due process by failing to specifically advise the Respondents of the reasons for denying the Respondents' rezoning application, which decision is not supported by the evidence and is contrary to controlling law regarding zoning decisions.

C. The Circuit Court, while holding that the Respon-

dents' amended rezoning application was denied because of inconsistency with the controlling comprehensive plan, has nevertheless ordered the Board to consider such inconsistent rezoning as having been approved despite the Respondents' failure to comply with the condition precedent of Florida Statutes, Section 163.3215, so as to be entitled to challenge such comprehensive plan inconsistency determination, contrary to statute and case law.

D. The Circuit Court failed to acknowledge controlling precedent that the law in effect at the time a decision is rendered is what must be applied by the Court and that a new Leon County Comprehensive Plan, adopted in good faith pursuant to State mandate during the pendency of this litigation, thereafter controlled the use and development of the land involved herein and rendered this controversy moot.

E. The Circuit Court has ordered the Board to approve future development orders for use and development of the Respondents' land without regard to whether or not such development orders are consistent with the applicable Leon County Comprehensive Plan, contrary to controlling statute and contrary to case law that a property owner acquires no vested right in the use and development of land absent proof of all elements of an equitable estoppel; and the Circuit Court has, in effect, determined that there is such an equitable estoppel in this matter without having tried that issue and without having permitted the Board to introduce evidence on such

issue.

F. The Circuit Court has entered Judgment granting a petition for writ of certiorari on grounds which were not raised in the original complaint filed by Respondents and which were not raised in an amended pleading until long after the jurisdictional time period for filing a petition for writ of certiorari.

G. The Circuit Court has entered Judgment against a party (Leon County) which--while being the only proper party to be the defendant in the lower court, pursuant to statute --was not named as a defendant in the original complaint filed herein, was not properly added or substituted as a defendant by motion and order of the Circuit Court, and was never served. The Petitioner, BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, is the only party ever properly named as a defendant and the only party ever served, but is the wrong defendant.

Legislative Determination

The Circuit Court based its Judgment on a determination that the decision of the Board on a rezoning application was quasi-judicial in nature and, thus, reviewable by petition for writ of certiorari; and this determination was, in turn, based on Snyder v. Board of County Commissioners of Brevard County, 16 F.L.W. 3057 (Fla. 5th DCA December 12, 1991), and Hirt v. Polk County Board of County Commissioners, 578 So.2d 415 (Fla. 2d DCA 1991).

There is a confusing body of case law opinions by the

Fifth and Second District Courts of Appeal which have gradually established a right, within those districts, to a review of rezoning decisions by petition for writ of certiorari. See, e.g., La Croix, The Applicability of Certiorari Review to Decisions on Rezoning, 65 Fla.B.J. 105 (June 1991). A good part of this confusion has been generated by decisions of the Third District Court of Appeal relating to Dade County rezonings, which are reviewable by petition for writ of certiorari because of a special act applying only to Dade County. See La Croix, supra at 105, fn8. In the recent Snyder opinion, the Fifth District Court decided to set out the reasoning and support for its own position, and in doing so it recognized that its position was not based on controlling Florida precedent.

In Snyder, the Fifth District Court adopted the rationale and reasoning of an Oregon case opinion in holding, at 16 F.L.W. 3061-2, that:

> . . . Initial zoning enactments and comprehensive rezonings or rezonings affecting a large portion of the public are legislative in character. However, rezoning actions which have an impact on a limited number of persons or property owners, on identifiable parties and interests, where the decision is contingent on a fact or facts arrived at from distinct alternatives presented at a hearing, and where the decision can be functionally viewed as policy application, rather than policy setting, are in the nature of executive or judicial or quasi-judicial action but are definitely not legislative in character. (Footnote omitted.)

This decision is directly contrary to the following controlling precedents of the Florida Supreme Court and to the following decisions of this Court, which hold that zoning and

rezoning decisions are legislative in character and which should have been followed by the Circuit Court in this case: Gulf & Eastern Development Corp. v. City of Fort Lauderdale, 354 So.2d 57 (Fla. 1978); Josephson v. Autrey, 96 So.2d 784 (Fla. 1957); County of Brevard v. Woodham, 223 So.2d 344 (Fla. 4th DCA 1969), cert. den. 229 So.2d 872 (Fla. 1969); Graham v. Talton, 192 So.2d 324 (Fla. 1st DCA 1966); and Harris v. Goff, 151 So.2d 642 (Fla. 1st DCA 1963). As legislative determinations, zoning decisions are not subject to review on petition for writ of certiorari. Thompson v. City of Miami, 167 So.2d 841 (Fla. 1964); City of Tallahassee v. Poole, 294 So.2d 52 (Fla. 1st DCA 1974); Watson v. Mayflower Property, Inc., 223 So.2d 368 (Fla. 4th DCA 1969), cert. disch. 233 So.2d 390 (Fla. 1970); Graham v. Talton, supra; and Harris v. Goff, supra.

In Snyder, the Fifth District Court attempted to distinguish prior decisions of the Florida Supreme Court, but only dealt with two of them, Schauer v. City of Miami Beach, 112 So.2d 838 (Fla. 1959), and Florida Land Co. v. City of Winter Springs, 427 So.2d 170 (Fla. 1983). By strained interpretations, the Snyder court found that these two cases only held that rezonings were legislative in character if they involved "a change in general policy of widespread applicability affecting a large area of the community" (Schauer) or "the validity and applicability of a legislatively-enacted comprehensive zoning plan" (Florida Land Co.). The opinions them-

selves are not so limited, however; in fact, the Florida Land Co. case involved nothing more than a common, garden-variety rezoning of a few parcels, and the opinion only held that the rezoning--like all other legislative decisions--was subject to petition and referendum provisions of the city charter.

Gulf & Eastern Development Corp. v. City of Fort Lauderdale, supra, dealt with a single parcel of land, as did this Court's decisions in Graham v. Talton, supra, and Harris v. Goff, supra. There are also a host of opinions from other District Courts which, prior to the last few years, also consistently held that zoning and rezoning decisions--even relating to a single parcel--were legislative in character and not reviewable by petition for writ of certiorari. E.g., County of Pasco v. J. Dico, Inc., 343 So.2d 83 (Fla. 2d DCA 1977); Norman v. Pinellas County, 250 So.2d 279 (Fla. 2d DCA 1971); Town of Belleair v. Moran, 244 So.2d 532 (Fla. 2d DCA 1971); and Hillsborough County v. Twin Lakes Mobile Homes Village, Inc., 153 So.2d 64 (Fla. 2d DCA 1963).

What has caused the Second and Fifth District Courts of Appeal to take it upon themselves to now start characterizing rezoning decisions as quasi-judicial is not known, but it may well be the ongoing process of adoption of new comprehensive plans by all of Florida's cities and counties pursuant to the Growth Management Act of 1985. Because these new comprehensive plans are now supposed to provide much greater guidance and stability with regard to zoning decisions, and because all

local government development orders are now supposed to be consistent with the applicable comprehensive plan, some courts have begun to characterize a new comprehensive plan as a kind of "constitution" for all zoning and development. E.g., Machado v. Musgrove, 519 So.2d 629, 632 (Fla. 3d DCA 1988). Furthermore, the Legislature established a statutory requirement that every local government development order (which includes, by definition, an approval or denial of a rezoning application) be consistent with the local government's comprehensive plan, and, in the Growth Management Act of 1985, it created an exclusive statutory remedy for the "review" of all development orders on the basis of claimed comprehensive plan inconsistency.

It may now be felt by some judges that a new comprehensive plan establishes sufficiently explicit and controlling standards and guidelines for rezoning determinations that there is no more legislative discretion at the rezoning stage, only at the comprehensive planning stage. If that were true, and if the comprehensive plan standards were so explicit that one--and only one--zoning district category was appropriate for each parcel of land, a decision on a rezoning application might indeed take on the characteristics of a quasi-judicial determination. However, with regard to most adopted comprehensive plans--and certainly with regard to comprehensive plans adopted prior to the Growth Management Act of 1985, such as the Leon County Comprehensive Plan applicable when the

Respondents' rezoning application was denied--the standards are not that explicit. Under most comprehensive plans, more than one zoning district may be consistent with the comprehensive plan as to any parcel of land. In such cases, there is still legislative discretion to impose any consistent zoning district category.

Nothing in the Growth Management Act of 1985, codified in Chapter 163, Florida Statutes, deprives cities and counties of the legislative authority in regard to the exercise of the police power in the form of zoning regulations, although it does put some limits on the exercise of that power. Within the constraints of each city's and county's comprehensive plan, local government legislative bodies may still exercise their legislative discretion. E.g., City of Jacksonville Beach v. Grubbs, 461 So.2d 160, 161 (Fla. 1st DCA 1985). There is no good reason for the judicial branch of government to now change the procedure for review, standard of review, or judicial deference accorded legislative determinations.

There is not much Florida law concerning what is a quasi-judicial determination as opposed to a legislative one. The most often-cited case on the subject appears to be DeGroot v. Sheffield, 95 So.2d 912, 915 (Fla. 1957), in which a quasi-judicial determination was characterized as one for which "notice and hearing are required and the judgment of the board is contingent on the showing made at the hearing . . . ." The quoted portion of DeGroot v. Sheffield is occasionally relied

upon erroneously in other opinions attempting to distinguish a quasi-judicial determination from a legislative one. The opinion, however, literally provides that the above-quoted characteristics are what distinguish a quasi-judicial decision from an executive decision. It has nothing to do with the distinctions between both of those types of decisions and a legislative one. What constitutes a legislative decision is another issue entirely, but a legislative decision does not become quasi-judicial merely because a legislative body gives public notice of an issue and holds a public hearing on the matter. Board of County Commissioners of Hillsborough County v. Casa Development Ltd. II, 332 So.2d 651, 654 (Fla. 2d DCA 1976). By statute, every city and county is required to publish notice and hold public hearings to adopt every non-emergency ordinance. If notice and hearing were the only requirements, every non-emergency exercise of the police power by a city or county would be considered quasi-judicial rather than legislative!

As concluded, after an examination of applicable case law, by the authors of Chapter 22, Florida Civil Practice After Trial (CLE 1966 ed.), certiorari is only available to review an action of an agency if that action "constitutes an exercise of judicial or quasi-judicial power preceded by notice and hearing, judicial in nature . . . ." (Emphasis added.) Id. at 1266. In one of the reviewed cases, Teston v. City of Tampa, 143 So.2d 473, 476 (Fla. 1962), the court

stated:

> . . . In the absence of specific valid statutory appellate procedures to review the particular order, it becomes necessary to ascertain whether the order is quasi-judicial or quasi-legislative. If the order is quasi-judicial, that is, if it has been entered pursuant to a statutory notice and hearing involving quasi-judicial determinations, then it is subject to review by certiorari. Otherwise, remedy by equity suit and injunction is appropriate. . . . (Citations omitted; emphasis added.)

As stated in 10 Fla.Jur.2d Constitutional Law §141, citing 16 Am.Jur.2d Constitutional Law §227:

> The legislative power has been described generally as being the power to make, alter, and repeal laws. The essential of the legislative function is the determination of the legislative policy and its formulation and promulgation as a defined and binding rule of conduct.

The determination of what particular rules apply to the use and development of each parcel of land within a city or county certainly seems to be a legislative function; and changing the zoning on any parcel of land is much more than changing a designation on a map--that change carries with it a completely different set of rules to be applied to the land and its use and development.

The distinction between the legislative function and the judicial function is that the "legislative function is to prescribe rules for the control of others as distinguished from the judicial function, which is to follow rules made by itself or some superior authority." (Citation omitted.) 10 Fla.Jur.2d Constitutional Law §144. In addition:

> The lawmaking function of the legislature involves the exercise of discretion as to the contents of a statute, its policy, or what it shall be. Public policy

> or what constitutes public policy is a matter of legislative determination. The legislature establishes the public policy of the state unless restrained by organic law.
>
> The power and responsibility of devising remedies for public evils as they develop in a changing civilization belong to the legislative rather than the judicial branch. Accordingly, the legislature has a wide discretion in the exercise of its proper powers in the interest of the public welfare, and the courts ordinarily will not interfere with its discretion except in cases where the legislature seeks to regulate by statute the provisions of organic law. A similar rule applies to municipal legislative bodies. . . . (Citations omitted.)

Id. §147. Furthermore, "the right to pass a statute or ordinance" (that is, the legislative function) "includes the power to repeal or modify it . . . ." Id. §149 and authorities cited therein. All of these general statements and considerations seem to support the long-established judicial interpretation that both adopting a zoning ordinance and amending a zoning ordinance to change the rules that apply to certain lands are legislative functions.

There are numerous other factors which ought to be thoroughly considered by the Court before willy-nilly changing the law to now hold that rezoning decisions are quasi-judicial. An adequate review of all these considerations would take a treatise, yet there are also other significant issues the Board wishes to raise in this Petition. One major factor the Court ought to keep in mind, however, is (without citations of authority): that an agency which is acting in a quasi-judicial capacity is applying certain legal standards to facts which it adjudicates to arrive at the proper result;

the agency derives its power from some superior authority; if a local government legislative body adopts a zoning map legislatively, it could only amend the map legislatively or provide for delegated authority, either to itself as an administrative body or to some other agency, to make such amendments; in order to delegate such authority, even to itself as an administrative agency, the legislative body would have to establish standards and guidelines for the exercise of the delegated power; and applying such guidelines and standards to the facts of any particular rezoning application would be the quasi-judicial determination.

The only specific "standards and guidelines" which could possibly be applied by a city or county commission in acting on rezoning applications are those set out in the applicable comprehensive plan. This gets back again, then, to whether or not local legislative bodies have any remaining discretion in regard to choosing between zoning districts which all would be consistent with the comprehensive plan. There would be no such discretion if the Local Government Comprehensive Planning and Land Development Regulation Act provided that a local government <u>may not deny</u> a development permit which is <u>consistent</u> with the comprehensive plan. The Act, however, provides only that a local government <u>may not approve</u> a development permit which is <u>inconsistent</u> with the plan. Therefore, as a policy decision, the State Legislature has left local government legislative bodies with the complete

discretion--subject only to constitutional limitations--to choose between alternative consistent zoning districts. That is a legislative function.

Aside from the fact that rezoning decisions are simply legislative in nature, there are many good policy reasons for not treating them as if they are quasi-judicial. If all rezoning decisions are to be treated as quasi-judicial, most small Florida cities and counties will never be able to withstand judicial challenge to a rezoning decision, because they do not have in their employ a professional planner or other experts necessary to make a record sufficient to support each decision and do not have the tax base to hire such experts for every (and, often, any) rezoning application. If such decisions are treated as being quasi-judicial, they would only be reviewable by petition for writ of certiorari based on the record made at the public hearing. Any applicant who wanted to insure an ultimate judicial rezoning would only have to retain whatever expert opinions would be necessary to make a prima facie case of comprehensive plan consistency.

Such a change in the way rezoning decisions are reviewed would also change the standard of review when rezoning decisions are challenged as being arbitrary and unreasonable. Traditionally, rezoning decisions have been upheld if they made sense for any reason related to public health, welfare, and safety. E.g., City of Miami Beach v. Lachman, 71 So.2d 148, 152 (Fla. 1954), app. dism. 348 U.S. 906 (1954). Such

a determination has traditionally been made in a de novo trial on the merits, even in review of a rezoning denial for a small parcel of land. E.g., City of Jacksonville Beach v. Grubbs, supra. In other words, the test is whether the decision is right, not whether it is based on the right reason. Just as courts are often held to have been right but for the wrong reason, so, too, have local government legislative bodies in relation to zoning. If the rule were different, a truly awful zoning decision--completely inconsistent with a comprehensive plan and adverse to the public health, welfare, and safety --would have to be upheld if the local government did not make a sufficient record and specifically identify the reason for such inconsistency and public harm.

A further reason for rejecting the Snyder philosophy is represented by the result in this case. Quasi-judicial proceedings require significantly more in terms of procedural due process, including--according to one recent opinion--no ex parte communications with the decision-makers. Jennings v. Dade County, 17 F.L.W. 26 (Fla. 3d DCA December 17, 1991). Every time a local government denies a rezoning application, it would be subjecting itself to possible liability for a taking-without-due-process claim if it was later determined to have run afoul of such due process requirements. It is virtually impossible--particularly in smaller cities and counties--for local legislators to not receive ex parte communications on controversial rezoning matters.

Finally, it is not appropriate for a District Court of Appeal--much less a Circuit Court--to decide a case contrary to numerous controlling precedents of the Florida Supreme Court. If anything, the District Court should rule in accordance with the Supreme Court precedents, explain its reasoning why it believes the law should be changed, and certify the question to the Florida Supreme Court as one of great public importance. A Circuit Court in this district should similarly not take it upon itself to decide a case directly contrary to numerous controlling decisions of the District Court of Appeal based on a case opinion from another district, particularly when such case is pending on a motion for rehearing (as is Snyder as of the filing of this Petition) and, if rehearing is denied, will certainly reach the Florida Supreme Court on conflict certiorari.

Due Process

In holding that the Board had deprived the Respondents of due process, the Court failed to make one significant finding. No person is guaranteed "due process" by either the United States Constitution or the Constitution of the State of Florida. What is guaranteed is that no person shall be deprived of life, liberty, or property without due process. Therefore, to bottom its decision on the due process clause, the Circuit Court had to first find that the Respondents have been deprived of some property right (life and liberty being irrelevant). E.g., 10 Fla.Jur.2d Constitutional Law §367 and

cases cited therein.

As discussed hereinafter, no person may acquire a property right in zoning or in a particular zoning district, under Florida law, absent all of the elements of an equitable estoppel. In this case, the issue of an equitable estoppel was neither pleaded nor tried, and the Circuit Court made no finding of an equitable estoppel. Therefore, since there was no deprivation of any property right, there could not have been any denial of due process.

Assuming, however, that the Respondents had a property right in a zoning district for which they had applied, the Circuit Court cited no authority for its determination that a legislative body's failure to provide specific reasons for deciding not to amend an ordinance somehow falls short of due process requirements. The Board can find no such authority.

Assuming, however, that the Board's determination to not amend its zoning ordinance was a quasi-judicial determination, as held by the Circuit Court, the Board did make adequate findings as shown by the record. In denying the rezoning, the Board specifically adopted the recommendation of the Planning Commission. That recommendation was specifically based on a finding of comprehensive plan inconsistency which specifically referenced the plan land use map, which showed a considerably smaller commercial area, and a professional planning staff review of the application against the policies of the comprehensive plan, which found that the rezoning was inconsistent

with four specific policies of the plan. The staff analysis was a public record available to the Respondents; it was discussed extensively at the Planning Commission hearings which the Respondents attended; and it was clearly understood by the Respondents, who specifically identified the map and the policies forming the basis of the inconsistency determination in the first complaint filed in this case.

Furthermore, where due process requires specific reasons or findings, it may be sufficient, or the error may be harmless, if sufficient findings are supplied by necessary implication. E.g., Troup v. Bird, 53 So.2d 717 (Fla. 1951), and Meehan v. Crowder, 158 Fla. 361, 28 So.2d 435 (1946). It takes very little (or no) implication to determine the specific reasons for the inconsistency determination in this case. There does not appear to be any Florida case decision which would prohibit an agency from making any required findings by adopting the recommendations of a hearing officer or other reviewing agency. In fact, the Florida Administrative Procedures Act specifically permits an agency subject to the Act to simply adopt a hearing officer's recommendations. Fla. Stat., §120.57(1)(b)10.

Although the Circuit Court did not base its ultimate decision on this finding, it also found that the Respondents were deprived of due process by the Board's failure to permit the Respondents to further amend their application after all required public hearing advertisements had been given and

after the required Planning Commission public hearing had been completed. Again, the Circuit Court cited no authority for this decision--because there is none. The Court simply concluded--without having the full Leon County Zoning Ordinance in the record and without the issue having been pleaded or tried--that there was no prohibition against such an amendment. The issue, however, is whether there is any requirement to permit such an amendment, rather than the filing of a new application; and there is no such legal requirement. If there were such a requirement, adversely-affected nearby property owners who had to repeatedly attend public hearings on successive amended applications would quickly see to a zoning ordinance change to prohibit such successive amendments.

The Circuit Court also found--again without the issue being pleaded or tried--that the Respondents' further amended application required no further public hearing or advertisement. Had the issue been pleaded, the Board could have briefed the Circuit Court on all of the case law holding that there must be strict compliance with all notice and hearing requirements regarding rezoning applications; that any zoning ordinance amendment enacted without such strict compliance is void ab initio; and that virtually the slightest change in regard to the requested rezoning requires new notices and hearings. E.g., Gulf & Eastern Development Corp. v. City of Fort Lauderdale, 354 So.2d 57 (Fla. 1978); Ellison v. City of

Fort Lauderdale, 183 So.2d 193 (Fla. 1966); David v. City of Dunedin, 473 So.2d 304 (Fla. 2d DCA 1985); Fountain v. City of Jacksonville, 447 So.2d 353 (Fla. 1st DCA 1984); City of Gainesville v. GNV Investments, Inc., 413 So.2d 770 (Fla. 1st DCA 1982); City of Sanibel v. Buntrock, 409 So.2d 1073 (Fla. 2d DCA 1982), rev. den. 417 So.2d 328 (Fla. 1982); Skaggs v. City of Key West, 312 So.2d 549 (Fla. 3d DCA 1975); Kelner v. City of Miami Beach, 252 So.2d 870 (Fla. 3d DCA 1971); and Florida Tallow Corp. v. Bryan, 237 So.2d 308 (Fla. 4th DCA 1970).

Even assuming that the Board's decision on this application was quasi-judicial in nature, and assuming that the Respondents had some property right in the requested zoning district, and assuming that due process required the Board to specify reasons for a comprehensive plan inconsistency determination, and assuming that the Board did not adequately do so in adopting the Planning Commission's recommendation and the staff analysis which that recommendation incorporated, a denial of due process would not entitle the Respondents to have their property rezoned to a district inconsistent with the Leon County Comprehensive Plan. All that a denial of due process would entitle the Respondents to is due process (whatever that is under the circumstances).

When the Circuit Court entered its May 2, 1991 Order remanding the application to the Board for a reconsideration of the application and a specification of reasons, it was

clear from how the Court directed the Order to be drafted that the Court intended to treat the Board's response as a new development order and to give the Respondents a new cause of action under §163.3215. The Board chose not to reconsider the application for several reasons, one being that the Board felt it had set forth specific reasons by its adoption of the Planning Commission recommendation. The Board also felt that the Court was simply wrong in deciding that there was such a due process requirement in relation to a legislative determination and that, if the Board reconsidered the application and revived the Respondents' cause of action under the statute, the Board would be prejudiced in later appealing the due process determination.

The Board felt comfortable with the Circuit Court's holdings, in the May 2, 1991 Order, that the September 26, 1989 rezoning denial was a development order subject to §163.3215 and that the Respondents had failed to comply with the statutory condition precedent; and the Board chose to appeal any final judgment entered on a denial of due process basis, rather than create for the Respondents a new cause of action on the substantive issue of comprehensive plan inconsistency. (The Board also considered that the Circuit Court might simply not have been made fully aware of the specific reasons for the inconsistency determination already in the record.) Little did the Board suspect that, by its choosing to depend on an appeal on the basis of there having

been no denial of due process, the Circuit Court was going to arbitrarily--and based on the same record--reverse its earlier decisions as to the statutory remedy. Such an arbitrary and clearly erroneous reversal borders on mere punishment or retribution for choosing to not give the Respondents a new substantive cause of action.

The Board would not argue that there could be no circumstance in which due process might be a valid basis for reversing an inconsistency decision on a development order and ordering a reconsideration of a development permit. As an example, a building official could revoke a building permit and identify several reasons for doing so which are not related to comprehensive plan inconsistency; a new building permit application could be submitted thirty days later, rectifying the specified problems; and the local government could take the position that an additional reason for the first denial was that the use for which the building was designed and planned was inconsistent with the comprehensive plan and that the first denial (never challenged under §163.3215) amounted to an administrative res judicata as to any subsequent building permit applications for the same use.

Admittedly, that is a far-fetched factual situation, as opposed to the facts of this case which involves a rather garden-variety rezoning denial. The point, however, is that the Board's position regarding the due process issue is reasonable and logical considering the facts of this case, and

the Board should not be penalized by the Circuit Court on other issues for its position on this issue. The Board's position on the due process issue is particularly well-reasoned and considered in light of this Court's decision in Parker, in which the Court held that the very reason for the verified complaint and response process required by §163.3215 was the crystallization of the comprehensive plan consistency issues.

Literally, and as this Court interpreted it in Parker, the statutory remedy placed the burden on the Respondents to first identify within a limited time why they claimed the denial of their requested rezoning was inconsistent with the comprehensive plan. The Circuit Court in this case relieved them of that obligation and placed the burden on the Board to justify, on the basis of comprehensive plan consistency, each of its decisions on development permit applications or be subject--even long after the fact--to statutory actions challenging such decisions. If the Circuit Court's interpretation of the statute is to be consistently applied, it would mean that any development order the Board approved would be subject to possible litigation and review for years thereafter, by persons adversely-affected by the approval, unless the Board is able to identify all of such adversely-affected parties and provide them with specified reasons for deciding that the requested development permit was plan-consistent.

Statutory Remedy

Regardless of whether the action of the Board on the Respondents' rezoning application was legislative or quasi-judicial, it is clear, as detailed above, that the reason for the denial of the application was inconsistency with the Leon County Comprehensive Plan.

The Leon County Comprehensive Plan was adopted pursuant to the Local Government Comprehensive Planning Act of 1975. The Act has now been renamed (by the Growth Management Act of 1985) as the Local Governmental Comprehensive Planning and Land Development Regulation Act and includes the following pertinent provisions.

> **163.3161 Short title; intent and purpose.--**
>
> (1) This part shall be known and may be cited as the "Local Government Comprehensive Planning and Land Development Regulation Act."
>
> . . .
>
> (5) It is the intent of this act that adopted comprehensive plans shall have the legal status set out in this act and that no public or private development shall be permitted except in conformity with comprehensive plans, or elements or portions thereof, prepared and adopted in conformity with this act.
>
> . . .
>
> **163.3164 Definitions.--**
>
> As used in this act:
>
> . . .
>
> (6) "Development order" means any order granting, denying, or granting with conditions an application for a development permit.
>
> (7) "Development permit" includes any building permit,

zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.

. . .

163.3194 Legal status of comprehensive plan.--

(1)(a) After a comprehensive plan or element or portion thereof has been adopted in conformity with this act, all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan or element shall be consistent with such plan or element as adopted.

. . . (Emphasis added.)

A county, therefore, may not rezone land inconsistently with its comprehensive plan, and, regardless of the zoning of any property, it is the comprehensive plan which controls its use and development. Therefore, since the Respondents did not challenge the validity of any of the comprehensive plan policies which were the basis for the Board's decision to deny the requested rezoning, the Respondents had to demonstrate from the record and argue successfully that the Board's decision as to comprehensive plan inconsistency was in error and that denial of the rezoning would have been inconsistent with the comprehensive plan. Leon County v. Parker, supra.

Florida Statutes, Section 163.3215--also part of the Local Government Comprehensive Planning and Land Development Regulation Act--provides an exclusive remedy for any adversely affected person to challenge any development order of a local government on the basis of comprehensive plan inconsistency. The statute, however, requires compliance with a condition

precedent, and the Respondents failed to comply with said condition precedent or to allege such compliance. The applicable portions of §163.3215 are hereinafter set out in full:

> **163.3215 Standing to enforce local comprehensive plans through development orders.**
>
> (1) Any aggrieved or adversely affected party may maintain an action for injunctive or other relief against any local government to prevent such local government from taking any action on a development order, as defined in §163.3164, which materially alters the use or density or intensity of use on a particular piece of property that is not consistent with the comprehensive plan adopted under this part.
>
> . . .
>
> (3) . . .
>
> (b) Suit under this section shall be the sole action available to challenge the consistency of a development order with a comprehensive plan adopted under this part.
>
> (4) As a condition precedent to the institution of an action pursuant to this section, the complaining party shall first file a verified complaint with the local government whose actions are complained of setting forth the facts upon which the complaint is based and the relief sought by the complaining party. The verified complaint shall be filed no later than 30 days after the alleged inconsistent action has been taken. The local government receiving the complaint shall respond within 30 days after receipt of the complaint. Thereafter, the complaining party may institute the action authorized in this section. However, the action shall be instituted no later than 30 days after the expiration of the 30-day period which the local government has to take appropriate action. Failure to comply with this subsection shall not bar an action for a temporary restraining order to prevent immediate and irreparable harm from the action complained of.
>
> . . . (Emphasis added.)

The Complaint filed by the Respondents did not even allege, generally, in conformance with Fla. R. Civ. P.

1.120(c), that all conditions precedent had been performed or had occurred, nor did the Respondents' first three amended complaints. It was not until their Restated [Fourth Amended] Complaint, filed after Parker v. Leon County, supra, had been decided, that the Respondents attempted to portray the required statutory condition precedent as nothing more than an available administrative remedy and pleaded futility of compliance. Alternatively, the Respondents alleged that they had substantially complied with the condition precedent. They also tried to distinguish Leon County v. Parker, supra, from this case in any way possible.

The Parker case did not involve a rezoning denial, but a true quasi-judicial determination on the denial of a subdivision application. The application had been denied because of inconsistency with the county comprehensive plan. The plaintiffs filed a certiorari action without complying with, or alleging compliance with, the §163.3215 condition precedent. Leon County argued that, since the denial of the subdivision application was based on comprehensive plan inconsistency, the only way the plaintiffs could prevail was to argue that approval of the plat was consistent with the plan and denial inconsistent. The Court agreed with the county and found that, since the plaintiffs were challenging a development order (which is defined to include the denial of a subdivision application) as being inconsistent with the comprehensive plan, the plaintiffs' only available remedy was

under the statute.

The instant case cannot be distinguished. The Respondents' rezoning application was denied because of comprehensive plan inconsistency, and the only way the Respondents can prevail is to argue that their requested rezoning was consistent with the comprehensive plan and the denial inconsistent. Denial of a rezoning is included within the definition of a development order. Since the Respondents cannot prevail without challenging that development order as being inconsistent with the Plan, their only available remedy is under the statute.

As noted above and in Parker, the Respondents' exclusive remedy is a statutory cause of action under §163.3215, not a common law certiorari petition or an action under the Declaratory Judgment Act. In Florida, while satisfaction of conditions precedent may usually be alleged generally, a pleader relying on a cause of action created by statute must specifically allege compliance with statutory prerequisites. San Marco Contracting Co. v. State, Department of Transportation, 386 So.2d 615, 617 (Fla. 1st DCA 1980). Florida courts also appear to require strict compliance with such statutory conditions precedent. E.g., Stresscon v. Madiedo, 16 F.L.W. 442 (Fla. June 13, 1991); Ferry-Morse Seed Co. v. Hitchcock, 426 So.2d 958 (Fla. 1983); and Gannett Florida Corp. v. Montesano, 308 So.2d 599 (Fla. 1st DCA 1975), cert. den. 317 So.2d 78 (Fla. 1975).

Furthermore, compliance with a condition precedent to a statutory cause of action is an essential element of the cause of action, and an action cannot be properly commenced until all of such elements are present. Ferry-Morse Seed Co. v. Hitchcock, supra at 961, and Orlando Sports Stadium, Inc. v. Sentinel Star Co., 316 So.2d 607, 610 (Fla. 4th DCA 1975).

The Respondents alleged that compliance with the statutory condition precedent should be dismissed or excused in their case. This argument ignored the fact that the Respondents never pleaded or invoked the jurisdiction of the Court under §163.3215. The argument also shrewdly, deceptively, and continuously spoke in terms of exhausting an administrative remedy and confused that doctrine with a statutory condition precedent.

Required exhaustion of administrative remedies is a judicial doctrine based on policies which include deference to agencies which are part of the executive or legislative branches of government and a policy of not stifling administrative action before it has run its course. 1 Fla.Jur.2d Administrative Law §147, and cases cited therein. There are several bases for excusing exhaustion of remedies in certain instances. On the other hand, as stated above, a statutory condition precedent is an element of a statutory cause of action, compliance with which must be pleaded in order to state a cause of action. 40 Fla.Jur.2d Pleadings §79 (entitled "Statutory Conditions"), and cases cited therein.

If all elements of the action as required by statute are not present, the court has no jurisdiction of the subject matter. Conversely, as stated in the concurring opinion of Judge Ferguson in Warner v. City of Miami, 490 So.2d 1045 (Fla. 3d DCA 1986), "the failure-to-exhaust defense does not go to subject matter jurisdiction but to court policy . . . ."

Even assuming, however, that what was involved here was simply the failure to exhaust an administrative remedy, rather than non-compliance with a statutory condition precedent, the facts and cases relied upon by the Respondents would not justify even a failure to exhaust an administrative remedy. The only fact pleaded by the Respondents to support their "futility" argument was that their rezoning application had been denied. The implication was that the Board had obviously taken a position, therefore any "rehearing" or reconsideration would necessarily be fruitless. The Respondents could say as much, however, about any denial by a local government of any permit application. Accepting that argument would make the exhaustion-of-remedies requirement totally meaningless.

The Respondents also represented to the Court that they had substantially complied by serving the Complaint filed in the Circuit Court on the Board. Of course, that was after the litigation had already commenced, and the Respondents ignored the fact that the judicial Complaint was not verified. More importantly, however, the only Florida authority cited by the Respondents in support of this argument had to do with the

premature filing of a notice of appeal. That is considerably different than filing a lawsuit before every element of a cause of action is in existence. As noted above, compliance with a statutory condition precedent is an element of the statutory cause of action. As held in Orlando Sports Stadium, Inc. v. Sentinel Star Company, supra at 610:

> . . . A cause of action must exist and be complete before an action can be commenced or, as sometimes stated, the existence or non-existence of a cause of action is commonly dependent upon the state of facts existing when the action was begun. As a general rule the Plaintiff may not be permitted to cure the defect of non-existence of a cause of action when suit was begun, by amendment of his pleadings to cover subsequently accruing rights, 1 Am.Jur.2d, Actions, Sec.58.
>
> In Hassam Realty Corporation v. Dade County, 178 So.2d 747 (1965), wherein the plaintiff appealed a final order dismissing its amended complaint, the 3rd D.C.A. stated:
>
> > "If a plaintiff has no valid cause of action on the facts existing at the time of filing suit, the defect cannot ordinarily be remedied by the accrual of one while the suit is pending. We do not find that this rule has been changed by the Rules of Civil Procedure which provide for amended or supplemental pleadings. . . .

See also Ferry-Morse Seed Co. v. Hitchcock, supra.

The Respondents attempted to avoid the statutory condition precedent, to argue that a petition for writ of certiorari was still available to challenge an inconsistency determination, and to distinguish this case from Parker, all based on representations of what was held in Gregory v. City of Alachua, 553 So.2d 206 (Fla. 1st DCA 1989), but this is an extremely confusing opinion. The opinion does recite, however, that the plaintiffs in that case, prior to trial, had

withdrawn the count of their complaint which dealt with a challenge to a rezoning for comprehensive plan inconsistency. Id. at 207. The only count which appeared to have been tried --and framed in the pretrial order--was one which sought a declaration that, in rezoning the property, the city's City Commission and Planning Commission were required to make findings of fact as to comprehensive plan consistency. Nevertheless, the trial court entered a final judgment on the withdrawn consistency count. In addition, the trial court had entered a pretrial order reflecting that only the record before the City Commission would be considered, but then considered de novo evidence, but then appeared to limit its consideration to the record.

What the majority opinion in Gregory held is very unclear, except that it remanded the case with directions to consider only the issues framed in the pretrial order (i.e, excluding the substantive consistency issue). Regarding this opinion, the Respondents attempted to make mountains out of two molehills, one each in the majority and dissenting opinions. The Respondents' reference to the majority opinion, however, was only to a footnote which provided that, in spite of §163.3215, traditional zoning remedies remain available; of course, the Court was only speaking in regard to a case in which the comprehensive plan consistency challenge had been withdrawn. Obviously, many other remedies are available when a rezoning is denied for reasons other than comprehensive plan

inconsistency. The Respondents' reference to the dissenting opinion was only to Judge Wentworth's "suggesting that certiorari review was not available when there was a consistency issue." However, Judge Wentworth was only saying that the sole issue to be tried under the pretrial order in that case (whether the record supported a finding of comprehensive plan inconsistency) was the wrong issue, because she believes that proceedings under § 163.3215 challenging the consistency of development orders are de novo actions, not appellate reviews limited to a record.

The Circuit Court in this case found in an interlocutory Order that the Board's denial of the Respondents' rezoning application was a "development order" and that the Respondents had not complied with the statutory condition precedent to be able to challenge that development order on comprehensive plan consistency issues. Based on the facts of the case, the specific terms of the statutory remedy, and this Court's decision in Parker v. Leon County, such conclusions were inescapable. Then, simply because the Board chose to disagree with the Circuit Court on its conclusion that due process had been denied the Respondents and to appeal on that issue, rather than reconsider the rezoning application and arguably give the Respondents a new development order and a new statutory cause of action, the Circuit Court arbitrarily reversed itself in every way possible and made completely contradictory findings.

The only way the Circuit Court could reach the conclusion that the Respondents were not bound by the statutory condition precedent set out in Fla. Stat., §163.3215, was to take out of context one phrase in the statute and conclude that a denial of a requested development permit was not a development order "which materially alters the use or density or intensity of use" of the land involved. The same reasoning would apply, however, to every development permit denial. Yet, this Court has specifically held, in Parker, that the statute applies to all development orders, which is defined to include denials as well as approvals. The Circuit Court's decision is merely a complete refusal to recognize and apply Parker. By completely refusing to apply directly controlling precedent, the Circuit Court has departed from the essential requirements of law.

The only way the Circuit Court could hold that the Respondents' August 12, 1991 "Verified Complaint" met the requirements of the statutory condition precedent was by completely ignoring recent direct precedent of the Florida Supreme Court directly on point on virtually identical facts. In Stresscon v. Madiedo, 16 F.L.W. 442 (Fla. June 13, 1991), the Court held in relation to a different statutory cause of action (a mechanic's lien) that a similar condition precedent requiring a timely verified document could not be satisfied by providing the document timely but the verification later. Thus, even assuming that the "Verified Complaint" was not

twenty-one months late because of the Board's response to the Court's remand Order, this document still did not meet the statutory requirement.

Effect of New Comprehensive Plan

The allegations of the Respondents' various complaints assumed that the comprehensive plan provisions which formed the basis of denial of their requested rezoning were still relevant. That was not the case, however, when this action was decided. On July 16, 1990, Leon County adopted a complete new comprehensive plan, by Leon County Ordinance Number 90-30, in accordance with the requirements of Fla. Stat., §163.3167. (A: 101-16)

In Florida, the law which applies in regard to the approval or denial of an application is the law in effect at the time the application is acted upon, and not the law in effect when the application is filed. E.g., City of Boynton Beach v. Carroll, 272 So.2d 171 (Fla. 4th DCA 1973), cert. den. 279 So.2d 871 (Fla. 1973); City of Coral Gables v. Sakolsky, 215 So.2d 329 (Fla. 3d DCA 1968), cert. den. 225 So.2d 526 (Fla. 1969); and Davidson v. City of Coral Gables, 119 So.2d 704 (Fla. 3d DCA 1960), cert. disch. 126 So.2d 739 (Fla. 1961). The law that applies when a judicial determination is made by a trial court is the law in effect when the suit is decided, and not the law in effect when the lawsuit is filed. E.g., Broach v. Young, 100 So.2d 411 (Fla. 1958); City of Boynton Beach v. Carroll, supra: and Davidson v. City

of Coral Gables, supra.

Similarly, Florida courts have many times held that, on an appeal from a trial court judgment, the applicable law is that in effect when the appeal is decided, and not the law in effect when the final judgment was entered. E.g., Hendeles v. Sanford Auto Auction, Inc., 364 So.2d 467 (Fla. 1978); Rohrsen v. Waco Scaffold & Shoring Company, 355 So.2d 770 (Fla. 1978); Rader v Variety Children's Hospital, 323 So.2d 564 (Fla. 1975); Florida East Coast Railway Company v. Rouse, 194 So.2d 260 (Fla. 1967); Board of Public Instruction of Orange County v. Budget Commission of Orange County, 167 So.2d 305 (Fla. 1964); City of Miami Beach v. Prevatt, 97 So.2d 473 (Fla. 1957), cert. den. 355 U.S. 957 (1958); City of Pompano Beach v. Haggerty, 530 So.2d 1023 (Fla. 4th DCA 1988), cert. den. 109 S.C. 1317 (1989); Department of Administration v. Brown, 334 So.2d 355 (Fla. 1st DCA 1976), cert. den. 344 So.2d 323 (Fla. 1977); Fitzsimmons v. City of Pensacola, 297 So.2d 107 (Fla. 1st DCA 1974), cert. den. 304 So.2d 129 (Fla. 1974); and Tsavaras v. Lelekis, 246 So. 2d 789 (Fla. 2d DCA 1971), cert. den. 249 So.2d 687 (Fla. 1971).

These rules apply with regard to zoning litigation, concerning amendments to a zoning ordinance or other controlling law enacted or amended during the pendency of a controversy, unless the amendment would affect a vested substantive right or unless the amendment was adopted in bad faith. E.g., Broach v. Young, supra; City of Miami Beach v.

Prevatt, supra; City of Pompano Beach v. Haggerty, supra; Town of Palm Beach v. Royal Palm Beach Hotel, Inc., 298 So.2d 439 (Fla. 4th DCA 1974); City of Boynton Beach v. Carroll, supra; Tsavaras v. Lelekis, supra; and Davidson v. City of Coral Gables, supra.

As stated in Tsavaras v. Lelekis, supra at 790, property owners do not have vested property rights in the zoning ordinances of a local government. There are, of course, many cases holding that there is no vested right in the continuation of existing zoning or land use regulations in the absence of matters creating an equitable estoppel. E.g., City of Miami Beach v. 8701 Collins Avenue, 77 So.2d 428 (Fla. 1954).

Many of the principles discussed above are summed up and applied in City of Gainesville v. Cone, 365 So.2d 737, 739 (Fla. 1st DCA 1979), which held that:

> An owner of property acquires no vested rights in the continuation of existing zoning or land use regulations as to such property unless matters creating an estoppel against the zoning authority have arisen. City of Miami Beach v. 8701 Collins Avenue, 77 So.2d 428 (Fla. 1954). An estoppel cannot arise so as to create a vested right in a particular zoning category in the absence of the expenditure of money in compliance with the existing zoning. Edelstein v. Dade County, 171 So.2d 611 (Fla. 3d DCA 1965). There is no suggestion of estoppel in the record before us. It appears to be quite incongruous to suggest that while the law is clear that one may not acquire any vested right in the continuation of an existing zoning category, he may upon the filing of a petition for a new zoning category, acquire a vested right in the zoning category. Further, it is clear that a city may adopt an amendment to a land use ordinance even during pendency of a controversy and the controversy must then be determined on the basis of the law as amended. City of Coral Gables v. Sakolsky, 215 So.2d 329

(Fla. 3d DCA 1968). . . .

See, also, City of Boynton Beach v. Carroll, supra at 173, holding that even a building permit which had been properly issued can be revoked based upon a new ordinance, unless an equitable estoppel exists, and that courts must apply new ordinances in effect when a decision is rendered, even though a permit or approval would have been proper when applied for, unless an equitable estoppel can be proved.

Once the issue of the new comprehensive plan was raised in the Circuit Court by the Board, the Respondents argued that the law in effect at the time they filed their rezoning application should control. Only three cases were cited by the Respondents, however, the first being Southern Cooperative Development Fund v. Driggers, 696 F.2d 1347 (11th Cir. 1983). The Southern Cooperative opinion is a rambling dissertation on several subjects, foremost of which is whether the particular subdivision ordinance involved therein required approval of a proposed subdivision as a clear legal duty or involved the exercise of some discretion in the approving officials. (There was found to be no discretion under the applicable ordinance and no basis for refusing plat approval. Clearly, that situation is distinguishable from a discretionary, legislative decision on rezoning.)

The court in Southern Cooperative then ruled on whether a new land development code, adopted during the pendency of the controversy to implement a county's comprehensive plan,

could be the basis for still refusing plat approval. The court said:

> . . . There is no question that plaintiffs' plat application does not meet the requirements of the new Development Code. It follows, defendants argue, that the land use ordinance can be amended during the pendency of a controversy, and that the controversy must then be determined on the basis of the amended law. See State Etc. v. Oyster Bay Estates, Inc., 384 So.2d 478 (Fla.App. 1980); Lelekis v. Liles, 240 So.2d 478 (Fla.1970); City of Miami Beach v. 8701 Collins Ave., 77 So.2d 428 (Fla. 1954). As we see it, however, these cases simply declined to apply the law of equitable estoppel when there was an absence of a factual basis for its application. But this line of authorities is inapposite here for several reasons.
>
> 696 F.2d at 1354.

The court then attempted to distinguish the cited Florida cases. Ultimately, however, the court found that the new land development code did not apply because it was adopted to implement the comprehensive plan and, under Florida Statutes, was required to be consistent with that comprehensive plan; and because the comprehensive plan itself exempted from its requirements and from its implementing regulations any development an application for which was pending when the plan was adopted. 696 F.2d at 1355. Any discussion of Florida cases on equitable estoppel and whether a newly-adopted ordinance affected a pending controversy was, therefore, obiter dictum.

As to the three cases cited by the court in that portion of its opinion quoted above, this federal court was simply wrong in its analysis of Florida law. Those three cases, along with all of those other Florida cases cited above in

this Petition, do hold that an ordinance, newly adopted during the pendency of a controversy, does apply unless the facts support an equitable estoppel or unless the new ordinance was adopted in bad faith. Quite obviously, the cases also dealt with whether the facts of each case supported an equitable estoppel so as to foreclose the application of the general rule.

One of the other cases cited by the Respondents was City of Margate v. Amoco Oil Co., 546 So.2d 1091 (Fla. 4th DCA 1989), which involved a subsequently-adopted ordinance that clearly was not adopted in good faith for the benefit of the public health, welfare, and safety, but was tailored in many respects to specifically focus on the plaintiffs' previously-denied application and provide several bases for having denied it.

The last case cited by the Respondents was Dade County v. Jason, 278 So.2d 311 (Fla. 3d DCA 1978), which also involved the issuance of a non-discretionary (building) permit and in which the court, again, specifically found bad faith on the part of the defendant county. In that case, the plaintiff had been advised that its permit application met all requirements, had been approved, and was ready to be picked up. However, focusing on the plaintiff's specific development, the county refused to issue the permit to allow time for the county manager to declare a moratorium and process an ordinance amendment to prohibit the development.

The applicable rule of law is as stated by the Florida Supreme Court in Broach v. Young, supra at 414:

> The Aiken and Harris cases place this Court with those that hold that if the application is unreasonably refused or delayed and the subsequent ordinance enacted in bad faith, the law at the time of the application should be applied. . . . (Emphasis added.)

The most recent Florida decision on this issue, City of Margate v. Amoco Oil Co., supra, was decided on the same basis.

As demonstrated by the pleadings in the Circuit Court, the parties hereto disagreed as to whether the Respondents' application was unreasonably denied, but it is clear that Leon County's new comprehensive plan, whatever its provisions are concerning the use and intensity of development of the Respondents' land, was not focused on the Respondents' specific application and was not adopted in bad faith but pursuant to mandated State requirements, regulations, and policies. Bad faith was never pleaded by the Respondents, even by bare legal conclusion. Furthermore, the Respondents could not have proved bad faith based on a certiorari record, but would have had to have introduced evidence to establish that fact in a de novo proceeding.

The new Leon County Comprehensive Plan, adopted July 16, 1990, by Leon County Ordinance No. 90-30, was not adopted in bad faith; it was mandated by Fla. Stat., §163.3167. The effect of the new comprehensive plan is that Leon County is prohibited from issuing any development order inconsistent with the new comprehensive plan. Fla. Stat., §163.3194(1)(a).

"Development Order" is defined in Fla. Stat., §§163.3164(6) and (7), as including any order granting or denying an application for rezoning, subdivision approval, building permit, or any other permit or approval having the effect of permitting the development of land.

Unless the proposed rezoning which is the subject of this litigation is consistent with the new Leon County Comprehensive Plan, it should not now be approved. Unless the proposed development which is the subject of this litigation is consistent with the new Leon County Comprehensive Plan, Leon County may not issue any further permits or approvals for the development as proposed, even if the zoning is approved.

Based upon the authorities cited herein, this pending controversy should now be decided pursuant to the requirements and limitations of those portions of Chapter 163, Florida Statutes, identified herein, and the newly adopted Leon County Comprehensive Plan. The requested rezoning, or a similar application, may well be consistent with the new comprehensive plan. There has been no review, however, of the proposed rezoning pursuant to the new comprehensive plan, and the initial determination of whether or not the proposed rezoning is consistent should be made by the zoning authority based on a proper application, rather than by the courts.

The facts of this case cannot be distinguished from any other decision of a local government denying, in good faith, a development permit application prior to the adoption of a

new comprehensive plan or zoning ordinance or other regulation affecting the permit sought. The mere fact that there is a good faith dispute as to such a denial, and that a court substitutes its judgment for the local government's with regard to that dispute, should not negate all that body of case law holding that the law in effect at the time a judicial decision is rendered controls. All of those cases themselves involved nothing more than a good faith dispute as to a local government denial and a subsequent controlling ordinance.

Absence of Vested Right

Had the Board approved the Respondents' requested rezoning, it could have revoked that approval based on the new Leon County Comprehensive Plan unless the zoning was consistent with the new plan or unless the Respondents were able to establish a vested right. Absent a vested right, by way of equitable estoppel, the Board could even have revoked a building permit based on a subsequently-adopted ordinance. E.g., City of Hollywood v. Hollywood Beach Hotel Co., 283 So.2d 867 (Fla. 2d DCA 1973), and cases cited therein. As stated in City of Gainesville v. Cone, supra, the Respondents cannot have acquired a vested right in a zoning district simply because they filed an application for rezoning to that district. Nevertheless, the Leon County Comprehensive Plan provided for the determination of vested rights as of the date the plan was adopted. In Leon County Ordinance No. 90-31, the County also adopted a procedure for vested rights applications

and their determination. (A: 376) The Respondents did not plead that they had followed the procedures set out in that ordinance and obtained a determination of a vested right.

The effect of the Circuit Court's Judgment appears to be that the Board must now treat the Respondents' property as being zoned in accordance with their denied application and permit the property to be developed in accordance with that zoning designation, regardless of whether that zoning, and development pursuant to the zoning, is consistent with the new comprehensive plan; regardless of whether or not the Respondents could possibly establish a vested right in the zoning; and regardless of whether the property is developed in the near future or many years from now. In other words, the Circuit Court has, in effect, given the Respondents a perpetual vested right.

As noted above, the only basis in Florida law for a vested property right is equitable estoppel, but the Circuit Court has effectively established a vested right without having tried the issue of equitable estoppel. By depriving the Board of its right to present evidence and contest all elements of an equitable estoppel, the Circuit Court has deprived the Board of due process and its right of access to the courts.

Certiorari Untimely

As noted above, the Respondents' exclusive remedy for contesting the determination of comprehensive plan inconsis-

tency as to their proposed rezoning was a statutory action under Fla. Stat., §163.3215. When the Parker opinion was rendered by this Court, confirming the statutory limitation, the Circuit Court was reluctant to apply the statute and held in an interlocutory Order that, for due process reasons, the statutory condition precedent should not begin to run until a rezoning applicant is provided with specific reasons, in writing, for an inconsistency determination. In this Order, the Court remanded the application to the Board to provide written notice of specific reasons to the Respondents. Thereafter, but not before, the Respondents' amended complaints contained allegations of due process violations because of an absence of written notification of specific reasons for the inconsistency determination. (In fact, in all prior complaints, the Respondents had continuously alleged the opposite--that the Board had adopted all of the findings of the Planning Commission regarding the plan map and specific plan policies and the Planning Commission's determination of comprehensive plan inconsistency.)

Assuming for the sake of argument that the Board's decision on the rezoning application was a quasi-judicial determination, and that the Respondents had not been adequately apprised of the reasons for the comprehensive plan inconsistency determination, and that such a lack of notice of specific reasons was a violation of procedural due process rights, the Respondents could have challenged the action taken

on their rezoning application based on a denial of procedural due process (and any other non-consistency issue) by filing a timely petition for writ of certiorari. Such a conclusion is supported by both the opinion in Gregory v. City of Alachua, supra, and a common sense interpretation of §163.3215. A timely petition for writ of certiorari would have had to be filed within thirty days after the decision.

In this case, however, the only Complaint which the Respondents filed within thirty days after their rezoning was denied was the original one, in which no issue of any denial of procedural due process was raised. Since the only issue raised in the original Complaint was the Respondents' disagreement with the comprehensive plan inconsistency determination, and since that Complaint was not filed under, and in accordance with, §163.3215, the Complaint stated no cause of action, the Circuit Court had no jurisdiction, and the petition for writ of certiorari should have been summarily dismissed. The failure of the Circuit Court to properly dismiss the petition for writ of certiorari should not extend indefinitely the Respondents' jurisdictional time limit for filing a proper petition for writ of certiorari.

Improper Defendant

In addition to other grounds argued herein, the Respondents should have been denied any relief based on Fla. Stat., §125.15, which requires that actions against a county be brought in the name of the county and not against the board

of county commissioners. See Erickson v. Board of County Commissioners of Sarasota County, 212 So.2d 340 (Fla. 2d DCA 1968). In the original Complaint, the only named defendant was the Petitioner, the BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY; the original Complaint was served on the Board; and an acceptance of service was executed and filed only on behalf of the Board. The board of county commissioners of any county is a separate entity from the county, just as the board of directors of a corporation is a separate entity from the corporation.

In filing their Third Amended Complaint in the Circuit Court, the Respondents--without basis--changed the style of the case, naming Leon County as the Defendant rather than the Board. Service, however, was made only upon the Board, and there was never filed by the Respondents any motion to add or substitute Leon County as a defendant, nor was Leon County ever served as a defendant, nor was there any court order permitting Leon County to be added as a defendant. As held in Warner-Lambert Co. v. Patrick, 428 So.2d 718 (Fla. 4th DCA 1983), an amended complaint adding a defendant, without court order or consent of opposing counsel, is a nullity.

Furthermore, the Respondents' statutory cause of action under Fla. Stat., §163.3215, had to be filed against the proper defendant within a certain time period, which had expired by the time of filing the Third Amended Complaint. As held in Lindsay v. H. H. Raulerson Junior Memorial Hospi-

tal, 505 So.2d 577, 578 (Fla. 4th DCA 1987), the addition of a totally separate new party, even on approval of the court, does not relate back to the filing of the initial complaint.

As in Lindsay, the Complaint in this case, and any amended complaint, should have been dismissed with prejudice for failure to timely file this action against the proper defendant, as well as for failure to obtain approval to add a party and failure to serve the proper party.

Conclusion

The Circuit Court in this case failed to accord the Petitioner due process or to comport with the essential requirements of law by:

A. Holding that the decision of the Board, on an application for rezoning, was a quasi-judicial determination reviewable by petition for writ of certiorari, contrary to a consistent body of controlling precedent by this Court and the Florida Supreme Court;

B. Holding that the Board denied the Respondents due process by failing to specifically advise the Respondents of the reasons for denying the Respondents' rezoning application, which decision is not supported by the evidence and is contrary to controlling law regarding zoning decisions;

C. While holding that the Respondents' amended rezoning application was denied because of inconsistency with the controlling comprehensive plan, nevertheless ordering the Board to consider such inconsistent rezoning as having been

approved despite the Respondents' failed to comply with the condition precedent of Florida Statutes, Section 163.3215, so as to be entitled to challenge such comprehensive plan inconsistency determination, contrary to statute and case law;

D. Failing to acknowledge controlling precedent that the law in effect at the time a decision is rendered is what must be applied by the Court and that a new Leon County Comprehensive Plan, adopted in good faith pursuant to State mandate during the pendency of this litigation, thereafter controlled the use and development of the land involved herein and rendered this controversy moot;

E. Ordering the Board to approve future development orders for use and development of the Respondents' land without regard to whether or not such development orders are consistent with the applicable Leon County Comprehensive Plan, contrary to controlling statute and contrary to case law that a property owner acquires no vested right in the use and development of land absent proof of all elements of an equitable estoppel; and, in effect, determining that there is such an equitable estoppel in this matter without having tried that issue and without having permitted the Board to introduce evidence on such issue;

F. Entering a judgment granting a petition for writ of certiorari on grounds which were not raised in the original complaint filed by Respondents and which were not raised in an amended pleading until long after the jurisdictional time

period for filing a petition for writ of certiorari; and

G. Entering Judgment against a party (Leon County) which--while being the only proper party to be the defendant in the lower court, pursuant to statute--was not named as a defendant in the original complaint filed herein, was not properly added or substituted as a defendant by motion and order of the Circuit Court, and was never served.

Relief Requested

For the reasons stated, and based upon the authorities cited, herein, the Petitioner requests that this honorable Court grant its writ of certiorari; reverse the decision of the Circuit Court; and direct the Circuit Court to dismiss the complaint filed herein for having stated no cause of action for writ of certiorari within the jurisdictional time limit therefor and for having stated no cause of action under Fla. Stat., §163.3215.

Respectfully submitted, this 25th day of March, 1992.

DAVID LA CROIX, ESQ.
Florida Bar No. 0156740
Pennington, Wilkinson, Dunlap,
Bateman & Camp, P.A.
Post Office Box 13527
Tallahassee, Florida 32317-3527
(904) 224-2677

ATTORNEYS FOR DEFENDANT,
PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition and a copy of the accompanying Appendix have been furnished to M. Steven Turner, Esquire, Broad and Cassell, Post Office Drawer 11300, Tallahassee, Florida 32302, and to the Hon. J. Lewis Hall, Jr., Circuit Judge, Leon County Courthouse, Tallahassee, Florida 32301, by hand delivery, this ____ day of March, 1992.

DAVID LA CROIX, ESQ.

Section 6.26. LU Limited Use District.

1. *District intent:* The provisions of the limited use district are intended as an alternative elective process which would allow further limitation on the permitted use of property. The general purpose is to permit certain land uses within a district to the exclusion of other uses, which allows land use to be directed to the circumstances surrounding the property and the individual application for reclassification. Further, it is the intent, through the use of optional site planning criteria, for a proposed development to be more sensitive to a neighborhood or the community environment by offering protection from potential adverse influences. An applicant may seek to restrict the use of the land to one or more uses permitted within a specific zoning district proposed for rezoning or may elect to file a site plan which would become part of the development standards on the property upon approval of the appropriate governing body. Application procedures shall be the same as provided in Article XII, "Amendments to the Zoning Code and Zoning Map."

2. *Definition:* A limited use zone is an alternative elective zoning district which accommodates either or both of the following:

(a) A certain use or uses are permitted to the exclusion of all other uses authorized within the zoning district;

(b) A site plan is permitted to become part of the development standards upon approval by the appropriate governing body.

3. *Eligibility:* Minimum requirements shall be the same as those set forth in development standards under the zoning district sought. Any rezoning application may be amended to conform to the requirements of this district at any stage of the process.

4. *Site plan:* When an applicant elects to submit a site plan, that site plan shall become part of said application and be binding upon the property in the event the same application is granted. A site plan shall be drawn to an appropriate engineer's scale to include the location and boundary of the site and in addition must include one or more of the following optional elements.

(a) The approximate size, location, height or setbacks of all proposed buildings and other structures. The specified use of buildings and structures may be included.

(b) The topography and physical conditions, such as water bodies, vegetative cover and steep grades, of the site.

(c) Off-street parking and loading plans, including circulation plans for vehicular and pedestrian movement.

(d) Driveway and access limitation controls including the number and approximate location and dimensions of driveways.

(e) Approximate location and size of open spaces and landscaped areas or buffering elements.

(f) Specimen trees, including those to be retained, removed, or relocated.

(g) Approximate location and width of all easements, rights-of-way, or drainage facilities.

(h) Total acreage of the site and the calculated intensity for the project. Residential intensity shall be expressed by either density including the number of dwelling units by type or by square footage of gross floor area. Commercial and industrial intensity shall be expressed by square footage of gross floor area.

(i) Drawings indicating the general architectural themes, appearance, and representative building types.

(j) Definitive covenants, grants, easements, dedications and restrictions to be imposed on the land buildings, and structures.

(k) Any other commitments of development specifications, limitations, constraints, standards, or proposed physical features not specifically included within elements (a) through (j) above. (Ord. No. 76-35, § 7, 7-13-76; Ord. No. 82-30, § 1, 6-22-82)

IN THE CIRCUIT COURT
FOR THE SECOND JUDICIAL
CIRCUIT IN AND FOR LEON
COUNTY, FLORIDA

MONTICELLO DRUG COMPANY, and
O'CONNOR DEVELOPMENT CORPORATION,

Petitioners,

CASE NO. 89-4024

vs.

BOARD OF COUNTY COMMISSIONERS
OF LEON COUNTY,

Respondent.

_____/

ORDER OF REMAND TO BOARD OF COUNTY COMMISSIONERS

THIS CAUSE came on to be heard upon the Restated Complaint for Writ of Certiorari filed herein by the Petitioners, and the Court having considered the pleadings and appendices filed with the Court and having heard argument of counsel for the parties, the Court hereby makes the following FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The Petition for Writ of Certiorari was filed for the purpose of seeking a review of the denial by the Respondent, the Board of County Commissioners of Leon County, of a rezoning application made by the Petitioners. The rezoning application was denied based on inconsistency with the Leon County Comprehensive Plan. In denying the rezoning application, however, the Respondent did not set out with specificity its reasons for finding the application to be inconsistent with the County's Comprehensive Plan.

2. The denial of a rezoning application is a "development

order" as defined in Florida Statutes, Sections 163.3164(6) and (7).

3. A Comprehensive Plan consistency determination as to any development order is subject to review only pursuant to the statutory remedy provided for in Florida Statutes, Section 163.3215. Leon County v. Parker, 566 So.2d 1315 (Fla. 1st DCA 1990).

4. The statutory cause of action provided for in Section 163.3215 requires satisfaction of a condition precedent, to-wit the filing of a verified complaint with a local government as set out in subsection (4) within thirty days after action is taken by the local government on the development order.

5. The Petitioners failed to satisfy the condition precedent to bringing an action under Section 163.3215, but have alleged and argued that the condition precedent is an administrative remedy, any exhaustion of which would have been futile.

6. In the opinion of the Court, the Petitioners would be deprived of due process if the thirty-day time period, by which the Petitioners are bound for satisfaction of the statutory condition precedent, begins to run prior to such time as the Respondent specifies the reasons for the Comprehensive Plan inconsistency determination and notifies the Petitioners of such reasons.

It is, therefore, hereby ORDERED AND ADJUDGED that:

1. This cause shall be, and is hereby, remanded to the Board of County Commissioners of Leon County, which shall set forth with specificity the reasons for its determination that the Petitioners'

rezoning application was determined to be inconsistent with the Leon County Comprehensive Plan, and which shall provide written notice to the Petitioners, within sixty days of the date of this Order, of the reasons specified for such determination.

2. When such notice is provided to the Petitioners, the Petitioners shall have thirty days thereafter in which to comply with the condition precedent set out in Florida Statutes, Section 163.3215(4), by filing with the Respondent a verified complaint.

3. Upon compliance with such condition precedent, the Respondent shall have the time set out in the statute in which to respond to the verified complaint.

4. Copies of the notice provided to the Petitioners of the specific reasons for the Comprehensive Plan inconsistency determination, the verified complaint of the Petitioners, and the Respondent's response to the verified complaint, if any response is made, shall be filed with the Court, whereupon the Petition for Writ of Certiorari shall be determined on the merits.

DONE AND ORDERED in Chambers in Tallahassee, Florida, this 2nd day of May, 1991.

J. Lewis Hall, Jr.
Circuit Judge

Copies furnished to:

M. Stephen Turner, Esq.
David La Croix, Esq.

IN THE CIRCUIT COURT FOR THE
SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA

MONTICELLO DRUG COMPANY, and
O'CONNOR DEVELOPMENT CORPORATION,

Petitioners,

vs. CASE NO. 89-4024

BOARD OF COUNTY COMMISSIONERS
OF LEON COUNTY,

Respondent.
_____/

NOTICE OF FILING RESPONSE TO REMAND ORDER

Notice is hereby given by Respondent that:

1. In response to the Remand Order of the Court, entered herein on May 2, 1991, Respondent, BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, considered the matters addressed in the Remand Order in its public meeting held on July 16, 1991. (While July 16 is not within the 60-day period set forth in the May 2, 1991 Order, the Motion for Clarification filed herein on May 13, 1991, by the Petitioners was not heard by the court until June 4, 1991, there being no further order entered by the Court at that time.)

2. The response of Respondent, BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, to the May 2, 1991, Order of Remand, which is attached hereto, was approved and authorized by the Respondent at its July 16, 1991, public meeting.

3. Said response is hereby filed with the Court along with this Notice of Filing.

DATED this 19th day of July, 1991.

DAVID LA CROIX, ESQ.
Pennington, Wilkinson, Dunlap
Bateman & Camp, P.A.
Florida Bar No. 056071
Post Office Box 13527
Tallahassee, Florida 32317-3527
(904) 222-6935

ATTORNEY FOR RESPONDENT

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. first class mail, postage prepaid, to M. Steven Turner, Esq., Broad & Cassel, P.O. Drawer 11300, Tallahassee, Florida 32302 this 19th day of July, 1991.

David La Croix

BOARD OF COUNTY COMMISSIONERS
Leon County Courthouse
Tallahassee, Florida 32301-1860
(904) 488-4710

July 16, 1991

The Honorable J. Lewis Hall, Jr.
Circuit Judge
Leon County Courthouse
Tallahassee, Florida 32301

Re: Monticello Drug Company and O'Connor Development Corporation vs. Board of County Commissioners of Leon County; Second Judicial Circuit Case Number 89-4024

Dear Judge Hall:

The Leon County Board of County Commissioners is in receipt of your Order entered in the above-referenced case, dated May 2, 1991, remanding the rezoning application which is the subject of that action to the Board of County Commissioners for a written specification, with notice to the applicants, of the reasons for which the rezoning was determined to be inconsistent with the Leon County Comprehensive Plan.

The Board of County Commissioners believes it would not be appropriate to reopen this rezoning application, since to do so may permit the Plaintiffs to allege a "new" decision date. However, to address the Court's concern that the reasons for finding the proposed rezoning inconsistent with the County's comprehensive plan were not clearly delineated and made known to all concerned, we would ask the Court to consider the following:

1. The reasons for the Planning Commission's recommendation and the decision of the Board of County Commissioners that this rezoning application was inconsistent with the Leon County Comprehensive Plan were sufficiently set forth in staff recommendations and reports, the minutes and transcript of the Planning Commission meeting, and the minutes and transcript of the meeting of the Board of County Commissioners at which this application was considered. Excerpts of these documents, all of which, we are told, are contained in the record before the court, are attached hereto.

2. It is apparent that the rezoning applicants (the Plaintiffs in this case) were also aware of the specific reasons for the determination and recommendation of comprehensive plan inconsistency by the Planning Commission, a summary of which was contained in a staff memorandum which was part of the published agenda materials for the public hearing of the Board of County Commissioners on this request. The applicants were present at the hearing of the Planning Commission, at which the Planning Department staff's comprehensive plan analysis was adopted as the basis for recommending denial because of comprehensive plan inconsistency, and at the hearing of the Board, when the Planning Commission's recommendation was adopted.

Furthermore, the Fourth Amended Complaint filed by the Plaintiffs, a portion of which is also attached hereto, itself specifically identified and argued the particular comprehensive plan policies and general business map designation with which the staff, the Planning Commission, and the Board of County Commissioners found the Plaintiffs' rezoning proposal to be inconsistent. All prior complaints contained the same allegations.

As further justification for not revisiting this rezoning application, the Board of County Commissioners offers the following additional comments:

3. The Board of County Commissioners has been advised by its outside counsel that the rezoning applicants had available a sole statutory remedy, pursuant to Florida Statutes, Section 163.3215, to have the Court review the decision of the Board on this application, and that the applicants failed to comply with the statutory condition precedent, set out in Section 163.3215, as a prerequisite to bringing an action for such a review. The Board has been further advised by its outside counsel that, in counsel's opinion, there appears to be no legal precedent for giving the applicants a second opportunity to comply with the requirements of the statute, and there is serious concern that reconsideration of the application would, in effect, create for the applicants a new cause of action.

4. The Board of County Commissioners has been advised by its outside counsel that zoning is an exercise of the police power; that decisions of the Board of County Commissioners on zoning and rezoning of property are, under the Leon County Zoning Ordinance, legislative determinations; and that, in the opinion of counsel, there is no legal requirement for the Board of County Commissioners to specify reasons in the exercise of its legislative discretion.

5. The owners of the property in question are free to file, at any time, a new application for rezoning or an application for amendment of the Comprehensive Plan, and any such application would be duly, properly, and appropriately considered by the Board, following review and recommendation by the Planning Commission, in accordance with the Leon County Code of Ordinances.

In appreciation of your service to the County in this, and in other matters, I remain

Sincerely,

Don C. Price
Chairman, Board of County
Commissioners

PLANNING DEPARTMENT
STAFF COMPREHENSIVE PLAN
CONSISTENCY EVALUATION

Pages 58-76 of Defendant's Appendix

DE TO LAND USE PROPOSAL CONSIST T -

WITH THE TALLAHASSEE-LEON COUNTY COMPREHENSIVE PLAN

Applicant: MONTICELLO FIRE COMPANY, INC.

Proposal Location: 28 ACRS: NE CORNER OF THOMASVILLE & APALACHEE PKWY

PROPOSAL:

(X) Zoning District Amendment From: A-2 TO: C-2

(X) Land Use Plan Amendment From: URBAN UNDEV TO: GENERAL BUSINESS

( ) Other/Description

DATE REVIEWED: 8-2-89

REVIEWED BY: CINDY GARRISON

SUMMARY

PART I. PROPOSAL CONSISTENCY WITH LAND USE PLAN MAP

( ) CONSISTENT
(X) INCONSISTENT
( ) NOT APPLICABLE

EXPLANATION/COMMENT: REQUIRES MAP AMENDMENT

PART II. CONSISTENCY WITH "APPROPRIATE LOCATION" POLICIES

EXISTING	PROPOSED	
(X)	( )	CONSISTENT
( )	(X)	INCONSISTENT
( )	( )	NOT APPLICABLE

EXPLANATION/COMMENT: SITE IS NOT AT THE INTERSECTION OF ARTERIAL ROADS.

PART III. CONSISTENCY WITH ELEMENT POLICIES

EXISTING	PROPOSED	
(3)	(3)	NUMBER OF POLICIES PROMOTED (+)
(0)	(4)	NUMBER OF POLICIES HINDERED (-)
+3	-1	NET EFFECT

EXISTING	PROPOSED	
(X)	( )	CONSISTENT
( )	(X)	INCONSISTENT
( )	( )	NOT APPLICABLE

EXPLANATION/COMMENT: PROPOSED LAND USE AMENDMENT IS INCONSISTENT WITH COMP PLAN ELEMENT POLICIES DUE TO LACK OF SANITARY SEWER SERVICE & LACK OF PROTECTION TO RURAL PROPERTY

PART IV. CONSISTENCY WITH ELEMENT POLICIES RELATED TO LIMITED USE OR SITE PLAN APPLICATIONS

LIMITED USE/SITE PLAN

( ) NUMBER OF POLICIES PROMOTED (+)
( ) NUMBER OF POLICIES HINDERED (-)

_____ NET EFFECT

LIMITED USE/SITE PLAN

( ) CONSISTENT
( ) INCONSISTENT
( ) NOT APPLICABLE

EXPLANATION/COMMENT: _____

: TO LAND USE PROPOSAL CONS. ICY

WITH THE LAHASSEE-LEON COUNTY COMPREHEN E PLAN

PART II: CONSISTENCY WITH "APPROPRIATE LOCATION" POLICIES

ELEMENT/LAND USE POLICY	EFFECT OF COMPREHENSIVE PLAN POLICIES				
	EXISTING		PROPOSED		
	+	-	+	-	COMMENTS
RESIDENTIAL LOCATIONS					
1.1 LOW DENSITY (Up to 5 du's/na*) (E,R-2,R-2,PUD)					
Areas with good visual quality and areas which will not support more intensive use, with good access to but protected from the potentially adverse influences of major streets, and intensive commercial and industrial activities.					
1.2 LOW-MEDIUM DENSITY (Up to 12 du's/na) (R-3,MH-1, MH-2,PUD)					
Areas with good visual quality with access to adequate public utilities. Good street and highway access.					
1.3 MEDIUM DENSITY (Up to 20 du's/na) (RM-1,PUD)					
Areas with access to adequate public utilities adjacent to arterial or collector streets. Convenient access to centers of employment and shopping.					
1.4 MEDIUM-HIGH DENSITY (Up to 30 du's/na) (RM-2, HC, PUD)					
Areas with access to adequate public utilities. Adjacent to arterial or major collector streets. Close proximity to centers of employment and shopping.					
1.5 HIGH DENSITY (Up to and over 30 du's/na) (RH-3, OR Limited Use PUD)					
Areas adjacent to major employment or commercial centers. Access to adequate public utilities. Adjacent to arterial or major collector streets.					

GUIDE TO LAND USE PROPOSAL CONSISTENCY

WITH THE TALLAHASSEE-LEON COUNTY COMPREHENSIVE PLAN

PART II: CONSISTENCY WITH "APPROPRIATE LOCATION" POLICIES

ELEMENT/LAND USE POLICY	EFFECT OF COMPREHENSIVE PLAN POLICIES				
	EXISTING		PROPOSED		
	+	-	+	--	COMMENTS
COMMERCIAL LOCATIONS					
NEIGHBORHOOD (C-1, PUD)					
Areas convenient to residential neighborhoods, on arterial or collector streets - preferably at a major street intersection - adequately buffered from adjacent residential development.					
OFFICE-TRANSITIONAL (HC, CO, OR, CM, CT, PUD					
Areas between residential and non-residential uses or areas in transition from single family residential to offices or multiple-family due to structural age or location; located adjacent to arterial or collector streets.					
HIGHWAY SERVICE (C-4, CP, CT, PUD)					
Areas adjacent to arterial streets with high traffic volumes. These uses should be concentrated at major street intersections wherever possible.					
GENERAL BUSINESS (C-2, CR, PUD)					
Near the center of several neighborhoods, at high access points such as the intersection of arterial streets or expressways.				X	NOT LOCATED AT INTERSECTION OF ARTS
CENTRAL BUSINESS DISTRICT (C-3, PUD)					
Downtown or at very high access points in other areas Must be served by all modes of transportation.					
INDUSTRIAL LOCATIONS					
LIMITED (M-1, PUD)					
Areas adjacent to major transportation facilities such as arterial streets or railroads. Can be in close proximity to,					

DE TO LAND USE PROPOSAL CON CY

WITH TH TALLAHASSEE-LEON COUNTY COMPREHENSIVE PLAN

PART II: CONSISTENCY WITH "APPROPRIATE LOCATION" POLICIES

ELEMENT/LAND USE POLICY	EFFECT OF COMPREHENSIVE PLAN POLICIES				
	EXISTING		PROPOSED		
	+	-	+	-	COMMENTS
HEAVY (M-2, PUD) Areas adjacent to major transportation facilities such as arterial streets or railroads; away from residential neighborhoods; located with consideration to prevailing winds, set back from major wetlands and drainage corridors. PUBLIC AND QUASI PUBLIC LOCATIONS GOVERNMENTAL/INSTITUTIONAL Areas in locations where necessary for efficient public service and where potentially adverse effects on adjacent residential neighborhoods can be minimized. OPEN SPACE, PARKS, RECREATION Areas convenient to residential neighborhoods or areas otherwise valuable for open space preservation such as flood prone areas, wetlands, or sensitive ecosystems. TRANSPORTATION, COMMUNICATIONS, UTILITIES Areas in locations necessary for efficient public service away from residential neighborhoods or where potentially adverse influences on nearby residential areas can be minimized.					

E TO LAND USE PROPOSAL CONS.

WITH THE TALLAHASSEE-LEON COUNTY COMPREHENSIVE PLAN

PART II: CONSISTENCY WITH "APPROPRIATE LOCATION" POLICIES

ELEMENT/LAND USE POLICY	EFFECT OF COMPREHENSIVE PLAN POLICIES				
	EXISTING		PROPOSED		
	+	-	+	-	COMMENTS
RESIDENTIAL LOCATIONS					
1.1 LOW DENSITY (Up to 5 du's/na*) (E,R-2,R-2,PUD)					
Areas with good visual quality and areas which will not support more intensive use, with good access to but protected from the potentially adverse influences of major streets, and intensive commercial and industrial activities.					
1.2 LOW-MEDIUM DENSITY (Up to 12 du's/na) (R-3,MH-1, MH-2,PUD)					
Areas with good visual quality with access to adequate public utilities. Good street and highway access.					
1.3 MEDIUM DENSITY (Up to 20 du's/na) (RM-1,PUD)					
Areas with access to adequate public utilities adjacent to arterial or collector streets. Convenient access to centers of employment and shopping.					
1.4 MEDIUM-HIGH DENSITY (Up to 30 du's/na) (RM-2, MC, PUD)					
Areas with access to adequate public utilities. Adjacent to arterial or major collector streets. Close proximity to centers of employment and shopping.					
1.5 HIGH DENSITY (Up to and over 30 du's/na) (RM-3, OR Limited Use PUD)					
Areas adjacent to major employment or commercial centers. Access to adequate public utilities. Adjacent to arterial or major collector streets.					

GUIDE TO LAND USE PROPOSAL CONSISTENCY

WITH THE TALLAHASSEE-LEON COUNTY COMPREHENSIVE PLAN

PART II: CONSISTENCY WITH "APPROPRIATE LOCATION" POLICIES

ELEMENT/LAND USE POLICY	EFFECT OF COMPREHENSIVE PLAN POLICIES				
	EXISTING		PROPOSED		
	+	-	+	-	COMMENTS
COMMERCIAL LOCATIONS					
NEIGHBORHOOD (C-1, PUD)					
Areas convenient to residential neighborhoods, on arterial or collector streets - preferably at a major street intersection - adequately buffered from adjacent residential development.					
OFFICE-TRANSITIONAL (HC, CO, OR, CM, CT, PUD					
Areas between residential and non-residential uses or areas in transition from single family residential to offices or multiple-family due to structural age or location; located adjacent to arterial or collector streets.					
HIGHWAY SERVICE (C-4, CP, CT, PUD)					
Areas adjacent to arterial streets with high traffic volumes. These uses should be concentrated at major street intersections wherever possible.					
GENERAL BUSINESS (C-2, CR, PUD)					
Near the center of several neighborhoods, at high access points such as the intersection of arterial streets or expressways.				X	NOT LOCATED AT INTERSECTION OF ARTS
CENTRAL BUSINESS DISTRICT (C-3, PUD)					
Downtown or at very high access points in other areas Must be served by all modes of transportation.					
INDUSTRIAL LOCATIONS					
LIMITED (M-1, PUD)					
Areas adjacent to major transportation facilities such as arterial streets or railroads. Can be in close proximity to,					

TO LAND USE PROPOSAL CONSIS

WITH THE T LAHASSEE-LEON COUNTY COMPREHENSIVE PLAN

PART III: CONSISTENCY WITH PLAN ELEMENT POLICIES

ELEMENT/LAND USE POLICY	EFFECT OF COMPREHENSIVE PLAN POLICIES						
	EXISTING			PROPOSED			
	+	-	NA	+	-	NA	COMMENTS
Encourage the concentration of commercial development; discourage linear (strip) commercial development.			X			X	
Encourage the preservation of agricultural land and other rural properties.	X				X		CURRENT LAND USE PROTECTS RURAL PROP
Allow adequate amounts of suitable land for a variety of housing types, including manufactured housing, mobile homes, and other off-site constructed housing units.			X			X	
Encourage only local traffic in residential areas; seek ways to reduce traffic speeds on local streets in residential areas.			X			X	
Provide adequately sized and properly located areas for intensive land uses according to the availability and capabilities of public facilities and transportation services and facilities.			X			X	
Encourage higher density urban development as a means of minimizing total land area requirements.			X			X	
As an alternative to urban area expansion, encourage the development of suitable urban areas which have been bypassed by development, but which are virtually surrounded by urban development.			X			X	
Establish special land development and water use policies, restrictions, plans, and public improvement programs to preserve the recreational value of the County's publicly owned lakes.			X			X	
NET EFFECT		-			-		

NA = Not applicable or minimal effect.

TE TO LAND USE PROPOSAL CONSIST Y

WITH THE TALLAHASSEE-LEON COUNTY COMPREHENSIVE PLAN

PART III: CONSISTENCY WITH PLAN ELEMENT POLICIES

ELEMENT/LAND USE POLICY	EFFECT OF COMPREHENSIVE PLAN POLICIES						
	EXISTING			PROPOSED			
	+	-	NA	+	-	NA	COMMENTS
Minimize the amount of additional "strip" commercial development; encourage concentration of commercial activity as an alternative form of development.			X			X	
Where "strip" commercial activities already exist, seek to reduce any negative effects through such techniques as:			X			X	
--sign controls;							
--limited access in the form of highway and site design features, traffic control, and zoning.							
--natural vegetation buffers.							
TRANSPORTATION ELEMENT							
Develop standards and implement procedures for controlling high-volume land use access points to major highway facilities (service roads, driveway permitting, etc.)			X			X	
Emphasize land use densities and arrangements which support reduced travel demand and shorter trip lengths.			X			X	
Emphasize increased land use densities.			X			X	
Promote the utilization of rail facilities for freight and passenger services.			X			X	
SANITARY SEWER, SOLID WASTE, DRAINAGE, AND POTABLE WATER ELEMENT							
In areas planned to remain rural or agricultural encourage low density development which can satisfactorily use septic tank systems.			X			X	
NET EFFECT		-	-		-	-	

NA = Not Applicable or Minimal Effect.

TO LAND USE PROPOSAL CONS.. .Y

WITH THE TA .HASSEE-LEON COUNTY COMPREHENSI PLAN

PART III: CONSISTENCY WITH PLAN ELEMENT POLICIES

ELEMENT/LAND USE POLICY	EFFECT OF COMPREHENSIVE PLAN POLICIES						
	EXISTING			PROPOSED			
	+	-	NA	+	-	NA	COMMENTS
Encourage development to occur in areas already served by sanitary sewer systems.	X			X			not a sewer finance item
Encourage the development of compatible multi-use facilities in floodplains.			X			X	
Develop and impose land use controls to carefully regulate development in flood prone areas.			X			X	
Protect the quantity and quality of the Leon County water supply.			X			X	
PARKS AND RECREATION ELEMENT							
Disallow incompatible uses adjacent to park and recreation facilities.			X			X	
Encourage provision of non-governmental recreation.			X			X	
ECONOMIC OPPORTUNITY ELEMENT							
Improve transportation options between residential areas and job opportunities.			X			X	
Seek economic diversification by encouraging private sector business opportunities. In doing so:			X			X	
--continue to emphasize environmental protection;							
--encourage the expansion of local businesses;							
--encourage and utilize rail service as an incentive for economic diversification.							
Develop or redevelop the Tallahassee Central Business District and the Frenchtown Business District.			X			X	
NET EFFECT	/		-	-		/	

NA = Not Applicable or Minimal Effect.

GUIDE TO LAND USE PROPOSAL CONSISTENCY
WITH TALLAHASSEE-LEON COUNTY COMPREHENSIVE PLAN
PART III: CONSISTENCY WITH PLAN ELEMENT POLICIES

ELEMENT/LAND USE POLICY	EFFECT OF COMPREHENSIVE PLAN POLICIES						
	EXISTING			PROPOSED			
	+	-	NA	+	-	NA	COMMENTS
Strengthen the ad valorem tax base by:			X	X			INCREASES VALUE OF PROPERTY
--Attracting appropriate businesses and industry to the area. Encouraging expansion of existing businesses and industry.							
ENERGY ELEMENT							
Revise land use plans to increase housing densities near employment centers and along major transportation corridors.			X			X	
Discourage scattered low density development and encourage well planned and staged developments consistent with public service and utility conservation principles.			X			X	
Discourage strip commercial and isolated office, educational, and shopping facilities.			X			X	
Protect sensitive and rare resource areas which perform useful functions such as flood storage.			X			X	
Encourage development in suitable vacant urban areas.			X			X	
Allow higher housing densities in appropriate areas.			X			X	
Encourage higher density in residential areas conducive to energy efficiency.			X			X	
Limit commercial access to arterial thoroughfares.			X	X			SITE - PLANS ON ARTERIAL
Require large scale development conformance with areawide transportation plans.			X			X	
NET EFFECT		-	-	?	-		

NA = Not Applicable or Minimal Effect.

WITH THE TALLAHASSEE-LEON COUNTY COMPREHENSIVE PLAN

PART II CONSISTENCY WITH PLAN ELEMENT POLICIES

ELEMENT/LAND USE POLICY	EFFECT OF COMPREHENSIVE PLAN POLICIES						
	EXISTING			PROPOSED			
	+	-	NA	+	-	NA	COMMENTS
Allow increased densities in connection with proximity to major arterials, multi-use and employment centers, and major public facilities in areas presently served by existing public utilities.			X		X		NO SEWER SERVICE
Increase accessibility to mass transit facilities.			X			X	
Discourage "commercial strip" rezoning.			X			X	
Protect prime agricultural land through zoning control.			X			X	
Protect identified potential commercial/industrial sites from conflicting land uses.			X			X	
NET EFFECT		-			-		

NA = Not Applicable or Minimal Effect.

DE TO LAND USE PROPOSAL CONSIST NCY

WITH THE TALLAHASSEE-LEON COUNTY COMPREHENSIVE PLAN

PART IV: CONSISTENCY WITH ELEMENT POLICIES RELATED TO LIMITED USE OR SITE PLAN APPLICATIONS*

ELEMENT/LAND USE POLICY	EFFECT OF COMPREHENSIVE PLAN POLICIES				
	LIMITED USE/SITE PLAN				
	+	_	NA	+	_	NA	COMMENTS
CONSERVATION/OPEN SPACE ELEMENT							
Accept ownership of acceptable donated or dedicated lands either for preservation purposes or for sale for "land bank" purposes.							
Encourage land conserving development techniques such as "cluster housing".							
Encourage non-publicly owned open space intensive uses (e.g. golf courses) for locations where needed.							
HOUSING ELEMENT							
* Promote more design flexibility in residential development.							
Encourage the public and private sectors to provide housing for low and moderate income households through available rent assistance programs, government financed home ownership programs and public housing programs.							
* Provide for the accommodation of adequate sites for group home and foster care facilities through the review, and amendment as needed, of appropriate local ordinances and regulations.							
Promote housing relocation opportunities.							
Promote the appropriate replacement of housing when demolitions are made.							
NET EFFECT							

* PART IV is to be completed only for limited use or site plan applications

: TO LAND USE PROPOSAL CONS... ...

WITH THE ...LLAHASSEE-LEON COUNTY COMPREHENSIVE PLAN

PART IV: CONSISTENCY WITH ELEMENT POLICIES RELATED TO LIMITED USE OR SITE PLAN APPLICATIONS*

ELEMENT/LAND USE POLICY	EFFECT OF COMPREHENSIVE PLAN POLICIES LIMITED USE/SITE PLAN						
	+	_	NA	+	_	NA	COMMENTS
LAND USE ELEMENT							
Strengthen and enforce the standards for buffering residential areas from more intensive land uses so as to minimize any detrimental effects of mixed uses.							
Encourage innovative development techniques that are consistent with maintaining public health, safety, and welfare.							
TRANSPORTATION ELEMENT							
Reduce parking requirements for major activity centers.							
Encourage private developers to include bikeway and sidewalk construction in proposed developments as identified in adopted plans.							
Seek ways to provide bikeways, pedestrian ways, and associated facilities.							
Seek utilization of fringe area parking lots for park-ride activities.							
As needed, establish or restructure restrictive ordinance provisions and operational guidelines applicable to areas of land use conflict (for example, airport noise and safety zones.							
Encourage the provision of bicycle parking and associated facilities (bicycle racks/storage lockers) at traffic generators.							
NET EFFECT							

* PART IV is to be completed only for limited use or site plan applications

E TO LAND USE PROPOSAL CONSI... Y

WITH THE TALLAHASSEE-LEON COUNTY COMPREHENSIVE PLAN

PART IV: CONSISTENCY WITH ELEMENT POLICIES RELATED TO LIMITED USE OR SITE PLAN APPLICATIONS*

ELEMENT/LAND USE POLICY	EFFECT OF COMPREHENSIVE PLAN POLICIES LIMITED USE/SITE PLAN						COMMENTS
	+	–	NA	+	–	NA	
SANITARY SEWER, SOLID WASTE, DRAINAGE, AND POTABLE WATER ELEMENT							
Investigate ways to reduce the amount of required impervious surface (e.g. through decreased parking requirements or through encouraging the use of innovative parking surfaces).							
Through site design, seek to maintain wetland areas, and vegetative buffers, minimize slopes.							
Where possible, enhance water quality through the use of vegetative areas such as grass swales to filter stormwater.							
Where appropriate, provide water quality control which may include regional filtration and/or detention systems, chemical, or physical treatment.							
Where cost effective purchase properties now located in flood hazard areas; covert to public use.							
Require run-off control facilities to regulate peak stormwater volume and water quality.							
PARKS AND RECREATION ELEMENT							
Cooperate with developers to assure that where parkland is needed in newly developing areas, that land will be available for this purpose.							
Acquire lands suited to recreation in areas presently unserved.							
Acquire, as a high priority, those areas proposed for potential recreation or open space use which are vulnerable to immediate development.							

ELEMENT/LAND USE POLICY	EFFECT OF COMPREHENSIVE PLAN POLICIES						
	LIMITED USE/SITE PLAN						
	+	_	NA	+	_	NA	COMMENTS
Encourage the donation of properties for parks and recreation purposes.							
Acquire existing park and recreation resources, where appropriate.							
Promote joint use of land owned by other governmental agencies for park and recreational facilities.							
Acquire lands necessary for future park and recreation demand.							
Seek coordination with FAMU, FSU, TCC, churches and other providers of institutional facilities in the joint use of facilities for all citizens.							
Seek coordination between applicable institutional and governmental providers of facilities which could be utilized for recreation.							
Consider using property acquired in the implementation of a storm water management plan for park and recreation purposes.							
Require adequate rights-of-way or easements to meet pedestrian facility needs.							
Encourage park and recreation access systems in new developments.							
Construct facilities necessary to minimize intermodal conflict as appropriate (pedestrian and bicycle overpasses, lighting and intersection improvements).							
NET EFFECT							

* PART IV is to be completed only for limited use or site plan applications

CU TO LAND USE PROPOSAL CONSISTE.

WITH THE TALLAHASSEE-LEON COUNTY COMPREHENSIVE PLAN

PART IV: CONSISTENCY WITH ELEMENT POLICIES-RELATED TO LIMITED USE OR SITE PLAN APPLICATIONS*

ELEMENT/LAND USE POLICY	EFFECT OF COMPREHENSIVE PLAN POLICIES LIMITED USE/SITE PLAN +	−	NA	+	−	NA	COMMENTS
Make paths accessible to the handicapped where possible.							
Encourage private recreation providers to install connections for existing or future access systems.							
Construct pedestrian and bike facilities to existing recreation centers, where needed.							
ECONOMIC OPPORTUNITY ELEMENT							
Encourage the development of equal employment opportunities in all sectors of the labor market.							
Encourage low-cost child care facilities to allow greater job opportunities for all family members.							
Monitor commercial development efforts to assure equal employment accessibility to all income groups. Where appropriate, support these commercial redevelopment efforts with public facility improvements.							
ENERGY ELEMENT							
Encourage open space and recreational areas in new developments which accommodate bike and pedestrian traffic consistent with overall open space/recreation systems.							
Emphasize planned developments which allow close relationships among living, working, recreation and shopping areas (e.g. Planned Unit Development).							
NET EFFECT							

* PART IV is to be completed only for limited use or site plan applications

... TO LAND USE PROPOSALS CONSI...
WITH THE TALLAHASSEE-LEON COUNTY COMPREHENSIVE PLAN

PART IV: CONSISTENCY WITH ELEMENT POLICIES RELATED TO LIMITED USE OR SITE PLAN APPLICATIONS*

ELEMENT/LAND USE POLICY	EFFECT OF COMPREHENSIVE PLAN POLICIES						
	LIMITED USE/SITE PLAN						
	+	−	NA	+	−	NA	COMMENTS
Encourage development using energy conserving construction techniques.							
Require preservation of the natural landscape where possible and planting of energy conserving landscaping.							
Encourage open space and recreation land facilities within new development.							
Promote parking strategies which encourage efficient use of energy.							
Energy efficiency should be a consideration in the location of buildings and facilities.							
* Incorporate energy conservation techniques and systems in new buildings.							
Use landscaping materials for energy conserving purposes.							
* Allow flexibility for innovative construction design and conservation techniques.							
Allow zoning flexibility to encourage retention of natural resource landscaping.							
Encourage adequate non-automotive transportation facilities in large developments (bikeways, pedestrian paths, etc.)							
Develop and implement measures conducive to operational transportation efficiency (such as carpooling, priority lanes, signal synchronization, turn lanes, intersection improvements, frontage roads, bus turn out lanes, etc.)							
* Encourage centralization of energy research activities in Tallahassee-Leon County utilizing existing and proposed educational and research facilities.							
NET EFFECT							

* [illegible] to be considered only [illegible]

MAP SHOWING COMPREHENSIVE PLAN LAND USE MAP GENERAL BUSINESS DESIGNATION IN RELATION TO PROPOSED REZONING REQUEST

Page 15 of Plaintiffs' Appendix

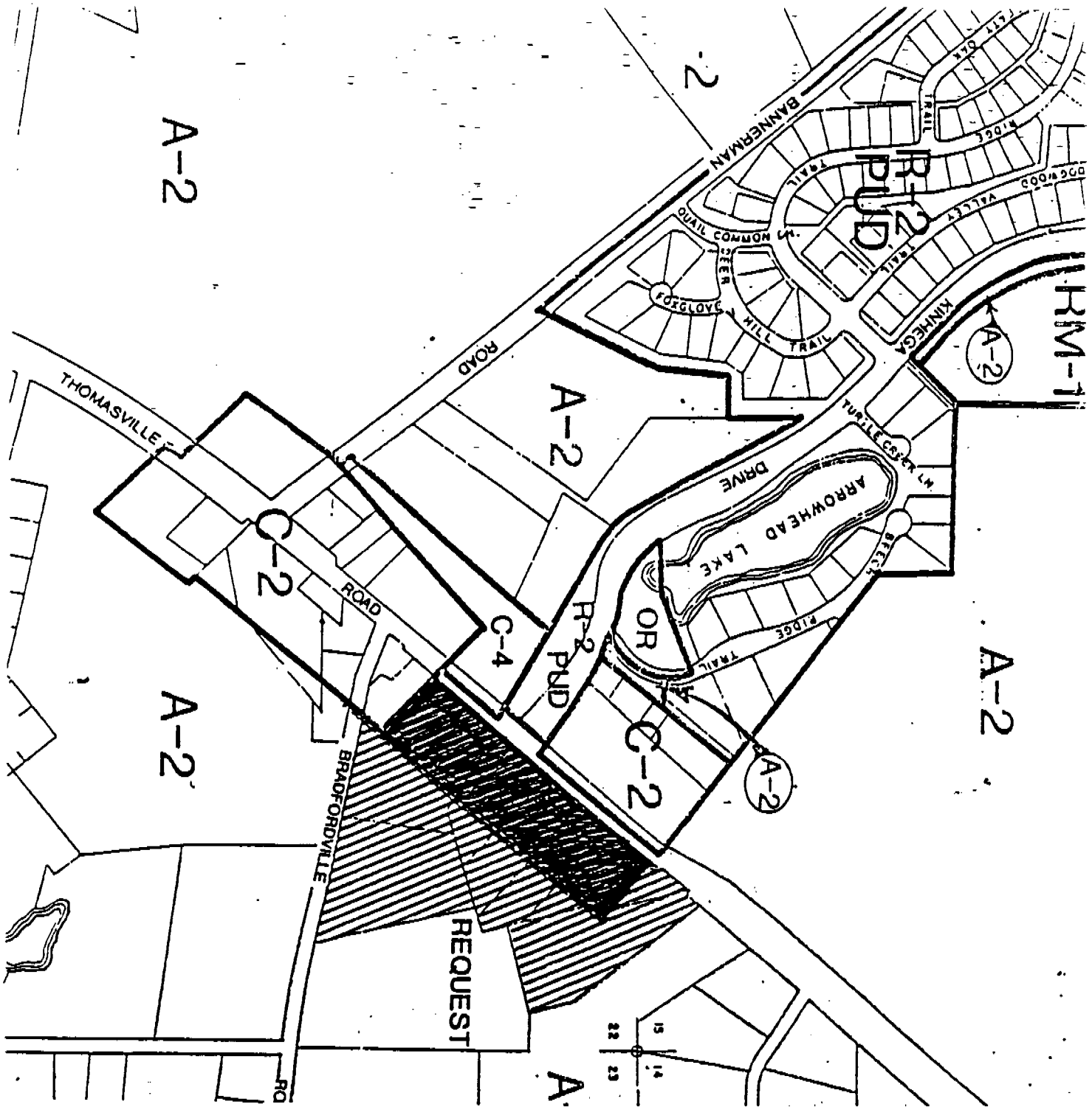
A-2
BANNERMAN
R-2 PUD
QUAIL COMMON
FOXGLOVE
DEER
HILL TRAIL
VALLEY
TRAIL
RIDGE
KINNEGA
RM-1
A-2
ROAD
THOMASVILLE
A-2
C-2
ROAD
C-4
R-2 PUD
OR
DRIVE
ARROWHEAD LAKE
TURTLE CREEK LN
BEECH
TRAIL
RIDGE
C-2
A-2
A-2
BRADFORDVILLE
REQUEST
A-2
RD
22
15
14
23

EXHIBIT "D"

STATE OF FLORIDA

COUNTY OF LEON

I, Jean W. Gregory, Assistant Land Use Administrator, for the City of Tallahassee and Leon County, Florida, hereby certify that the attached is a true and accurate transcript of a portion of the minutes of the Tallahassee-Leon County Planning Commission meeting held on September 13, 1989.

IN WITNESS WHEREOF, I have hereunto affixed my hand this 27th day of July, A.D., 1990.

Jean W. Gregory, Assistant
Land Use Administrator

Sworn to and subsribed before me, this 27th day of July, 1990.

Notary Public, State of Florida
My Commission Expires March 27, 1994
Bonded Thru Troy Fain - Insurance Inc.

Mr. Tellefsen said these roads will have pavement and base to County specifications.

John Mooshie moved approval of the preliminary plat subject to the conveyances to the 2 stormwater management areas and the variance to length of Atascadero Lane cul de sac. Eleanor Hunter seconded the motion. The motion carried 5-1 with Kathy Archibald opposing the motion.

Ms. Archibald felt all the roads all the roads should not be private. She suggested the original intent of private roads has been exceeded. She is opposed to the homeowners association being responsible for drainage and private roads.

Ms. Hunter remembered a recommendation previously made by the Planning Commission that another site be chosen for the state office complex. Mr. Murley gave an update on this issue. He said this is being assessed by a team of City and County staff members. Ms. Hunter felt it was important that the Planning Commission have input on other anticipated impacts from the Commission's point of view of the selections.

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The Planning Commission considered the request of Monticello Drug Company, Etal. for a change in zone classification form Agricultural 2 to Commercial 2 and for a land use plan map amendment from Urban Undesignated to General Business on 28 acres located 125 feet north of the intersection of Bradfordville Road and Thomasville Road (northeast quadrant of the intersection) and fronts on both roadways.

Mr. Fronczak asked when the next time the "north" quadrant would be under consideration by the Commission. Ms. Gregory replied in February 1990. In reply to another question, she said the task force is suppose to report to the County Commission in a 5 months time frame.

Ms. Gregory summarized the notice and public response to this application. She stated that approximately 40 to 50% of the site is not designated as General Business and explained the location of that designation. She said the request was found inconsistent with locational policies and element policies. She briefly reviewed the zoning history in the area and the commercial nodes on Thomasville Road between I-10 and Bradfordville Road. A briefing was given on the proposed commercial development in the Northampton PUD. Ms. Gregory said the applicant is proposing to construct a shopping center with 150,000 square feet and an additional 15,000 square feet of office. She reviewed the amended rezoning application for the Commission and said that a

Mr. Oven said the preliminary drainage design had been reviewed by Brice-Nist, Florida DOT, and the DER. He said that apparently the parties are not communicating with Mr. Swanson's office because the project has been reviewed by County Public Works.

Mr. Moore said the site sits on the ridge line between two very large drainage basins with the rear portion of the site draining to the Killearn Estates Lake chain and the Killearn Estate chain was targeted in the Commission's original study as an area to which runoff should be minimized because of the volume problems that currently exist. He said the developer has the ability based on the configuration of the site to drain away from the Killearn Estates lake chain towards the Lake Arrowhead basin which eventually flows to Lake Iamonia. The Lake Arrowhead Lake Chain was not designed as a holding pond for this development so the developer is supplying a holding pond that drops back to pre-development rates for discharge into Lake Arrowhead at pre construction rates. Lake Arrowhead currently does not have a volume problem. Mr. Moore said an environmental permit has not been applied for and if in design, it is determined that the water should not be transferred that option is available. He stated that he has intended to demonstrate that a pond of adequate size can be allocated and water can physically be piped from Point A to Point B and that the project will meet all government ordinances.

Mr. Deaton said the reason for the delay is to determine whether there will be problems in Lake Arrowhead. Mr. Culley recalled a letter from David Williams of Killearn Properties stated concern over routing water from this site to Lake Arrowhead. Mr. Moore reiterated that this development does not intend to use Lake Arrowhead as a holding pond, and is consistent with policies for regional holding ponds. A 3 acre area has been designated on the project for a holding pond and the water after it has been treated and retained will be piped under Thomasville Road to Lake Arrowhead.

Mr. Murley asked Mr. Apgar for a legal perspective on where the Commission is. Under the current law, Mr. Apgar said the primary criteria for rezoning is the Comprehensive Plan and consistency with the Zoning Code itself and then older case law which says health, safety, and welfare. The applicant has the burden to show his entitlement to the rezoning. He said the Commission could consider zoning areas and their potential impacts.

Mr. Murley moved denial of the request based on being inconsistent with the Comprehensive Plan analysis as provided by staff and the advisory map with the existing plan shows an area somewhat less than what is being requested. He mentioned that he had concern over the actual definition of the CP zone and in the

time that the Commission is being asked to make the zoning recommendation in relation to on-going activities to assess what is being planed for Bradfordville. Mr. Murley quoted from the District Intent of CP and he said it was a significant question as to whether this is an entrance into an urban area under the current plan. He added there are questions that can be raised on the technical issues. The motion was seconded by Ms. Hunter.

Mr. Mooshie said that he had labored over this development and in his mind the issue of timing is appropriate. He said that it is his opinion that the optionees are prepared to meet all technical requirements. He said that he assumed the developer was willing to put up a bond that provided a guarantee traffic and environmental degradation did not occur. He felt the development of a commercial node somewhere down the road was inevitable and he did not feel that it is the Commission's responsibility to tell the developer that he cannot invest millions of dollars to do that. Mr. Murley said basically he agreed, the Commission does not have the responsibility to make a business decision, but assuming a successful project, assuming the impacts are technically met, the remaining part of the Commission's responsibility is the decision abut the public interest and welfare described in the case law and the Plan and in this case that Commission has to look at this project in relationship and timing to the existing neighborhood and make a judgement call as lay persons for the elected Commission in the form of a recommendation. Mr. Murley said that if with Mr. Mooshie's assumptions that he felt were really difficult to ascertain at this time, he felt it would be difficult for him to recommend approval. He stated that this certainly doesn't mean that an application for a lesser amount of land might not be acceptable under the Comprehensive Plan.

Mr. Mooshie said this Commission has an opportunity with this request and the Lauder request to deal with 2 landowners as opposed to 20 landowners which could conceivably happen somewhere down the road. He suggested approval of a Limited Use Site Plan which provides for phasing. Mr. Murley said he felt this was getting close to "contract zoning" and the government has that ability through a local development agreement process.

Ms. Hunter said the application is premature and to favor this application you have to assume the continuation of the existing development pattern which is a valid assumption, but certainly not a certainty.

Mr. Murley said he felt the elected officials had the right to approach the applicants regarding phasing of the project, but the Commission or staff can not pursue the action. He felt the Commission had to respond to the application which is before it.

Mr. Mooshie emphasized his opinion that this will be a commercial node before the year 2000 and if there is a way the project can be planned accordingly and insure the integrity of the neighborhoods and that degradation of the lakes and roadways does not occur, it behooves the Commission to explore that possibility. Ms. Hunter said the County Commission has appointed a task force to do just that.

Ms. Hunter said her view of two elements of the Comprehensive Plan dealing with central utility services is that those elements are not supported by this application because it seems explicit that the elements used and relied upon by staff require infrastructure to be in place, not just available.

Mr. Fronczak said he agreed that there should be commercialization in this area, but how much he was not prepared to say. He said if the task force completes it report by the agreed upon deadline, the request could be reconsidered in the normal cycle once the additional data is available. Mr. Murley said the report of the task force is not directive of the zoning decision and really constitutes "nice" information and until the County Commission puts it in an ordinance it has no legal status.

Upon call for a vote, the motion carried unanimously.

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The Planning Commission considered the request of John A. Lauder for a change in zone classification from Agricultural 2 and Commercial 2 to CP Commercial Parkway, Office-Residence, and HC Historic and Cultural Conservation and for a land use plan map amendment from Urban Undesignated and Low Density Residential to General Business and Office-Transitional on 36.83 acres located at the southwest corner of the intersection of Bannerman and Thomasville Roads.

Ms. Gregory said the applicant's representative has submitted a letter requesting a thirty day continuance. Discussion was held between the Commission and Mr. Broward Davis pertaining to the continuance and Mr. Davis said the applicant was not given enough direction by the Planning Commission to prepare a proper site plan.

Ms. Hunter moved to continue until October 11 with the understanding that the applicant is to either establish a firm time limit on submitting a plan or come back to the Commission with a plan for their consideration. The motion was seconded by Mr. Mooshie.

PLANNING COMMISSION REPORT TO BOARD OF COUNTY COMMISSIONERS

Pages 1, 7 - 8, and 13 - 14 of Plaintiffs' Appendix

Bc 1 of County Commi .ners

AGENDA REQUEST

DATE: September 26, 1989

TO: Honorable Chairman and Members of the Board

FROM: Tallahassee-Leon County Planning Commission

SUBJECT: Rezoning Application Advertised for Public Hearing on September 26, 1989 at 6:00 P.M. - Monticello Drug Company

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RECOMMENDATION:

The Planning Commission voted 5 - 0 to recommend denial of the rezoning and companion land use plan map amendment.

Commissioners Eleanor Hunter, Jim Murley, Walter Culley, John Mooshie, and Dave Fronczak voted in favor of that action. Kathy Archibald left the September 13, 1989, meeting prior to the vote on this request.

ISSUE:

Request of Monticello Drug Company, Etal. for a land use plan map amendment from Urban Undesignated to General Business and for a change in zone classification from Agricultural 2 to CP Commercial Parkway Limited Use with Site Plan on 36.83 acres located at the northeast corner of intersection of Bradfordville Road and Thomasville Road.

ANALYSIS:

See Attached Report.

ATTACHMENTS:

— General Location Map
— Planning Commission/Technical Coordinating Committee Report
— Environmental Analysis

C-2 Uses (continued):

5. Retail dry cleaning establishments
6. Automotive-retail, tires, batteries, and accessories; and automotive-retail-parts and equipment
   Accessory to their retail sales is the installation and repair of automotive tires, batteries, accessories, and minor parts excluding any installation or repair of major mechanical or body repair parts.
7. Repair services-general (furniture and similar uses excluding automotive)

LAND USE PATTERN:

The request site contains one single family residence at the southern corner of the tract with the remainder of the request being undeveloped. A single family residence lies directly to the east of the request on Bradfordville Road and several residences interface the request across Bradfordville Road. A liquor store is located at the northeast corner of Thomasville and Bradfordville Roads. A Talquin Electric building and shopping center interface the request on the west side of Thomasville Road. The parcel to the north is undeveloped. Single family homes are located along Millwood Lane farther north of the request.

ZONING PATTERN:

A-2 to the north and east; A-2 and C-2 to the south; and C-2 and C-4 to the west.

PLANNING CONSIDERATIONS:

I. Comprehensive Plan Analysis

A. Land Use Plan Map - Approximately 40-50% of the request is now designated as General Business with the remainder of the tract subject to a land use plan map amendment from Urban Undesignated to General Business.

The Land Use Plan Map is not intended to be site specific, but the current General Business category generally fronts on the east side of Thomasville Road at the same depth as the C-2 district to the south and runs north to the approximately northerly boundary of the C-2 district on the west side of Thomasville Road.

B. Locational Policies - The request site was found inconsistent with the locational policies for General Business because the site is not located at the intersection of arterial roadways and is not located at the center of several neighborhoods.

C. Element Policies - The following three policies were found to support the General Business classification:

— encourage the protection and restoration of historically valued properties

— strengthen the ad valorem tax base - attract appropriate businesses

— limited commercial access to arterial thoroughfares (CP district has access restrictions)

The following 4 policies were found to be in conflict with this request:

— allow adequate amounts of land for manufactured housing and mobile homes

— encourage the preservation of agricultural land and other rural properties

— encourage development to occur in areas already served by sanitary sewer systems

— allow increased densities in connection with proximity to major arterials, multi use and employment centers, and major public facilities in areas presently served by existing public utilities

The Planning Commission and staff engaged in a discussion of the last two policies enumberated under the hindered policies. The applicant has submitted letters from the City of Tallahassee and Talquin Electric addressing provision of sanitary sewer to this proposed project, but in staff's opinion these letters indicate only there is a high probability that sewer will be available to this project. The site is not located in a sewer franchise area and the Planning Commission agreed that these policies were not supported by this request under current conditions.

ENVIRONMENTAL CONSIDERATIONS:

Rick Moore, the optionee's engineer - This request sits on the ridgeline between two very large drainage basins. The proposal is to construct about a 3 acre water management area in the southeast corner of the site which is located in the Gilbert Pond watershed of Lake Lafayette and from which water drains to the Killearn Estates lake chain and then transfer it after treatment and at predevelopment rates through a pipe to Lake Arrowhead which is located in the Lamonia basin. Lake Arrowhead was not designed as a holding pond for this development, so the holding pond will be located on the applicant's property. Lake Arrowhead is not experiencing volume problems at this time. Environmental permits have not been applied for on the project.

Leon County Environmental Services - Recommends that the project be continued until completion of the Bradfordville study and the completion of environmental review of the area. The proposal appears to lessen impacts in the Gilbert Pond Watershed, but the impacts in the Lake Arrowhead area are undetermined.

Tallahassee Historic Preservation Board - Expressed these concerns: (a) the road touches the cemetary which will result in noise pollution and the visibility will increase the possibility of vandalism. Requested a 50 foot separation between the roadway and cemetary: (The cemetary on the property dates from 1837 and is one of the most significant cemetaries in Leon County); (b) will future development, including the construction of Velda Dairy Road, be allowed in the cemetery preservation area; (c) the developer has agreed to do an archaelogical investigation of Pinehill Plantation and would like language incorporated into the site plan to provide for this investigation.

ACTION OF THE PLANNING COMMISSION:

The applicant had a 5 - 0 vote to recommend denial of the requests. All Planning Commissioners except Kathy Archibald voted in favor of that action and Ms. Archibald left the September 13 meeting prior to the vote on this item.

The Planning Commission felt the request is inconsistent with the Comprehensive Plan and also the land use plan map which provides for a general commercial area somewhat less in size than the request. The Commission felt that staff had correctly interpreted the element policies dealing with the availability of utilities to the site. Other reasons cited for recommending denial included the district intent of CP which provides the area should be viewed as the "entrance to the urban area" and this was felt to be a significant question under the current Comprehensive Plan; the timing of being faced with making a decision on this request in view of on-going activities to assess what is the best alternative for Bradfordville; the application is premature in that to support it you have to assume the continuation of the existing development pattern which is a valid assumption, but not a certainity. Commissioners Mooshie and Fronczak both felt the intersection is a commercial node, but Mr. Mooshie felt the timing was inappropriate for the request and Mr. Fronczak said that he was not prepared to ascertain how much commercial would be needed to serve the area.

Mr. Mooshie discussed at some length the phasing of the project or the posting of a performance bond to insure that traffic and environmental degradation did not occur. He felt this was an opportune time to deal with two property owners requesting commercial zoning instead of a mulitplicty of owners which might occur in the future. It was the opinion of the Planning Commission that the application which was before the Commission must be responded to and that application did not incorporate any of those features.

PUBLIC NOTICE RESPONSE:

30 Notices
10 Notices in objection from Killearn Lakes
14 Page letter from Thomasville Road Association raising points concerning legality, environmental, transportation, and need vs. market (County Commissioners were copied on this letter)

Nine speakers appeared at the Planning Commission public hearing in opposition to this request and 26 speakers spoke on the Lauder request at the southwest corner of Bannerman Road and Thomasville Road and many of these speakers intended their negative comments to apply to this request also.

SUPPLEMENTARY INFORMATION:

The developer is proposing the construction of a shopping center with approximately 150,000 square feet. This is comparable in size to the Westwood Shopping Center located at the intersection of Ocala Road and Pensacola Street which has 152,000 square feet. The applicant also proposes the construction of 15,000 square feet of office space.

EXCERPT FROM MINUTES OF
BOARD OF COUNTY COMMISSIONERS MEETING

Pages 43 and 45 of Defendant's Appendix

Paul F. Hartsfield

CLERK OF THE CIRCUIT COURT — LEON COUNTY, FLORIDA
P. O. Box 726 • Tallahassee, Florida 32302

CLERK OF THE CIRCUIT COURT
Criminal Division
Juvenile Division
Probate Division
Civil Division

STATE OF FLORIDA

COUNTY OF LEON

I, PAUL F. HARTSFIELD, Clerk of the Circuit Court, in and for Leon County, Florida, and ex-officio Clerk of the Board of County Commissioners of Leon County, Florida, Leon County, Florida, hereby certify that the attached is a true and accurate transcript of a portion of the Board of County Commission Minutes of September 26, 1989.

IN WITNESS WHEREOF, I have hereunto affixed by hand and official seal this 27th day of July, A.D., 1990.

/s/ Paul F. Hartsfield
Clerk, Board of County
Commissioners, Leon
County Florida

By: Sandra C. O'Neal
Sandra C. O'Neal, D.C.

CLERK OF THE COUNTY COURT
Misdemeanor Division
Traffic Division
Civil Division

CLERK TO BOARD OF COUNTY COMMISSIONERS
COUNTY AUDITOR
COUNTY RECORDER

Mr. Raney Oven, representing applicant, appeared and explained the new amended limited use site plan to the Board; 60% of request is now designated as General Business (rather than 50%); approximately 10 acres (rather than 28 acres). Mr. Oven presented a comprehensive land use analysis and stated that the subject was not rural property.

Mr. Rick Hall, Transportation Consulting Group and representing the applicant, appeared and explained that he did a traffic analysis for the project and the method he used was acceptable to government. He indicated that it was an acceptable level of service.

Mr. Richard Moore, 304 N. Meridian St., drainage engineer representing the applicant, appeared and stated that he has done a preliminary design on the entire site, and the calculations show the ability to mitigate stormwater impact by construction of a large on-site holding pond and treatment facility, which would exceed existing and proposed ordinances and meets a State DOT requirements.

Mr. John W. O'Conner, owner of the property also appeared and requested the Board approve the request.

The following citizens appeared in opposition to the request:

Patrick Bond 4431 Millwood Lane	Richard Thoma 3412 Valley Creed Dr.
Terry Arthur 3338 Barrow Hill	Jim Penrod 10599 Lake Iamonia Dr.
John Douglas 3619 Dees Hill Trail	Sara Lamb Rt. 19, Box 1020

Following a lengthy discussion, Commisioner Turnbull made a substitute motion, which was seconded by Commissioner Price to uphold the Planning Commission's recommendation to deny the request. The motion carried unanimously.

(It was noted that Planning Commission felt this was inconsistent with the Comphrehensive Plan and also the time of the request, in view of on-going activities to assess what was the best alternative for Bradfordville Road.

EXCERPTS FROM PLAINTIFFS'
FOURTH AMENDED COMPLAINT

23. The Planning Commission found that the site plan provided that central sanitary sewer would be used by and could be provided to the site. (Tab C, pp. 8, 9, 11).

24. The Planning Commission expressed concern that the original site plan did not provide a buffer area to insulate existing residences east of the proposed roadway and substantially exceeded the depth of current commercial tracts in the area. However, the Planning Commission found the depth of the request was advantageous in allowing development without forcing commercial enterprise closer to the road and creating a strip type development. (Tab C, pp. 10-11).

25. The Planning Commission recommended denial of Plaintiffs' request for the following reasons and findings (Tab C, pp. 8 and 13):

a. General business designation for the request site, although supported by three "element policies", on balance was inconsistent with the Comprehensive Plan because of conflict with four other element policies. The four inconsistent policies were: 1) to allow adequate amounts of land for manufactured housing and mobile homes; 2) to encourage the preservation of agricultural land and other rural properties; 3) to encourage development in areas already served by sanitary sewer systems; and 4) to allow increased density in connection with proximity to major arterials in areas presently served by existing public utilities.

b. General business designation for the request site was inconsistent with the Comprehensive Plan locational policy because the site is not located at the intersection of arterial roadways and is not located at the center of several neighborhoods.

c. Commercial zoning was inconsistent with the comprehensive land use plan map which indicates a general business area somewhat less in size than the request.

d. The "district intent" is for CP zoning to be "viewed as the entrance to the urban area."

e. The difficulty of making a decision in view of on-going activities to assess the best alternatives for Bradfordville.

f. Prematurity of the application because it assumes the continuation of the existing development pattern which is a valid assumption but not a certainty.

26. At the subsequent hearing before the Board of County Commissioners on September 26, 1989, Plaintiffs further modified their request by filing an amended limited use site plan. The amended site plan deleted all development east of the proposed roadway and sought CP commercial zoning for only about 18 acres of the subject property lying west of the proposed roadway. The remaining 10 acres of the site would continue to be zoned agricultural (A-2) and used for public roadway, stormwater management, preservation and natural buffer area. (Tab D).

36. The pending motion to continue action on Plaintiffs' zoning request in view of its amendment was then substituted by a motion to accept the recommendation of the Planning Commission to deny the request, which substitute motion was approved by the Board. (Tab E, pp. 41-43).

37. In adopting the Planning Commission's recommendation to deny Plaintiffs' request, the Board necessarily adopted the Planning Commission findings and reasons.

38. The Board's adopted findings and reasons with respect to the extension of the general business designation on the land use map (see Paragraphs 25a and 25b above) were legally insufficient, unsupported, or contrary to law because:

a. The effect of the amended site plan, which significantly reduced the area to be designated for general business use, was not even evaluated by the adopted findings.

b. The locational policy for general business designation is inapplicable because the land use map already designates this location for general business use on a non-site specific basis. (Tab C, pp. 2,7). Moreover, Plaintiffs complied with the policy because the competent evidence, including the Planning Commission report, established that the subject property is at the center of several large residential neighborhoods at a high access point. (Tab C, p. 10; Tab E, p. 14).

c. The four plan element policies found to be inconsistent with the request were inapplicable or unreasonable to apply or were complied with as follows: 1) The area to be designated