

Kilgore Road Residents  
Opposition to:

Brentwood Club Phase 2 Rezoning Appeal  
Case No.: RZ-19-09-037

Brentwood Club Preliminary Subdivision Plan  
Case No.: CDR-19-08-267

A. Kurt Ardaman

**FISHBACK ♦ DOMINICK**

ESTABLISHED 1935

ATTORNEYS AND COUNSELORS AT LAW



**Kilgore Road Residents**

**Brentwood Club Lots adjacent to Kilgore Road Residents**

**Kilgore Road**





The Kilgore Road Residents abut the westerly border of Brentwood Club. The Kilgore Road lots are zoned R-CE and such zoning has existed since 1967, *prior* to Orange County's adoption of the its Comprehensive Plan and before Brentwood Club was zoned and developed.

The request to rezone Brentwood Club is improper and should be denied because:

- (i) Rezoning is inconsistent with the Orange County Comprehensive Plan and is, therefore, illegal; and
- (ii) Approving the rezoning will breach the agreement between the Kilgore Road Residents, the developer and his successors, and the Board of County Commissioners – zoning approval dated June 12, 1989.

On June 12, 1989, the Board of County Commissioners (“BCC”) held its rezoning hearing for Brentwood Club and the BCC found that in order for the rezoning to be compatible with the Kilgore Road homes and R-CE zoning and the County’s Comprehensive Plan, the following conditions were required:

1. All lots abutting the western property boundary shall be a minimum of ½ acre.
2. All lots abutting the southern property boundary shall be a minimum of ½ acre.
3. No access shall be permitted onto Darlene Drive.
4. Construction of a six (6) foot high brick wall along the southerly boundary line abutting Darlene Drive.
5. The minimum living area was required to be 2,200 square feet.
6. Building setbacks for principal structures along the rear (westerly) boundary shall be a minimum of fifty (50) feet; ***the westerly thirty-five (35) feet of which is to remain in its natural vegetative state.***
7. The owner of each lot located along the westerly boundary line shall be required to install a six (6) foot high shadowbox fence where no natural vegetation exists.

# BCC Written Decision of Approval – June 12, 1989

COMMISSIONERS AT THEIR MEETING  
JUN 12 1989

## DECISION ON PUBLIC HEARING

BEFORE

THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY, FLORIDA

June 12, 1989

THE BOARD OF COUNTY COMMISSIONERS approved A REQUEST BY RICHARD E. BOSSERMAN, AGENT, P & Z HEARING #9 HEARD ON MAY 18, 1989 FOR A CHANGE IN ZONING CLASSIFICATION FROM IND-1A TO R-1AA, ON PROPERTY LOCATED NORTHWEST CORNER APOPKA-VINELAND ROAD AND DARLENE DRIVE, SUBJECT TO THE

### FOLLOWING CONDITIONS:

1. All lots abutting the Western property boundary shall be a minimum of 1/2 acre;
2. All lots abutting the Southern property boundary shall be a minimum of 1/3 acre;
3. No access shall be permitted onto Darlene Drive;
4. Construction of a six(6) foot high brick wall along the South boundary line abutting Darlene Drive;
5. Minimum living area shall be 2200 square feet for all lots within the subdivision;
6. Building setbacks for principal structures along the rear (Westerly) boundary line shall be a minimum of fifty(50) feet; the Westerly thirty-five(35) feet of which is to remain in its natural vegetative state;
7. The owner of each lot located along the Westerly boundary line shall be required to install a six(6) foot high shadowbox fence where no natural vegetation exists;
8. Sewer and water services are to be obtained from Orange County.

*Jerry Blaiman*

CHAIRMAN

THE FOREGOING DECISION HAS BEEN FILED WITH ME THIS 16<sup>th</sup> DAY OF June, 1989.

*Smith W. H. H. H.*  
DEPUTY CLERK  
Board of County Commissioners  
Orange County, Florida

ENCLOSURE "2"

On August 23, 1989, the Development Review Committee ("DRC") considered the Preliminary Subdivision Plan for Brentwood Club. To ensure that all future owners were aware of the 35-foot natural vegetation buffer, the DRC required as a condition of approval, **prior to platting, deed restrictions and covenants shall be filed that prohibit clearing or removal of vegetation...on the western 35 feet of the project."**

Development Review Committee  
Brentwood Club PSP  
August 23, 1989 - Page 10

RECOMMENDATION:

DENY AS SUBMITTED - REDESIGN/RESUBMIT to address Findings as listed above and provide a species survey for review and approval. The following conditions should be considered by the developer for Redesign/Resubmit:

1. Development shall conform to the Brentwood Club Preliminary Subdivision Plan, dated Received \_\_\_\_\_, and to the following conditions of approval. Development based upon this approval shall comply with all other applicable federal, state and county laws, ordinances and regulations, which are incorporated herein by reference, except to the extent they are expressly waived or modified by these conditions or by action of Orange County.
2. Prior to platting or construction plan submittal, a survey for legally protected plant and animal species shall be submitted to the Planning Department for review and approval. If any legally protected species are found on-site, then a management plan for said species shall be submitted and approved by the Planning Department and the Florida Game and Freshwater Fish Commission prior to construction plan submittal.
3. Prior to platting, deed restrictions and covenants shall be filed that prohibit clearing or removal of vegetation (including ground cover) or placement of any structures on the western 35 feet of the project.

This condition was also included in the BCC's Preliminary Subdivision Plan approval. The developer abided by this condition of approval by:

- Including the condition on the **Plats**;
- Including the condition in the **Declaration of Covenants and Restrictions**; and
- Including the condition in **deeds** to lot owners.

All of the current applicants and other Brentwood Club owners were aware of the conditions prior to buying their house.



# **Brentwood Club Phase 2 Plat**

**Lots 8 through 28 are  
subject to this request**



# BRENTWOOD CLUB PHASE 2

SECTION 3, TOWNSHIP 24 SOUTH, RANGE 28 EAST  
ORANGE COUNTY, FLORIDA

SEE REPORT OF BRENTWOOD CLUB PHASE 2 PLAT 27 BOOK 21, EXHIBITING A PORTION OF PLAT.

### LEGAL DESCRIPTION

THESE ARE THE TERMS AND CONDITIONS OF THIS DEED. THE GRANTEE SHALL BE BOUND BY THE TERMS AND CONDITIONS OF THIS DEED. THE GRANTEE SHALL BE BOUND BY THE TERMS AND CONDITIONS OF THIS DEED.

NOTICE: THIS DEED IS SUBJECT TO THE RIGHTS AND INTERESTS OF THE OTHER PARTIES TO THE DEED. THE GRANTEE SHALL BE BOUND BY THE TERMS AND CONDITIONS OF THIS DEED.

### NOTICE

THE GRANTEE SHALL BE BOUND BY THE TERMS AND CONDITIONS OF THIS DEED.

### EASEMENTS

THE GRANTEE SHALL BE BOUND BY THE TERMS AND CONDITIONS OF THIS DEED.

### NOTES

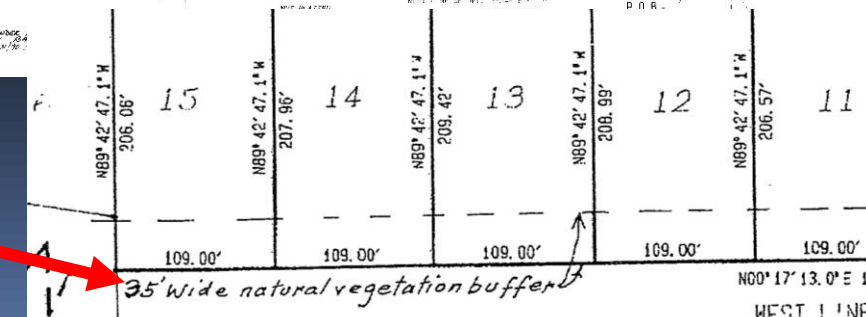
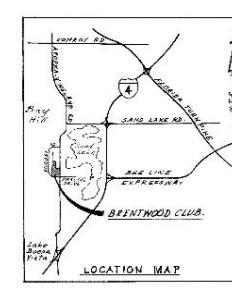
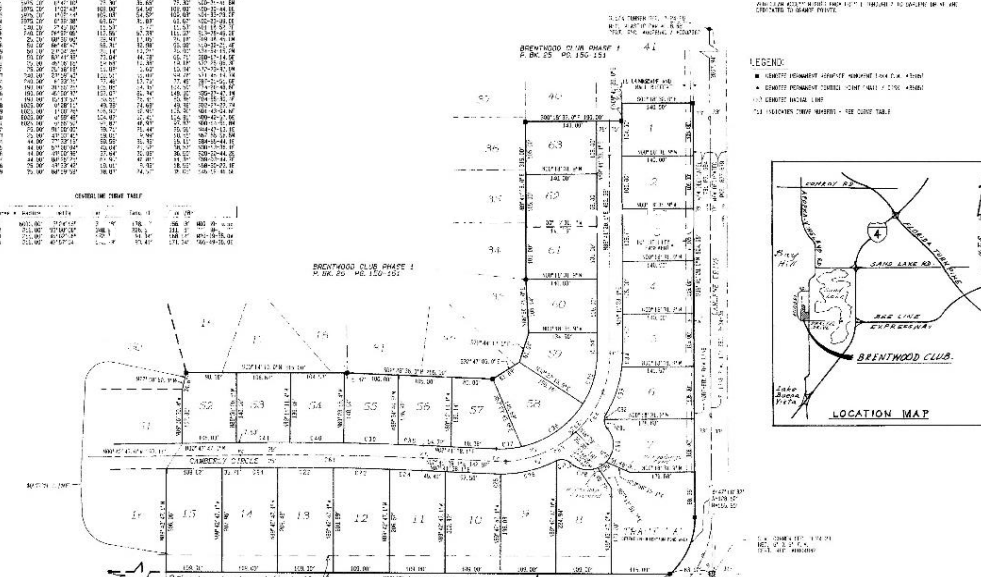
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### LEGEND

- BRENTWOOD CLUB PHASE 2
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Block	Area	Length	Width	Perimeter
1	1.00	100.00	100.00	400.00
2	1.00	100.00	100.00	400.00
3	1.00	100.00	100.00	400.00
4	1.00	100.00	100.00	400.00
5	1.00	100.00	100.00	400.00
6	1.00	100.00	100.00	400.00
7	1.00	100.00	100.00	400.00
8	1.00	100.00	100.00	400.00
9	1.00	100.00	100.00	400.00
10	1.00	100.00	100.00	400.00

Block	Area	Length	Width	Perimeter
11	1.00	100.00	100.00	400.00
12	1.00	100.00	100.00	400.00
13	1.00	100.00	100.00	400.00
14	1.00	100.00	100.00	400.00
15	1.00	100.00	100.00	400.00



PLAT BOOK **27** PAGE **1**

**BRENTWOOD CLUB PHASE 2**

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, being the owner of the parcel of land described in the foregoing caption to this plat, do hereby dedicate said lands and plat for the uses and purposes herein expressed and dedicate the Streets, Tract A, Tract B, Tract C, Tract D, Tract E, Tract F, Tract G, Tract H, Tract I, Tract J, Tract K, Tract L, Tract M, Tract N, Tract O, Tract P, Tract Q, Tract R, Tract S, Tract T, Tract U, Tract V, Tract W, Tract X, Tract Y, Tract Z, Tract AA, Tract AB, Tract AC, Tract AD, Tract AE, Tract AF, Tract AG, Tract AH, Tract AI, Tract AJ, Tract AK, Tract AL, Tract AM, Tract AN, Tract AO, Tract AP, Tract AQ, Tract AR, Tract AS, Tract AT, Tract AU, Tract AV, Tract AW, Tract AX, Tract AY, Tract AZ, Tract BA, Tract BB, Tract BC, Tract BD, Tract BE, Tract BF, Tract BG, Tract BH, Tract BI, Tract BJ, Tract BK, Tract BL, Tract BM, Tract BN, Tract BO, Tract BP, Tract BQ, Tract BR, Tract BS, Tract BT, Tract BU, Tract BV, Tract BW, Tract BX, Tract BY, Tract 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**DEDICATION**

**BRENTWOOD CLUB PHASE 2**

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VK, Tract VL, Tract VM, Tract VN, Tract VO, Tract VP, Tract VQ, Tract VR, Tract VS, Tract VT, Tract VU, Tract VV, Tract VW, Tract VX, Tract VY, Tract VZ, Tract WA, Tract WB, Tract WC, Tract WD, Tract WE, Tract WF, Tract WG, Tract WH, Tract WI, Tract WJ, Tract WK, Tract WL, Tract WM, Tract WN, Tract WO, Tract WP, Tract WQ, Tract WR, Tract WS, Tract WT, Tract WY, Tract WZ, Tract XA, Tract XB, Tract XC, Tract XD, Tract XE, Tract XF, Tract XG, Tract XH, Tract XI, Tract XJ, Tract XK, Tract XL, Tract XM, Tract XN, Tract XO, Tract XP, Tract XQ, Tract XR, Tract XS, Tract XT, Tract XU, Tract XV, Tract XW, Tract XX, Tract XY, Tract XZ, Tract YA, Tract YB, Tract YC, Tract YD, Tract YE, Tract YF, Tract YG, Tract YH, Tract YI, Tract YJ, Tract YK, Tract YL, Tract YM, Tract YN, Tract YO, Tract YP, Tract YQ, Tract YR, Tract YS, Tract YT, Tract YU, Tract YV, Tract YW, Tract YX, Tract YZ, Tract ZA, Tract ZB, Tract ZC, Tract ZD, Tract ZE, Tract ZF, Tract ZG, Tract ZH, Tract ZI, Tract ZJ, Tract ZK, Tract 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**STATE OF Florida, COUNTY OF Seminole**

THIS IS TO CERTIFY that on August 30, 1980, before me, an officer duly authorized to take acknowledgments in the State and County aforesaid, personally appeared Edward G. Galloway and Graham Aggarwal, respectively trustees of the above named corporations incorporated under the laws of the State of Florida

to me known to be the person described in and who executed the foregoing dedication and severally acknowledged the execution thereof to be their free act and deed for the uses and purposes therein expressed.

**IN WITNESS WHEREOF** I have hereunto set my hand and seal on the above date.

Victoria J. Fitzgerald  
NOTARY PUBLIC  
My Commission Expires 9-8-92

**CERTIFICATE OF SURVEYOR**

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, being a licensed and registered land surveyor, does hereby certify that on 8-22-80

he completed the survey of the lands as shown in the foregoing plat or plan, that said plat is a correct representation of the lands therein described and placed or established, that permanent reference monuments have been placed as shown thereon as required by Chapter 177, Florida Statutes, and that said land is located in Orange County, Florida.

Signed: Clive W. Hudson Dated: 8-22-80  
Name: C. W. HUDSON Reg. No. 38238  
(Print)

**CERTIFICATE OF APPROVAL BY ZONING DIRECTOR**

Examined and Approved: [Signature] Date: [Date]  
Zoning Director

**CERTIFICATE OF APPROVAL BY COUNTY ENGINEER**

Examined and Approved: Alvin R. Bates Date: 8-19-80  
County Engineer

**CERTIFICATE OF APPROVAL BY THE BOARD OF COUNTY COMMISSIONERS**

THIS IS TO CERTIFY that on \_\_\_\_\_ the foregoing plat was approved by the Board of County Commissioners of Orange County, Florida.

Chairman: Board of County Commissioners

**CERTIFICATE OF COUNTY COMPTROLLER**

I HEREBY CERTIFY, that I have examined the foregoing plat and find that it complies in form with all the requirements of Chapter 177, Florida Statutes, and was filed for record on 8-26-80 File No. 26379  
MARLA B. HAYNIC  
County Comptroller  
in and for Orange County, Florida

35' natural vegetation buffer



# BRENTWOOD CLUB PHASE 2

SECTION 3, TOWNSHIP 24 SOUTH, RANGE 28 EAST  
ORANGE COUNTY, FLORIDA

**EASEMENTS:**

1. A 35' WIDE NATURAL VEGETATION BUFFER IS REQUIRED ALONG ALL LOT PERIMETERS BY FRONTS ON HIGHWAYS.

2. A 5' WIDE FIREWORK AND BOMB BUFFER ZONE IS REQUIRED ON THE LOT PERIMETERS TO BE ADJACENT TO ANY PUBLIC OR PRIVATE HIGHWAY.

3. A 5' WIDE BUFFER ZONE IS REQUIRED AROUND ALL LOT AND COMMON UTILITY RIGHTS OF WAY.

4. A 5' WIDE BUFFER ZONE IS REQUIRED AROUND ALL LOT AND COMMON UTILITY RIGHTS OF WAY.

5. A 5' WIDE BUFFER ZONE IS REQUIRED AROUND ALL LOT AND COMMON UTILITY RIGHTS OF WAY.

6. A 5' WIDE BUFFER ZONE IS REQUIRED AROUND ALL LOT AND COMMON UTILITY RIGHTS OF WAY.

7. A 5' WIDE BUFFER ZONE IS REQUIRED AROUND ALL LOT AND COMMON UTILITY RIGHTS OF WAY.

8. A 5' WIDE BUFFER ZONE IS REQUIRED AROUND ALL LOT AND COMMON UTILITY RIGHTS OF WAY.

**NOTES:**

1. REVISIONS ARE REFERRED TO THE ASSUMED DATE OF BRENTWOOD CLUB PHASE 1.

2. ALL LOTS ARE TO BE CONVEYED TO THE ASSUMED DATE OF BRENTWOOD CLUB PHASE 1.

3. ALL LOTS ARE TO BE CONVEYED TO THE ASSUMED DATE OF BRENTWOOD CLUB PHASE 1.

4. ALL LOTS ARE TO BE CONVEYED TO THE ASSUMED DATE OF BRENTWOOD CLUB PHASE 1.

5. ALL LOTS ARE TO BE CONVEYED TO THE ASSUMED DATE OF BRENTWOOD CLUB PHASE 1.

6. ALL LOTS ARE TO BE CONVEYED TO THE ASSUMED DATE OF BRENTWOOD CLUB PHASE 1.

7. ALL LOTS ARE TO BE CONVEYED TO THE ASSUMED DATE OF BRENTWOOD CLUB PHASE 1.

8. ALL LOTS ARE TO BE CONVEYED TO THE ASSUMED DATE OF BRENTWOOD CLUB PHASE 1.

**LEGEND:**

■ REVERSED FORWARD METERS POINT (44.4, 4.0) (4.0, 44.4)

▲ REVERSED FORWARD METERS POINT (44.4, 4.0) (4.0, 44.4)

○ UNPLATTED METERS POINT (44.4, 4.0) (4.0, 44.4)

□ UNPLATTED METERS POINT (44.4, 4.0) (4.0, 44.4)

○ UNPLATTED METERS POINT (44.4, 4.0) (4.0, 44.4)

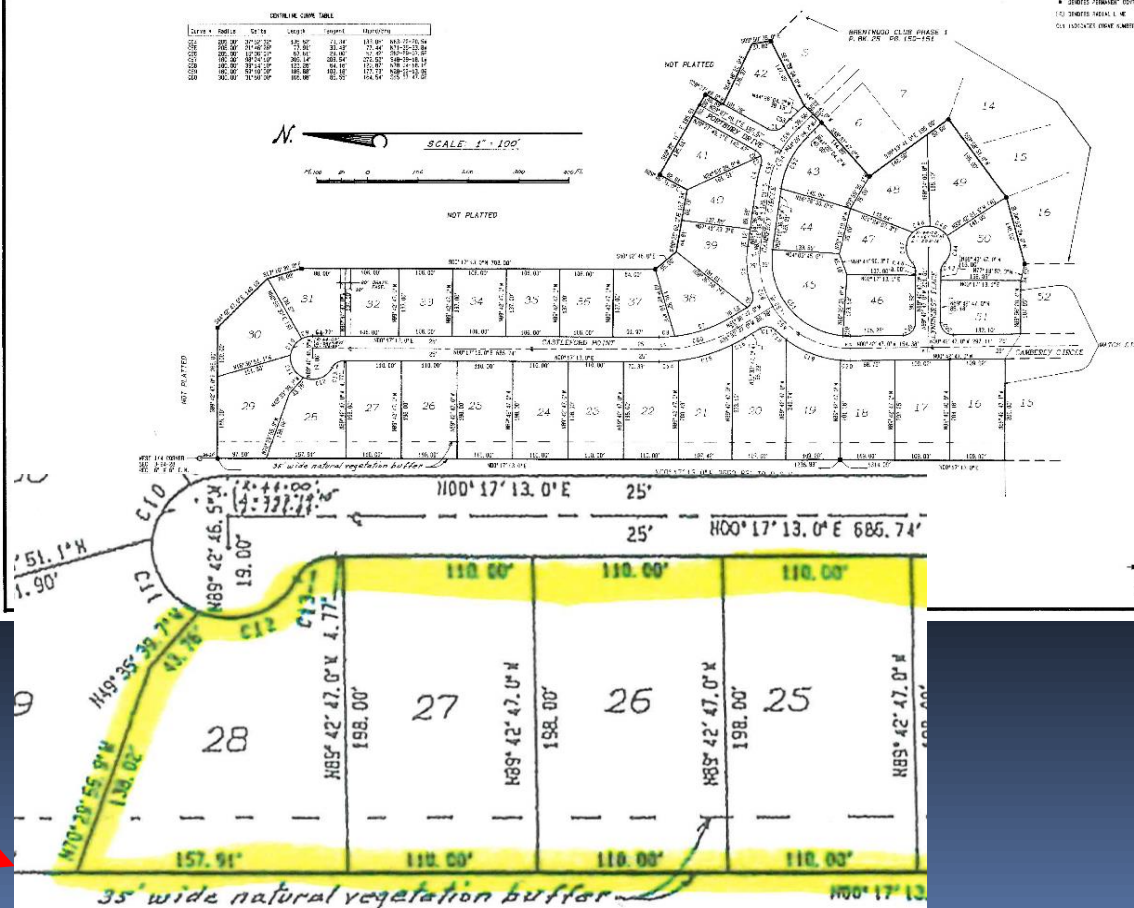
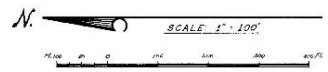
□ UNPLATTED METERS POINT (44.4, 4.0) (4.0, 44.4)

**CHAIN TABLE**

Chain #	Angle	Dist	Length	Area	Remarks
1	90.00	10.00	10.00	100.00	100-00-00.00
2	90.00	20.00	20.00	400.00	200-00-00.00
3	90.00	30.00	30.00	900.00	300-00-00.00
4	90.00	40.00	40.00	1600.00	400-00-00.00
5	90.00	50.00	50.00	2500.00	500-00-00.00
6	90.00	60.00	60.00	3600.00	600-00-00.00
7	90.00	70.00	70.00	4900.00	700-00-00.00
8	90.00	80.00	80.00	6400.00	800-00-00.00
9	90.00	90.00	90.00	8100.00	900-00-00.00
10	90.00	100.00	100.00	10000.00	1000-00-00.00

**CONTINUING CHAIN TABLE**

Chain #	Angle	Dist	Length	Area	Remarks
11	90.00	110.00	110.00	12100.00	1100-00-00.00
12	90.00	120.00	120.00	14400.00	1200-00-00.00
13	90.00	130.00	130.00	17000.00	1300-00-00.00
14	90.00	140.00	140.00	19800.00	1400-00-00.00
15	90.00	150.00	150.00	22900.00	1500-00-00.00
16	90.00	160.00	160.00	26200.00	1600-00-00.00
17	90.00	170.00	170.00	29700.00	1700-00-00.00
18	90.00	180.00	180.00	33400.00	1800-00-00.00
19	90.00	190.00	190.00	37300.00	1900-00-00.00
20	90.00	200.00	200.00	41400.00	2000-00-00.00



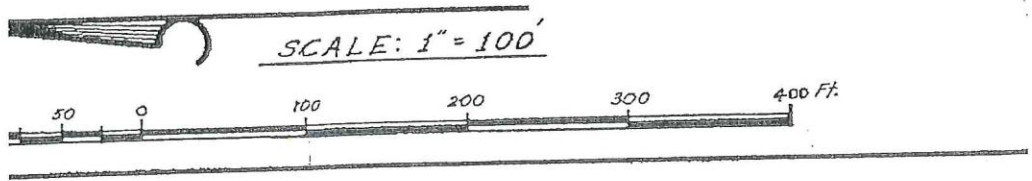
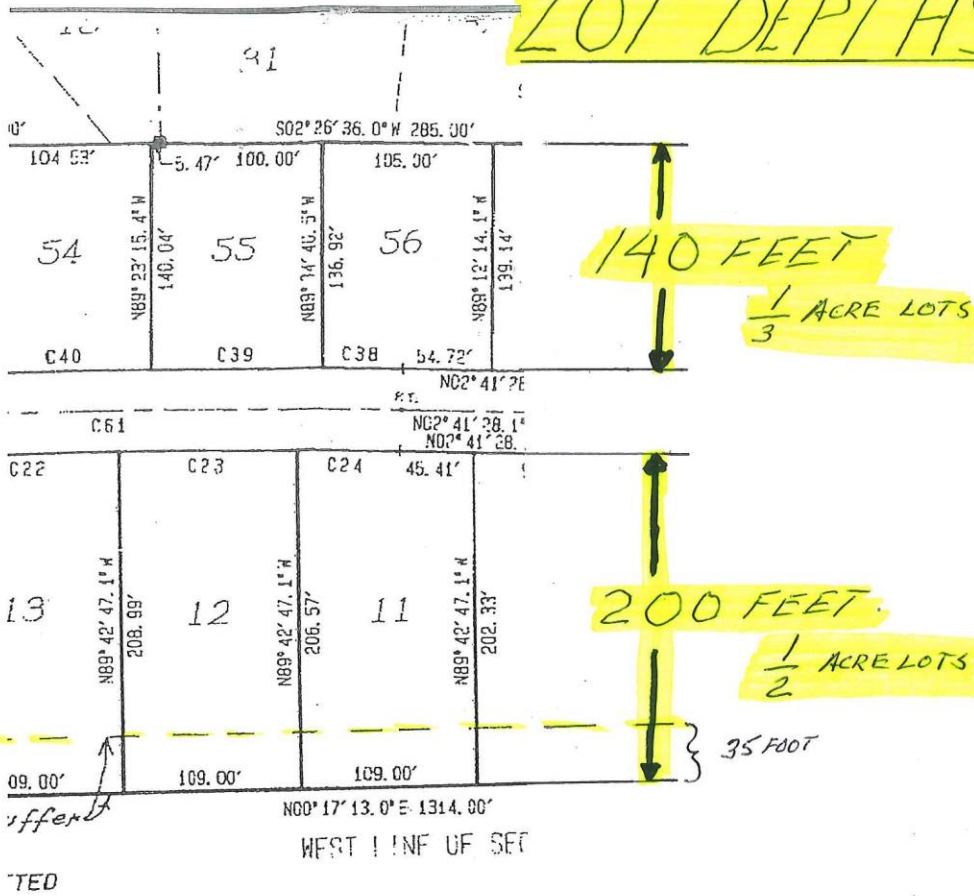
35' wide natural  
vegetation buffer



**CLIVE W. HUDSON**  
PROFESSIONAL LAND SURVEYOR  
P.O. Box 785 • Longwood, FL 32778  
Phone: 407-321-0834 • Fax: 407-321-0835



# LOT DEPTHS



# Declaration of Covenants and Restrictions for Brentwood Club Phase 2:

## ARTICLE IV

ADDITIONAL RESTRICTIONS: In addition to the Covenants and Restrictions that are incorporated by reference as provided in Article III, the following additional restrictions shall apply to BRENTWOOD CLUB PHASE 2:

The West 35 feet of Lots 8-29, inclusive, is designated as a natural vegetation buffer. Clearing or removal of vegetation, including ground cover, and placement of any structures on the West 35 feet of these lots is prohibited.

In 1989, the BCC found that to make the Brentwood Club development compatible with the adjacent properties, the 35-foot natural vegetation buffer was required – neither the houses, vegetation, or other conditions which required the 35-foot buffer 1989 has changed.

# CONCLUSION AND RATIONALE TO DENY APPEAL

1. The BCC did not “eliminate” the backyards from the requesting Brentwood owners. Even if one were to exclude the 35 foot natural vegetation buffer and pretend that the 35 feet is not part of these Brentwood lots, each one of these lots has a larger backyard than the other Brentwood lots.
2. There was never any “unintentional” consequence to the County Commission’s actions. The 35 foot natural vegetation buffer was an agreed compromise between the Kilgore Road residents, the developer, and the County Commission.
3. Thus, the 35 foot natural buffer was absolutely and expressly an agreed condition and each of the requesting Brentwood lot owners knew about the requirement when they acquired their property. It is a condition of the Brentwood Club R-1AA zoning, it is expressly reflected on their plats, it is set forth in their declaration of covenants and restrictions, and the plat is referenced in their deeds.



4. The 35 foot natural vegetation buffer was already a compromise when Brentwood Club was zoned and platted.
5. Incompatible with Comprehensive Plan Policies 8.1.1 and 8.2.1 and Objective 8.2, as compatibility is the fundamental required consideration.
6. Kilgore Road zoning is R-CE and Brentwood Club zoning is R-1AA making the adjacent zonings incompatible with one another thus, requiring the 35-foot natural vegetation buffer to maintain rural characteristics.
7. Each of the requesting Brentwood lots are between 198 feet and 243 deep, most of which are approximately 200 feet deep, averaging 60 feet more than the other Brentwood lots that average 140 feet deep.
8. These Brentwood owners' lot depths are approximately 25% larger than the other lots in Brentwood while the other lots in the subdivision are 1/3-acre lots. Therefore, these 21 Brentwood lots were platted and made extra-large and deep to accommodate the 35 foot buffer.

9. No change in circumstances since 1989 – thus, the 35-foot buffer is still required to maintain compatibility.

10. The Kilgore Road Residents purchased lots in reliance on this condition and provides an intrinsic value to their respective lots AND the Kilgore Road Residents gave up their right to appeal in exchange for these conditions.

11. If approved, this will set a precedent for other subdivisions to request the removal of buffers.

12. The Orange County Planning and Zoning Commission recommended denial of the rezoning and we respectfully request that you do so and deny the requested change to the plat.

Request **DENIAL** of the  
Rezoning Appeal and  
Preliminary Subdivision Plan  
regarding applicant's request to  
reduce or eliminate the  
required 35-foot natural  
vegetation buffer.

## John Smogor Analysis:

The Comp Plan supports providing for compatibility:

FLU Policy 8.1.1 specifies that R-CE is not allowed in the USA boundary. The existing R-CE was approved in 1967, prior to the adoption of the Comp Plan, and is grandfathered-in. Therefore the R-1AA was incompatible with the existing R-CE. That is why staff in 1989 recommended that the lots along the west would have to meet the R-CE site and building requirements. As a compromise between the Developer and the R-CE property owners, the conditions were negotiated and adopted.

FLU Policy 8.2.1 requires that land use changes shall be compatible with existing development. Performance restrictions and/or conditions may be placed on property through the appropriate development order to ensure compatibility.

**OBL FLU8.2 states that compatibility will continue to be the fundamental consideration in all land use and zoning decisions.**



# We represent 17 of 21 homeowners along Kilgore Road:

Sherri Fragomeni

Ronald Hartog

Gary Gentry

Marguerite Gentry

Paul Vissers

Elise Vissers

George E. Smith

Barbara Sheridan

John Stephens

Laura Stephens

David Wilson

Wayne Murray

Priscilla Murray

John Link

Richard Citron

Mohammed Diab

Celestina Rojas



# 35-foot natural vegetation buffer





**Rezoning Brentwood Club to remove the 35-foot  
buffer is inconsistent with the County's  
Comprehensive Plan and therefore illegal:**

Over 30 years ago, the BCC made the finding that the 35-foot natural vegetation buffer and shadowbox fence conditions were necessary to meet the County's Comprehensive Plan compatibility requirements. Policy FLU 8.2.1 requires land use changes to be compatible with existing development. Objective FLU 8.2 requires compatibility to be the fundamental consideration in all land uses and zoning decisions.

**The July 1989 BCC approval for the Brentwood Club R-1AA zoning is an agreement benefiting the Kilgore Road Residents and each of the Brentwood Club houses. Approving the current rezoning request is a breach of such agreement.**

The development records for Brentwood Club are clear that the 1989 zoning approval containing the 35-foot natural vegetation buffer and shadowbox fence conditions were and are for the benefit of the Kilgore Road Residents and was a requirement to allow Brentwood Club to develop. The BCC imposed requirements to maintain the rural characteristics consistent with the R-CE zoning while allowing the R-1AA lots to be approved and homes to be developed. In return, **the Kilgore Road Residents gave up their rights to challenge the 1989 zoning approval, which is now time barred.**

**The County's prior actions supports the agreement reached in 1989. The County has consistently treated the BCC's 1989 zoning approval as an agreement.**

In a letter from a representative of the Kilgore Road Residents to then Commissioner Vera Carter dated June 18, 1990, the representative stated that the June 12, 1989 zoning approval is a "legal agreement reached between residents of Kilgore Road and the Board of County Commissioners," and requesting the BCC enforce the 35 feet natural vegetation buffer condition.

In another letter to County staff dated August 10, 1990, the damage to the 35-foot natural vegetation buffer was addressed and that such damage be repaired to restore such buffer.



## Applicant's Change in Arguments:

Original rezoning request based on health and safety concerns due to wildlife corridor and "varmints" invading the lot owners' backyards.

P&Z recommended denial of the rezoning, resulting in the applicant's appeal.

On the applicant's appeal form, the applicant states the 35-foot natural vegetation buffer was an "Unintentional Consequence" imposed by the BCC.