



COUNTY ATTORNEY'S OFFICE
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MEMORANDUM

TO: Mayor Jerry L. Demings
and
County Commissioners

FROM: Jeffrey J. Newton, County Attorney *JJN*
Elaine M. Asad, Senior Assistant County Attorney *EAsad*
Contact Number: 407-836-7357

DATE: July 2, 2019

RE: Consent Agenda Item for July 16, 2019
Settlement Agreement for *Westwood Partners Group, LLC v. Orange County*
Section 70.51, Florida Statutes

In March 2018, Westwood Partners Group, LLC (“Westwood”) filed an application with the Orange County Development Review Committee (“DRC”) seeking approval of a development plan to rezone two parcels on Lake Willis in District 1 containing 8.88 gross net acres, of which 3.78 acres are developable, from R-CE (Country Estate District) to PD (Planned Development District) for the purpose of constructing eighty (80) attached single-family residential dwelling units. The DRC and the Planning and Zoning Commission (“PZC”) both recommended approval of Westwood’s proposed PD Land Use Plan.

On July 10, 2018, the Board denied the rezoning request.

Westwood then filed a request with the County invoking the special magistrate process described in Section 70.51, Florida Statutes, for land use disputes. As part of the special magistrate process, Westwood and the County mediated the case, resulting in the proposed Settlement Agreement.

If approved by the Board, the Settlement Agreement allows Westwood to submit a small scale development comprehensive plan amendment and concurrent rezoning requesting a change to the Future Land Use Element Map designation for the property from ACR to PD-MDR and rezone the property from R-CE to PD, with a maximum of forty-three (43) units. Also, if the Settlement Agreement is approved, the Board’s decision whether to approve the comprehensive plan amendment and rezoning request would need to be made by the Board at advertised and noticed public hearings where interested members

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July 2, 2019

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Settlement Agreement for *Westwood Partners Group, LLC v. Orange County*

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of the public would be allowed to appear and participate. In other words, approval of the Settlement Agreement would not obligate the Board to approve the comprehensive plan amendment or rezoning request at those future public hearings.

If the Settlement Agreement is not approved, or if the Settlement Agreement is approved but the comprehensive plan amendment and rezoning request are not subsequently approved, the litigation will resume under Section 70.51, Florida Statutes.

Please let us know if you have any questions.

ACTION REQUESTED: Approval of Settlement Agreement in the case of *Westwood Partners Group, LLC v. Orange County*, Case No. LUP-16-09-335. District 1.

c: Byron Brooks, County Administrator
Chris Testerman, Deputy County Administrator
Joel D. Prinsell, Deputy County Attorney

BCC Mtg. Date: July 16, 2019

Settlement Agreement between Westwood Partners Group, LLC, Petitioner and Orange County, Florida, Respondent.
File No. 2018-761
Case No. LUP-16-09-335

6/3/19

**IN AND BEFORE A SPECIAL MAGISTRATE
IN AND FOR ORANGE COUNTY, FLORIDA**

WESTWOOD PARTNERS GROUP, LLC

Petitioner

vs.

File No. 18-761
Westwood Partners
Group, LLC Rezoning
Case No. LUP-16-09-335

ORANGE COUNTY, FLORIDA,

Respondent

SETTLEMENT AGREEMENT

Petitioner, WESTWOOD PARTNERS GROUP, LLC, a Florida limited liability company ("Westwood"), and Respondent, ORANGE COUNTY, FLORIDA, a Charter County and political subdivision of the State of Florida ("County"), hereby enter into this Settlement Agreement ("Agreement"):

A. STIPULATIONS OF FACT

1. Westwood is the owner of certain real property that is the subject of the above-styled proceeding and that is located at 11302 and 11314 Westwood Boulevard, in Orange County, Florida, with Parcel Identification Numbers 14-24-28-4800-00-370 & 14-24-28-4800-00-360 ("Property").

2. The Property is located in the unincorporated area of Orange County, and accordingly is subject to the County's Comprehensive Plan, the County Code, and the County's Land Development Regulations.

3. In March, 2018, Westwood filed an application with the Orange County Development Review Committee ("DRC") seeking approval of a development plan to rezone

T.J.

two (2) parcels containing 8.88 gross net acres, of which, 3.78 acres are developable, from R-CE (Country Estate District) to PD (Planned Development District) for the purpose of constructing eighty (80) attached single-family residential dwelling units (the "Original Rezoning Request").

4. On or about March 28, 2018, the DRC recommended approval of Westwood's PD Land Use Plan.

5. On or about May 17, 2018, the Planning and Zoning Commission ("PZC") also recommended approval of Westwood's PD Land Use Plan.

6. On or about July 10, 2018, the Board of County Commissioners ("BCC") conducted a public hearing on Westwood's proposed rezoning, and, at the conclusion thereof, voted to deny the rezoning request from R-CE (Country Estate District) to PD (Planned Development District) for the purpose of constructing eighty (80) attached single-family residential dwelling units. The BCC's Decision Letter was filed with the Clerk of the BCC on July 24, 2018.

7. On August 7, 2018, Westwood filed a request with the County invoking the special magistrate process prescribed in Section 70.51, *Florida Statutes*, with regard to the BCC's denial of Westwood's Original Rezoning Request, such proceeding being styled as *Westwood Partners Group, LLC v. Orange County, et al.*, OC File No. 18-761 ("Special Magistrate Proceeding").

8. On November 1, 2018, Westwood, the County, and interested members of the public participated in a mediation conference in accordance with Section 70.51(12), *Florida Statutes*, in an attempt to amicably resolve the Special Magistrate Proceeding and to arrive at a fair and reasonable agreement to resolve the dispute.

9. Westwood and the County (collectively, the "Parties") desire to enter into this Settlement Agreement for the purpose of attempting to resolve the Special Magistrate Proceeding in accordance with the terms below.

B. SETTLEMENT COVENANTS AND TERMS

1. **Terms of Agreement.** In connection with the Parties' execution of this Agreement and the covenants and terms herein, the Parties agree as follows:

a. Within ninety (90) days of the Effective Date of this Agreement,

Westwood shall submit to the County its applications for a small scale development comprehensive plan amendment ("plan amendment") and concurrent rezoning. The plan amendment application will request to change the Future Land Use Element Map designation for the Property from ACR to PD-MDR, and to rezone the Property from R-CE to PD, with a maximum of 43 units.

- b. As soon as the DRC's calendar permits, the proposed rezoning shall be reviewed by the DRC in accordance with standard DRC procedures and practice, and the DRC shall make a recommendation on the proposed rezoning. (The DRC does not review proposed comprehensive plan amendments.) Thereafter, as soon as the calendar for the Local Planning Agency/Planning and Zoning Commission ("LPA/PZC") permits, the proposed plan amendment and concurrent rezoning shall be reviewed by the LPA/PZC at duly noticed concurrent public hearings. Thereafter, as soon as the BCC's calendar permits, the proposed plan amendment and concurrent rezoning shall be reviewed by the BCC at duly noticed concurrent public hearings, notwithstanding the time period restrictions set forth in Sections 30-37 and 30-48 of the Orange County Code.
- c. The County agrees to waive the application fees for the plan amendment and concurrent rezoning.
- d. Any other waiver requests will be subject to review by the County.
- e. If, at the conclusion of the BCC's concurrent public hearings, a member of the BCC makes a motion to deny Westwood's proposed plan amendment and/or concurrent rezoning, and the motion is seconded, Westwood may elect to withdraw the requests and thereafter schedule a hearing on the Original Rezoning Request as provided in Section 70.51(15)(a), *Florida Statutes*. If, however, the BCC approves the plan amendment and concurrent rezoning, such approval shall supersede and vacate the BCC's denial of the Original Rezoning Request, shall constitute the County's final decision on the matter, shall constitute a final resolution of the Special Magistrate Proceeding, and, accordingly, within ten (10) days, Westwood shall voluntarily dismiss the Special Magistrate Proceeding with prejudice.

- f. In the event the BCC denies the plan amendment and concurrent rezoning, or the BCC fails to review and consider the plan amendment and concurrent rezoning within ninety (90) days after the date that the DRC renders a decision on the rezoning (unless Westwood agrees to an extension of such time period in writing), then the BCC's July 24, 2018, decision on the Original Rezoning Request shall be deemed unaffected by the Parties' settlement efforts, the plan amendment and concurrent rezoning applications shall be deemed to have been withdrawn, this Agreement shall become null and void, and Westwood shall be entitled to resume the Special Magistrate Proceeding pursuant to Section 70.51, *Florida Statutes*, on the Original Rezoning Request.

2. **Permits Required.** The plan amendment and concurrent rezoning, as well as any and all development on the Property, may require certain subsequent permits. Westwood shall apply for all such permits as may be required and shall meet all applicable requirements of the Orange County Code, the County's Land Development Regulations, and the County's Comprehensive Plan, as amended.

3. **Authority.** Each Party represents and warrants, with respect to itself, that the execution and delivery of this Agreement has been authorized by all necessary action of such Party, and that this Agreement constitutes the legal, valid, and binding agreement of each Party, enforceable in accordance with its terms. It is expressly understood and agreed that this Agreement shall not become binding upon Westwood and the County unless and until the BCC approves this Agreement at a public hearing, as is required by Florida law.

4. **Governing Law; Venue.** This Agreement shall be construed, interpreted, enforced, and governed in accordance with the laws of the State of Florida. Venue for any action arising out of or related to this Agreement shall be in Orange County, Florida.

5. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the respective successors, heirs, assigns, bankruptcy trustees, representatives, affiliates, officers, directors, partners, members, and joint venturers of the Parties.

7. **Non-Waiver.** Failure by Westwood or the County to insist upon the strict performance of any of the terms, conditions, or provisions of this Agreement shall not be deemed to be a waiver of such terms, conditions, and provisions, and Westwood and the County, notwithstanding such failure, shall have the right hereafter to insist upon the strict performance of any or all such terms and conditions of this Agreement as set forth herein. Notwithstanding

the foregoing, the BCC's review of Westwood's proposed plan amendment and concurrent rezoning pursuant to this Agreement shall be conducted at duly noticed concurrent public hearings where the BCC hears testimony and receives evidence from Westwood and the general public, and reserves its authority to approve or deny the plan amendment and concurrent rezoning. Accordingly, nothing in this Agreement may be construed or interpreted to mean that the BCC is obligated to give, or will give, favorable consideration to the plan amendment and concurrent rezoning.

8. **Construction; Headings.** The Parties acknowledge that they participated in the negotiation and drafting of the terms of this Agreement and acknowledge that no provision shall be strictly construed against one party or the other based solely on draftsmanship. The Parties have entered into this Agreement without duress, coercion, or under undue influence of any kind, and are motivated by a desire to avoid the costs and time associated with further litigation and to arrive at a fair and reasonable agreement with regard to the dispute. The Parties acknowledge that they have been represented by counsel in connection with the negotiation of the terms of this Agreement and that they enter into this Agreement freely and voluntarily, and only after consultation with their respective counsel. Captions and paragraph headings contained in this Agreement are for convenience and reference only. They in no way define, describe, extend or limit the scope or intent of this Agreement.

9. **Interpretation.** This Agreement shall be read and interpreted in such a manner as to give all provisions their ordinary and customary meaning, and all words, terms, and phrases not otherwise specifically defined by a capitalized term or otherwise shall have the same meaning and interpretation as customarily used among lay persons. The terms "hereby," "hereof," "herein," "hereto," "hereunder," and any similar terms refer to this Agreement in its entirety and not solely to the particular section or paragraph in which the term is used. All words, terms, and phrases specifically defined by a capitalized term shall apply throughout this Agreement in its entirety and not solely to the particular section or paragraph in which the term is used. In construing this Agreement, unless the context clearly indicates or suggests otherwise, the singular shall be held to include the plural, the plural shall include the singular, and the use of any gender shall include every other and all genders.

10. **Entire Agreement; Amendments.** This Agreement represents the entire understanding and agreement between the Parties with respect to the subject matter hereof. No representations have been made, either express or implied by the Parties, other than those expressly set forth in this Agreement. This Agreement or any part hereof may not be changed, amended, waived, discharged, or terminated except by an instrument in writing, executed by all Parties.

11. **Disclaimer of Third Party Beneficiaries.** This Agreement is solely for the benefit of the Parties and no right or cause of action shall accrue by reason hereof to, or for the benefit of, any third party not a formal party hereto. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give any other third person or entity any right, remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof, other than as may be expressly stated herein.

12. **Purpose of this Agreement; Not Establishing Precedent.** The Parties acknowledge and agree that this Agreement is not intended by any Party to be construed, and shall not be construed, as an admission by any Party of any liability, error, or violation of any law, statute, ordinance, regulation, or other legal duty of any nature whatsoever. Rather, the Parties enter into this Agreement in a spirit of cooperation and compromise for the purpose of avoiding further litigation and a desire to resolve the Disputes. The Parties enter into this Agreement as part of a mediated settlement affecting many factual and legal issues and do not intend this Agreement to be an endorsement of, or precedent for, the use of the terms set forth herein in any other circumstances.

13. **Attorneys' Fees; Costs.** Each Party expressly agrees to bear the fees and costs of its respective counsel, experts, and consultants in the Special Magistrate Proceeding, as well as in the preparation of this Agreement, and the Parties expressly waive any and all rights to pursue an award of attorneys' fees and costs in such proceedings. The Parties further agree to pay an equal share of the total amount of Special Magistrate fees that are due and owing to Lewis Stone, Esquire, who served as Special Magistrate in the mediation.

14. **Notices.** All notices and other communications required hereunder shall be in writing and shall be delivered personally, or by registered or certified mail, return receipt requested, postage prepaid, or by Federal Express or other nationally recognized overnight commercial delivery service, fees prepaid for next day delivery. Such notices shall be deemed to have been received: (i) upon delivery, if personally delivered; (ii) upon the earlier of actual receipt or the third day after mailing, if mailed by registered or certified United States mail, return receipt requested, postage prepaid; and (iii) upon the earlier of actual receipt or the next business day if sent by Federal Express or other nationally recognized overnight commercial delivery service, if fees are prepaid for next day delivery. The addresses for delivery of such notices shall be as follows:

- (a) To Westwood Group Partners, LLC:

2211 W Washington ST, Orlando FL 32805

[Need Westwood's address]

With a copy to:

Rebecca Wilson, Esq.
Lowndes Drosdick Law Firm
P.O. Box 3809
Orlando, FL 32802-2809

(b) To the County:

Orange County Administrator
c/o Chris Testerman, Deputy County Administrator
P.O. Box 1393
201 S. Rosalind Avenue
Orlando, Florida 32802-1393

With a copy to:

Orange County Legal Department
c/o Joel D. Prinsell, Deputy County Attorney
P.O. Box 1393
Orlando, Florida 32801

or to such other address as any Party hereto shall from time to time designate to the other Party by notice in writing as herein provided.

15. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original and need not be signed by more than one of the Parties and all of which shall constitute one and the same agreement.

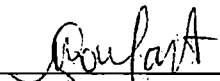
16. **Effective Date.** This Agreement shall become effective upon the date of execution by the County, the last of the Parties to execute it.

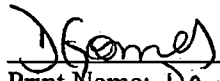
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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in a manner sufficient to bind them on the day and year identified above.

Signed, sealed, and delivered before me:

WITNESSES


Print Name: MELINA GOLART


Print Name: DANILO GOMES

WESTWOOD GROUP PARTNERS, LLC,
a Florida limited liability company,

By: 

Name: Thiago Davila

Its: Member

Date: 6/3/19

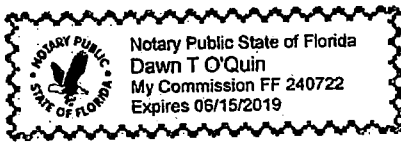
STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this 4th day of June 2019, by Thiago Davila, as Member of Westwood Group Partners, LLC, on behalf of said entity. Said person (check one) is personally known to me or produced _____ as identification.

(Notary Seal)

Printed Name: Dawn T. O'Quin
Notary Public, State of Florida
Commission No. FF-240722
My commission expires: 6/15/19



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: Jerry L. Demings
for Jerry L. Demings
Orange County Mayor

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: Craig A. Stopya
for Deputy Clerk
Date: JUL 16 2019, 2019

