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MEMORANDUM

TO: Mayor Jerry L. Demings
-and-
County Commissioners

FROM: Jeffrey J. Newton, County Attorney *JJN*
Joel D. Prinsell, Deputy County Attorney *JDP*
Contact: (407) 836-7320

DATE: June 5, 2023

SUBJ: Proposed Amendment to Settlement Agreement Concerning West
Orange County Relief High School
CONSENT AGENDA: June 20, 2023

In April 2015, the School Board of Orange County, Florida (“OCSB”) and the Board of County Commissioners (“BCC”) entered into a Settlement Agreement to resolve protracted litigation in Circuit Court Case Numbers 2013-CA-13692 and 2013-CA-014749 over OCSB’s attempt to open the West Orange Relief High School near the northeastern quadrant of CR 535 and Ficquette Road in County Commission District 1 (“Settlement Agreement”).

Pursuant to the terms of the Settlement Agreement, in May 2015, the BCC held a public hearing to consider approval of OCSB’s special exception application, referenced as Board of Zoning Adjustment (“BZA”) Case Number SE-13-07-046, to construct what is now known as the Windermere High School (“WHS”) in compliance with the terms of the Settlement Agreement (“Special Exception”). At the public hearing, the BCC approved the Special Exception, subject to several restrictions and conditions consistent with the terms of the Settlement Agreement, including one requiring the high school stadium to be located about one mile from the site of WHS at the County-owned Dorman property on Ficquette Rd. (“Stadium”), which property is now known as Deputy Scott Pine Park (“Park”).

Also pursuant to the terms of the Settlement Agreement and the Special Exception, a year later, in May 2016, the OCSB and the BCC entered into an Agreement regarding the West Orange Relief High School Stadium (“Stadium Agreement”). Subsequently, the County constructed the Stadium, and both parties are required to use the Stadium and grounds of the Park under the terms of the Stadium Agreement.

For several years, the OCSB has been asserting that the off-campus Stadium causes logistical issues that are a hardship to WHS. Also, the OCSB has been claiming that the limited size of the parking area at the Park, the lack of buildings for

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shelter at the Park during periods of inclement weather, and the road network in the vicinity of the Stadium, have caused safety and other issues for students, faculty, and guests of WHS events at the Park as well as for the surrounding community.

Accordingly, through the Amendment, the OCSB desires to seek amendments to several conditions of the Special Exception to allow a standard public high school stadium to be built on the southwest corner of the campus of the WHS property, and to simultaneously request to amend the Stadium Agreement.

The OCSB is scheduled to consider the proposed Amendment to the Settlement Agreement for approval at its June 13, 2023 meeting (“Amendment”). If approved by the OCSB, the BCC will consider the Amendment for approval at its June 20, 2023 meeting.

If approved by the OCSB and the BCC, the Amendment provides that the BCC consents to Orange County Public Schools (“OCPS”) filing an application with the Zoning Division to amend certain restrictions and conditions of the Special Exception to allow construction of a high school stadium at the site of the existing track and practice field on the WHS campus. The application and supporting documentation, including a revised site plan, would be scheduled for a public hearing with the BZA. At least ten days before the public hearing with the BZA, the OCSB would host a community meeting on its proposal at the campus of the WHS in coordination with the office of Commissioner Nicole Wilson. After the BZA holds the public hearing and makes its recommendation to the BCC, the BCC will hold a public hearing on the application.

The OCSB understands and agrees in the Amendment that any changes required to the terms of the underlying Settlement Agreement regarding maintenance, cost sharing, and usage of the Stadium located at the Park will be addressed by an Amendment to the Stadium Agreement, and that the proposed Amendment to the Stadium Agreement must be approved and executed by the OCSB before the date of the public hearing by the BCC on the application to amend the Special Exception, that the proposed Amendment to the Stadium Agreement will be considered by the BCC *concurrently* with its consideration of OCPS’s application to amend the Special Exception, and that the BCC’s approval of the application to amend the Special Exception is contingent on the BCC deciding in its sole discretion to also approve the proposed Amendment to the Stadium Agreement.

Furthermore, the OCSB understands and agrees in the Amendment that by approving the Amendment to the Settlement Agreement, the BCC is *not* obligated or compelled to approve OCPS’s application to amend the Special Exception, and that

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the BCC cannot decide whether to approve or not approve the application until the conclusion of its quasi-judicial public hearing.

Moreover, the OCSB understands and agrees in the Amendment that if the BCC ultimately decides to not approve OCPS's application to amend the Special Exception and/or decides to not approve the proposed Amendment to the Stadium Agreement, then the Amendment to the Settlement Agreement will be of no further force and effect, and the current Settlement Agreement as approved in April 2015 will remain in full force and effect between the two parties.

The Amendment will not become effective unless approved by the BCC on June 20, 2023.

Please contact Jeffrey Newton or me at (407) 836-7320 if you have any questions.

ACTION REQUESTED: Approval and execution of Amendment to West Orange County Relief High School Settlement Agreement between the School Board of Orange County, Florida and the Orange County Board of County Commissioners.

Attachment

c: Byron W. Brooks, AICP, County Administrator
Jon V. Weiss, Deputy County Administrator
Jennifer Moreau, Manager, Zoning Division
Matt Suedmeyer, Manager, Parks and Recreation Division
Scott McHenry, Assistant County Attorney

Amendment to West Orange County Relief High School Settlement Agreement

WHEREAS, on or about April 7, 2015, the School Board of Orange County, Florida (“OCSB”) and the Orange County Board of County Commissioners (“BCC”) entered into that certain West Orange County Relief High School Settlement Agreement (“Settlement Agreement”) in order to settle litigation in Circuit Court Case Nos. 2013-CA-13692 and 2013-CA-014749;

WHEREAS, pursuant to the terms of the Settlement Agreement, on or about May 5, 2015, the BCC held a quasi-judicial public hearing to consider approval of OCSB’s special exception application, Board of Zoning Adjustment (“BZA”) Case No. SE-13-07-046, to construct what is now the Windermere High School (“WHS”) in compliance with the terms of the Settlement Agreement (“Special Exception”), and at such public hearing the BCC approved the Special Exception, subject to restrictions and conditions consistent with the terms of the Settlement Agreement;

WHEREAS, in particular, consistent with the terms of the Settlement Agreement, the Special Exception approval required the construction of a standard public high school stadium to serve WHS at the County owned Dorman property on Ficquette Road about one mile from the site of WHS (“Stadium”), which property is now known as Deputy Scott Pine Park (“Park”);

WHEREAS, pursuant to the terms of the Settlement Agreement and the Special Exception, on or about May 24, 2016, the OCSB and the BCC entered into that certain Agreement Regarding West Orange Relief High School Stadium (“Stadium Agreement”);

WHEREAS, thereafter, the County constructed the Stadium, and both parties have been using and occupying the Stadium and grounds of the Park under the Stadium Agreement;

WHEREAS, the OCSB asserts that the off campus Stadium has caused logistical issues that are a hardship to WHS;

WHEREAS, also, the OCSB asserts that the limited size of the parking area at the Park, the lack of buildings for shelter at the Park during periods of inclement weather, and the road network in the vicinity have caused safety and other issues for students, faculty, and guests of WHS events at the Park as well as for the surrounding community; and

WHEREAS, the OCSB therefore desires to seek amendments to the conditions of the Special Exception to allow the construction of a standard public high school stadium on the southwest corner of the campus of the WHS property, and to request to amend the Stadium Agreement.

NOW THEREFORE, the OCSB and the BCC wish to amend the Settlement Agreement as follows:

1. The BCC consents to allowing Orange County Public Schools (“OCPS”) to submit an application to amend certain conditions of the Special Exception to propose allowing the

construction of a standard public high school stadium on the southwest corner of the campus of the WHS property, which is the location of the existing track and practice field on the WHS campus. The application must be submitted by OCPS, if at all, within one hundred eighty (180) days from the effective date of this Amendment. The application and supporting documentation, including a revised site plan, shall be scheduled for a quasi-judicial public hearing with the BZA, and after the BZA holds the public hearing and makes its recommendation to the BCC, the application shall be scheduled for a de novo quasi-judicial public hearing with the BCC. At least ten (10) days before the public hearing with the BZA, the OCSB shall host a community meeting on its proposal at the campus of the WHS in coordination with the office of District 1 County Commissioner Nicole Wilson.

2. The BCC consents to allowing OCPS to propose in its application to amend the Special Exception that the use restrictions found in paragraphs 2) a., 2) g., and 2) j. of the Settlement Agreement be modified or rescinded by the BCC, subject to other conditions or restrictions that may be established by the BCC if it ultimately decides to approve OCPS' application to amend the Special Exception.
3. The OCSB understands, acknowledges, and agrees that any changes required to paragraphs 2) i. and 2) j. of the Settlement Agreement regarding the maintenance, cost sharing, and usage of the Stadium located at the Park shall be addressed by an Amendment to the Stadium Agreement, and that such proposed Amendment to the Stadium Agreement must be approved and executed by the OCSB before the date of the public hearing by the BCC on the application to amend the Special Exception, that the proposed Amendment to the Stadium Agreement will be considered by the BCC concurrently with its consideration of OCPS's application to amend the Special Exception, and that the BCC's approval of the application to amend the Special Exception is contingent on the BCC also deciding in its sole discretion to approve the proposed Amendment to the Stadium Agreement.
4. Furthermore, the OCSB understands, acknowledges, and agrees that by approving this Amendment to the Settlement Agreement, the BCC is not obligated or compelled to approve (or, with respect to the BZA, to recommend approving) OCPS's application to amend the Special Exception, and that such decision to approve or not approve the application must be made at the conclusion of a quasi-judicial public hearing that is duly advertised, noticed and held. Similarly, the OCSB understands, acknowledges, and agrees the BCC is not obligated or compelled to give favorable consideration to the application as a result of having entered into this Amendment to the Settlement Agreement with the OCSB consenting to allow OCPS to submit an application to amend certain conditions of the Special Exception. In other words, the BCC reserves the authority to approve or not approve the amendment application based on the testimony and evidence at the quasi-judicial public hearing.
5. Moreover, the OCSB understands, acknowledges, and agrees that if the BCC ultimately decides to not approve OCPS's application to amend the Special Exception and/or decides to not approve the proposed Amendment to the Stadium Agreement, then this Amendment to the Settlement Agreement shall be null and void and of no further force and effect, and the Settlement Agreement as approved on or about April 7, 2015, shall remain in full force

and effect between the parties, and the OCSB waives any right it might otherwise have to challenge or contest the BCC's decision through legal, equitable, or any other remedies.

6. The OCSB also understands, acknowledges, and agrees that if OCPS withdraws its application for an amendment to the Special Exception prior to a final decision by the BCC, or OCPS does not submit the application to amend the Special Exception within 180 days from the effective date of this Amendment as required under paragraph 1 of this Amendment, then this Amendment to the Settlement Agreement shall be null and void and of no further force and effect, and the Settlement Agreement as approved on or about April 7, 2015, shall remain in full force and effect between the parties.

7. This Amendment shall become effective upon the date of approval by the BCC.

The School Board of Orange County, Florida, a corporate body organized and existing under the Constitution and laws of the State of Florida

By: *Teresa Jacobs*
Teresa Jacobs, Chair

Date: 6/15/23

Orange County, Florida
By: **Board of County Commissioners**

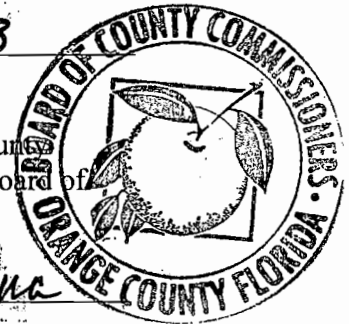
By: *Henry L. Demings*
Henry L. Demings, County Mayor

Date: 20 June 2023

ATTEST:
By: *Maria F. Vazquez*
Maria F. Vazquez, Ed.D., as its
Secretary and Superintendent

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

By: *Craig Stopynka*
for Deputy Clerk



Approved as to form and legality by the
Office of Legal Services for The School
Board of Orange County, Florida this
13th day of JUNE, 2023

Amy D. Envall
Amy D. Envall, General Counsel