



Interoffice Memorandum

79- 1-16P04: 1- 1807

Date: September 1, 2016

TO: Katie Smith, Deputy Clerk, Comptroller Clerk's Office

THRU: Cheryl Gillespie, Agenda Development Supervisor
Agenda Development Office, BCC

FROM: Diana M. Almodovar, P.E., Manager, Development Engineering Division

THRU: Francisco J. Villar, P.E., Engineer III
Development Engineering Division, Public Works Department
Telephone: 407-836-7921
E-mail address: francisco.villar@ocfl.net

RE: **Request for Public Hearing for the Windermere Country Club Plat Vacation
Bryan DeCunha on behalf of Windermere Country Club, LLC**

Applicant: Bryan DeCunha
Windermere Country Club, LLC
2710 Butler Bay Drive North
Windermere, FL 24786

Location: S01/T23/R27 Petition to vacate the development and access rights of Tract A (Golf Course) of the Butler Bay – Unit Three development dedicated to Orange County per the plat of Butler Bay – Unit Three, as recorded in Plat Book 18, Page 4, of the Public Records of Orange County, Florida. The parcel ID number is 01-23-27-1108-00-001. The parcel address is 2710 Butler Bay Drive North and it lies in District 1.

Estimated time required for public hearing: Two (2) minutes.

Hearing controversial: Yes.

Advertising timeframes: Publish the petition, the Clerk's estimated hearing date, time and place at least 14 days prior to the date set for the public hearing. Publish the notice of adoption within 30 days of the hearing date.

October 18, 2016
@ 2pm

**Request for Public Hearing for the Windermere Country Club Plat Vacation
Bryan DeCunha on behalf of Windermere Country Club, LLC**

Applicant/Abutters to

Be notified:

Yes – Mailing labels sent via e-mail to the Clerk's office.

Hearing by Fla. Statute

or code:

Pursuant to Section 177.101 of the Florida Statutes.

Spanish contact person:

Para mas información referente a esta vista pública, favor de comunicarse con la División de Ingeniería de Desarrollos (Development Engineering Division) al número 407-836-7921.

Materials being submitted as backup for public hearing request:

1. Memo from the property owner's attorney requesting the plat vacation
2. Receipt of payment of petition fees
3. Mailing labels (sent via e-mail to the Clerk's office)


SPECIAL INSTRUCTIONS TO CLERK (IF ANY):

1. Please notify Francisco Villar of the scheduled date and time. The Development Engineering Division will notify the customer.

**PUBLIC WORKS DEPARTMENT
DEVELOPMENT ENGINEERING DIVISION
REQUEST FOR COUNTY MAYOR'S APPROVAL
August 5, 2016**

Request authorization to schedule a Public Hearing for the Windermere Country Club Plat Vacation. This is a request from Windermere Country Club, LLC to vacate the development and access rights to Tract A dedicated to Orange County per the plat of Butler Bay – Unit 3, as recorded in Plat Book 18, Page 4, of the Public Records of Orange County, Florida. Property lies in District 1.

Requested Action
Approved by



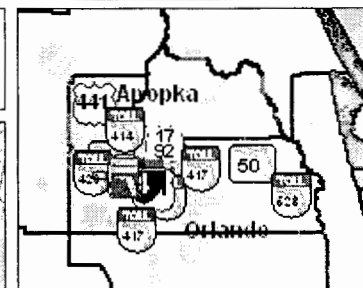
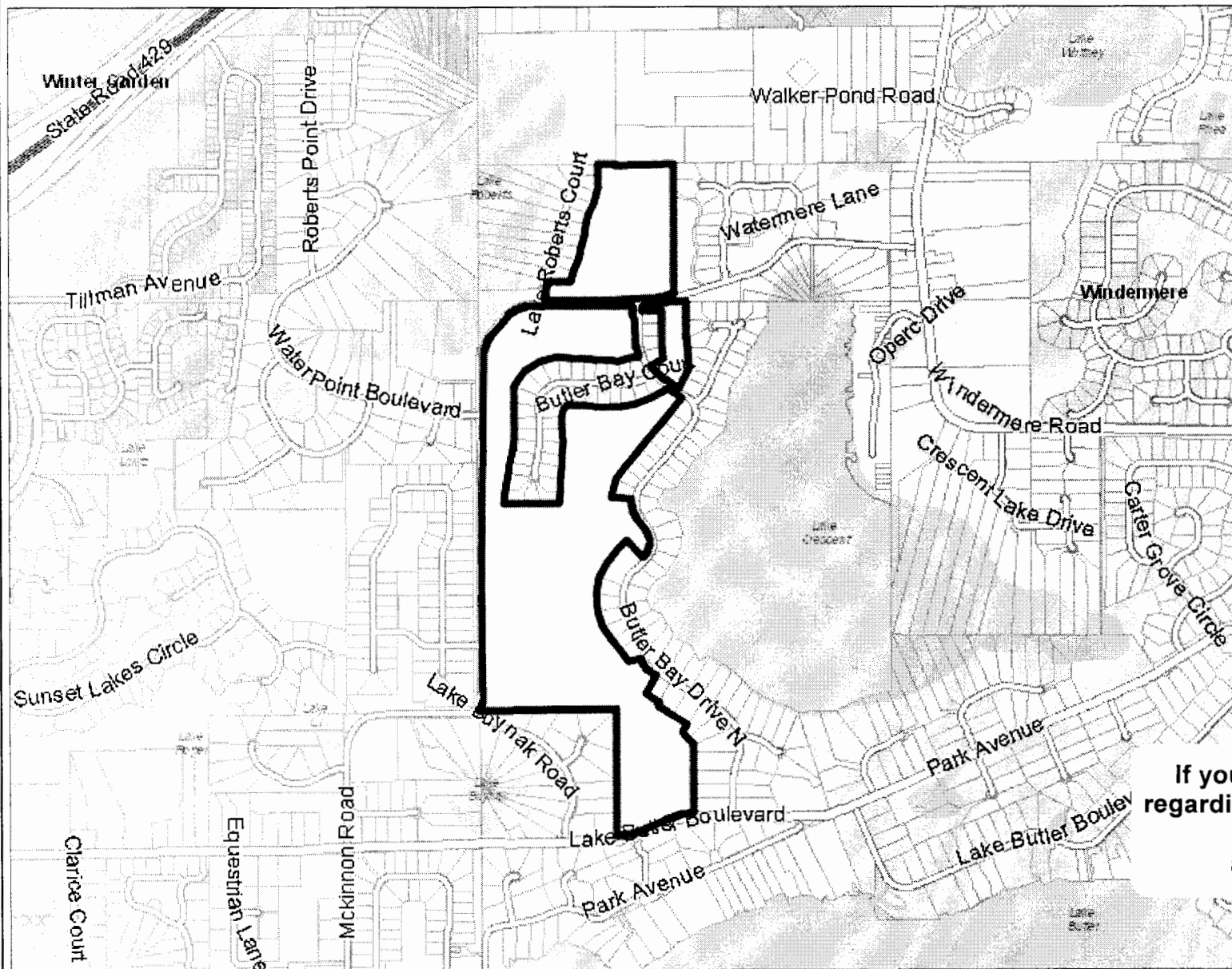
Mayor Teresa Jacobs

(Date)


NOTE: FURTHER PROCESSING NECESSARY:

Please return to Francisco J. Villar via interoffice mail.

Windermere Country Club Plat Vacation



Legend

 Petitioner's property

If you have any questions
regarding this map, please call
Francisco Villar
at 407-836- 7921.

1: 17,014



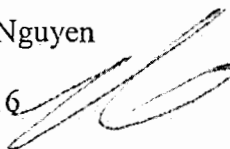
0.5 0 0.27 0.5 Miles

Notes

407-244-5683

PAUL.CHIPOK@GRAY-ROBINSON.COM

MEMORANDUM

TO: Mayor Jacobs and Board of County Commissioners
FROM: Truong M. Nguyen
DATE: July 18, 2016 
SUBJECT: Support of Windermere Country Club Petition to Vacate; Property Referenced as Golf Course, Not Common Open Space

Petitioner, owners of a defunct former golf course, is requesting the Board approve a Petition to Vacate the development rights to Tract A dedicated to Orange County, Florida, as indicated in Note #12, and the access rights to Tract A dedicated to Orange County, Florida, as indicated in Note #13 of the Plat of Butler Bay - Unit 3, as recorded in Plat Book 18, Page 4, Public Records of Orange, County, Florida. As the information in this Memorandum makes clear, Petitioner's request fully complies with all relevant County Code provisions and should be approved.

Windermere Country Club has filed a rezoning application, Application #RZ-10-038, to modify the Cluster Plan to 1) bring the 155 acres under the current standard of 1 unit per 1 acre and 2) change the 155 acres from golf course (a referenced use and not open space) to residential area to accommodate 95 lots. At the November 19, 2015 Planning and Zoning Commission meeting, the Planning and Zoning Commission continued the rezoning application to April 21, 2016 and directed Windermere Country Club to file a Petition to Vacate the 155 acre Tract A/golf course property and to modify the 1986 Developer's Agreement applicable to the Butler Bay, Unit 3 Plat¹.

BACKGROUND

The Butler Bay Cluster Plan, where the Tract A/Golf Course Property is located, received its zoning approval on February 21, 1985. There was no mention of conveyance of development rights from the Golf Course Property in this zoning approval.²

¹ Tab I

² See Minutes of February 21, 1985 Planning and Zoning Commission Meeting (Tab A) and Minutes of February 25, 1985 Board of County Commission Meeting (Tab B).

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Language regarding dedication of the development rights to the Golf Course Property to Orange County first emerged during PSP review on November 18, 1985.³ That condition to convey development rights was included in the "1986 Developer's Agreement".⁴ When the Butler Bay Unit 3 Plat⁵, was approved, a Resolution Vacating and Annuling a portion of the Butler Bay Unit 2 Plat was approved at the same time.⁶ Further, when the Replat of Lots 8, 9, 10 and Tract B was approved on April 2, 1990⁷, a second Resolution Vacating and Annuling Plat was approved by the BOCC on the same day.⁸

GOLF COURSE PROPERTY IS NOT "COMMON OPEN SPACE", "COMMON AREA", OR "COMMON PRIVATE FACILITIES."

The Windermere Country Club golf course is privately held property and maintained by the Golf Course Property owner. It is not common open space. The County's ordinances and a review of the history of the County approvals associated with the Golf Course Property make this very clear.

Section 34-155(a)⁹ defines "open space" and states it may include private parks and recreation areas provided: (i) they have been designated as a tract on the plat, (ii) they are adequate for the intended purpose, (iii) assurance has been given by deed restriction or Covenants, Conditions and Restrictions ("CCRs") that the area will be maintained and (iv) the area must be identified on the plat as 'common areas' for owners of property within the subdivision. In this case, the Golf Course Property is not identified as 'common area' on the plat. There is no plat dedication of Golf Course Property to any other lot or property owners. The CCRs do not include the Golf Course Property nor provide for maintenance of the golf course. In fact, the "Property" as defined in Exhibit A to the CCRs is limited to Lots 1-123, PB 18, Pages 4-9 and notably does not include the Tract A/Golf Course Property. The CCR definition of "Common Area" requires that common area be owned by the "Association". Article XII of the CCRs is titled "Covenants and Restrictions Relating to Golf Course". Section 1 states "All Owners of Lots on the Property acknowledge the existence of a private golf course on lands adjoining the Property. The golf course is for the use and enjoyment of the members of the private golf club". Section 3 creates a 10 foot easement in favor of the golf course across the rear of each lot adjacent to the golf course. The easement prohibits fences, walls or shrub planting. See OR Book 3808, Page 1478 (Tab K). The plat note 12 and 13 on PB 18, Page 4,

³ Attached Tab C

⁴ Development Agreement recorded at OR 3757/1536 (Tab D) and hereinafter "1986 Developer's Agreement."

⁵ PB 18/4 (Tab E)

⁶ See OR 3808/2058 (Tab F).

⁷ Replat of Lots 8, 9, 10 and Tract B, Butler Bay Unit 3, PB 25/116 (Tab G).

⁸ See OR 4173/3662 (Tab H)

⁹ Tab J

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which are applicable to the golf course are between the Golf Course Property owner and the County, the subdivision owners are not parties to those plat note restrictions. Clearly, there is no dedication or identification on the plat that the Tract A/Golf Course Property is common area for the owners of property within the subdivision. Further, the subdivision lot developer and their successors, the individual lot owners, were on notice through the CCRs that the golf course was not common area or common open space for the benefit of the lot owners. Rather, the lot owners acknowledge through the CCRs the existence of a private golf course for the use and enjoyment of the members of the private golf club. There is no documented expectation that the lot owners have any legal or equitable interest in the Tract A/Golf Course Property.

The 1986 Developer's Agreement (Tab D) approved by the Board of County Commissioners on February 26, 1986 incorporated the November 18, 1985 Preliminary Subdivision Plan conditions of approval (Tab C). That 1986 Developer's Agreement recognizes that the conditions shall control all future development of the property "(unless said conditions of approval are amended or modified by Orange County)".

The 1986 Developer's Agreement, Condition 5, provides: "The applicant shall enter into a Developer's Agreement with the County to address ownership and maintenance of all common private facilities." The "Developer's Agreement - Common Private Facilities" was approved by the Board of County Commissioners on July 21, 1986¹⁰. That Development Agreement was executed by "Windermere Lakes, Ltd." who was not the owner of the Golf Course Property. Further, the "Property" subject to that Developer's Agreement is Lots 1-123 of "Butler Bay Unit 3" not the Tract A/ Golf Course Property. The Tract A/Golf Course Property by the terms of that 1986 Developer's Agreement is not "common private facilities."

In regards to open space, the Tract A/Golf Course Property is zoned R-CE-C. Section 38-556¹¹, requires 40% of each lot to be pervious surface. Section 38-557¹², Common Open Space, Subsection (a) refers to Chapter 24 for open space regulations. Section 24-29(e)¹³ provides, that for residential cluster districts, when the density is less than or equal to 1 unit per acre, there is no common open space required. Section 24-26¹⁴, Definitions, states "Common Open Space" shall mean a type of open space designed and intended for the use or enjoyment of occupants of a project. That Section also defines "Residential Private Open Space" to include front, rear and side yards excluding parcel driveways and structures. Both common open space and residential private open space are included as part of the definition of "Open Space."

¹⁰ Tab L. Recorded at OR Book 3808, Page 1466.

¹¹ Tab M.

¹² Tab N.

¹³ Tab O.

¹⁴ Tab P.

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Section 24-27¹⁵, Legislative findings, at Subsection (e) states:

“Consistency in the definition of open space and the provisions for open space are necessary to balance between private property rights and the protection of the public health, safety and welfare.”

Section 24-28¹⁶, Applicability, provides, in part, that the open space standards are minimum standards, “however, an applicant may provide a greater percentage of open space but a greater percentage of open space will not be required by the county.” Section 24-30¹⁷, Open Space Design Guidelines, subsection (e), Ownership and Maintenance, states common open space areas shall be the responsibility of a property owners’ association or a mandatory homeowner’s association. In Butler Bay Unit 3, this responsibility is addressed through the July 21, 1986 “Developer’s Agreement – Common Private Facilities” (Tab L), which does not include the Tract A/Golf Course Property.

Notwithstanding the foregoing, in 1985 the standard for common open space was 25%. Attached as Tab T is a chart prepared by Poulos and Bennett making clear that the owners’ proposed revision to Tract A/Golf Course Property within the Cluster Plan retains total Butler Bay Cluster Plan gross common open space at 25%.

Notwithstanding the foregoing, the 1985 approved Cluster Plan (Tab A) does not define the term “Gross Open Space”. As defined by the Orange County Code, “Open Space” includes “Residential Private Open Space” and “Common Open Space”. In the 1985 Cluster Plan, reference is made to having 38% “Gross Open Space” within the Butler Bay Cluster Plan. Attached as Tab U is a chart prepared by Poulos and Bennett which establishes that the total Butler Bay Cluster Plan open space (calculated utilizing both common open space and residential open space) after redevelopment of Tract A to 95 lots will be 45.3% of the total area. For just the 155 acres within Tract A after redevelopment to 95 lots the open space will be 60.6%.

CONCLUSION

Under the current Orange County Code there is no common open space requirements for an R-CE-C project when density is less than or equal to 1 unit per acre. The County, by releasing the development rights for 95 units back to the Tract A/Golf Course Property, maintains an overall density within the Butler Bay Cluster Plan of 1 unit per one acre in full compliance with County Code.

¹⁵ Tab Q.

¹⁶ Tab R.

¹⁷ Tab S.

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Even if the old standard of 25% common open space was applied to the request for 95 units on the Golf Course Property, the overall common open space within the Butler Bay Cluster Plan will remain at 25% common open space, also fully compliant with the County Code.

In the event that the 38% "gross open space" as listed in the original 1985 Butler Bay Cluster Plan is interpreted to apply to the current cluster plan modification request, the resulting modified Butler Bay Cluster Plan, with 95 units assigned to the Tract A/Golf Course Property, will exceed the 38% gross open space, also fully compliant with the County Code.

This memorandum establishes that the release of the development rights back to the Tract A/Golf Course Property owner through the vacation of the plat as applicable to Tract A/Golf Course Property can be accomplished in compliance with the open space standards.

ORANGE COUNTY RECEIPT

PUBLIC WORKS DEPARTMENT
4200 S. JOHN YOUNG PARKWAY
ORLANDO, FL 32839-9206
TELEPHONE: (407)836-7900

DATE: 4-11-16

ISSUED TO: _____
FIRM OR _____
INDIVIDUAL Bryan E Decunha
ADDRESS Windermere C.C.
CITY/STATE/ZIP _____

	AMOUNT	DESCRIPTION (PERMIT #, NAME)
DRC APPEAL	\$ _____	
E-PROJECT	\$ _____	
FIN. SUB. DIV.	\$ _____	
EXC & FILL	\$ _____	
INSPECTION	\$ _____	
PERMIT TRNSFR RFND	\$ _____	
PETITION TO VACATE	\$ _____	
RECORDING	\$ _____	
ROW	\$ _____	
SEPTIC TANK	\$ _____	
UU	\$ _____	
100-YR FLOOD STUDY	\$ _____	
FLOOD PLAIN PERMIT	\$ _____	

WELLS FARGO BANK

6212

FOWLER GROVES 3301 DANIELS RD WINTER GARDEN, FL 34787

63-751631

DATE APRIL 6/2016

PAY TO THE ORDER OF ORANGE COUNTY BOCC. \$ 752
- SEVEN HUNDRED AND FIFTY TWO DOLLARS

WINDERMERE COUNTRY CLUB LLC
BRYAN E DECUNHA
338 ENGLISH LAKE DR
WINTER GARDEN FL 34787-5234

407-487-2594 PAB

B E Decunha

\$ _____ 0600-4110
\$ _____ 3200-4110 (ARBOR)

PSP CHG DET	DP CHG DET	DP/NS to PD CHG DET	FINAL PLAT
\$ _____ 2700-4110	\$ _____ 2700-4030	\$ _____ 2700-4030	\$ <u>752</u> 2700-2965
\$ _____ 3100-4110	\$ _____ 3100-4030	\$ _____ 3100-4030	\$ _____ 3100-2965
\$ _____ 1300-4110	\$ _____ 1300-4030	\$ _____ 1300-4030	

ESCROW DEPOSIT \$ _____
SIDEWALK CONTR \$ _____

TOTAL RECEIVED \$ 752.00 CHECK # 16312 CASH \$ _____

RECEIVED BY Bryan E Decunha RECEIPT # 79281