



Interoffice Memorandum

DATE: January 11, 2021

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

FROM: Jon V. Weiss, P.E., Director
Planning, Environmental and Development
Services Department

CONTACT PERSON: **Alberto A. Vargas, MArch, Manager,
Planning Division
(407) 836-5354**

SUBJECT: January 26, 2021 – Public Hearing
Rocking Horse Rural Residential Enclave - Proposed Settlement
Agreement; *1182/3526S Rouse, LLC, and 1185/3626N Rouse,
LLC, vs. Orange County, State of Florida* Division of
Administrative Hearings Case No. 18-5985GM

On October 16, 2018, the Board approved amendments to the Orange County Comprehensive Plan by adopting Ordinance No. 2018-23 that established the Rocking Horse Rural Residential Enclave ("Rocking Horse RRE") in District 5.

On November 15, 2018, two entities whose properties were impacted by Ordinance No. 2018-23, 1182/3526S Rouse, LLC and 1185/3626N Rouse, LLC, filed a Petition for a Formal Administrative Hearing under Section 163.3184, Florida Statutes, challenging the comprehensive plan amendments adopted by Ordinance No. 2018-23 ("Petition"). They alleged in the Petition that those amendments were not "in compliance," as that term is defined in Section 163.3184, Florida Statutes. In particular, one Petitioner's property, located at 3626 N. Rouse Road, Orlando (Parcel ID No. 04-22-31-0000-00-019), was included in the boundaries of the Rocking Horse RRE under Ordinance No. 2018-23, over the Petitioners' objection at the October 16, 2018 hearing.

On April 16, 2019, an Administrative Law Judge with the Department of Administrative Hearings held a final hearing in this case, and on October 14, 2019, she issued a Recommended Order that the Florida Administration Commission (the Governor and Cabinet) issue a Final Order determining that the Rocking Horse RRE amendments adopted by Ordinance No. 2018-23 are not "in compliance," based solely on a purported urban sprawl issue.

Subsequently, the County filed Exceptions to the Recommended Order, and the County's Exceptions and the Recommended Order are currently pending before the Florida Administration Commission.

Although the County disputes, and continues to dispute, that the comprehensive plan amendments adopted by Ordinance No. 2018-23 are not "in compliance," the Petitioners and the County staff have negotiated a Settlement Agreement to resolve the claims and defenses, and to avoid the inconvenience, expense, and uncertainty of continuing to litigate the dispute.

If the Board approves the Settlement Agreement at a noticed and advertised public hearing, then under the terms of the Settlement Agreement the Board will hold a second noticed and advertised public hearing to consider approval of the following proposed comprehensive plan amendment described in the Settlement Agreement: to remove the property located at 3626 N. Rouse Road from inclusion in the Rocking Horse RRE, modify Ordinance No. 2018-23 accordingly, and leave the remainder of the comprehensive plan amendments adopted by Ordinance No. 2018-23 intact (the "Remedial Amendment").

In the event the Board approves the Settlement Agreement and the Remedial Amendment, the Petitioners stipulate and agree in the Settlement Agreement that the comprehensive plan amendments adopted by Ordinance No. 2018-23, as amended by the Remedial Amendment, will be "in compliance," and as such, within ten days after adoption of the Remedial Amendment, the Petitioners will dismiss the Petition by submitting a Notice of Voluntary Dismissal with Prejudice with the Division of Administrative Hearings.

On the other hand, in the event the Board rejects the proposed Remedial Amendment, or fails to take final action on the Remedial Amendment by February 26, 2021, the Settlement Agreement will be null and void, both parties will no longer be bound by any of the recitals or terms set forth in the Settlement Agreement, and the parties agree to notify the Florida Administration Commission that it may issue a Final Order in the pending case.

Please call Joel Prinsell at 407-836-7329 or Alberto Vargas at 407-836-5354 if you have any questions or comments.

ACTION REQUESTED: Approval and execution of Settlement Agreement by and among 1185/3626N Rouse, LLC, 1182/3526S Rouse, LLC, Thomas R. Jokerst, and Orange County regarding the Rocking Horse Rural Residential Enclave and 1182/3526S Rouse, LLC, and 1185/3626N Rouse, LLC, vs. Orange County, State of Florida Division of Administrative Hearings Case No. 18-5985GM. District 5.

Attachments
JVW/AAV/jmd

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARING

1182/3526S ROUSE LLC, and
1185/3626N ROUSE LLC,

Petitioners,

vs.

CASE NO. 18-5985GM

ORANGE COUNTY,

Respondent.

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and among **1185/3626N ROUSE, LLC**, a Florida limited liability company ("3626N Rouse") and **1182/3526S ROUSE, LLC**, a Florida limited liability company ("3526S Rouse") and **THOMAS R. JOKERST**, in his capacity as manager of 3626N Rouse and 3526S Rouse ("Manager," and together with 3626N Rouse and 3526S Rouse, the "Petitioners"), and **ORANGE COUNTY**, a charter county and a political subdivision of the State of Florida, located at 201 S. Rosalind Ave., Orlando, FL 32801 ("Orange County"), each of which may be referred to individually as a "Party" and collectively are the "Parties."

RECITALS

WHEREAS, Orange County adopted certain amendments to the Orange County Comprehensive Plan by Ordinance No. 2018-23 on October 16, 2018 which established the Rocking Horse Rural Residential Enclave ("Rocking Horse RRE") and which also created Policy FLU 2.5.8 regarding new proposed land use, zoning and development applications within or in close proximity to a Rural Residential Enclave;

WHEREAS, the Petitioners own property in Orange County, Florida, and are directly and materially impacted by the comprehensive plan amendments adopted by Ordinance No. 2018-23;

WHEREAS, Petitioner 3626N Rouse's property located at 3626 N. Rouse Road, Orlando, FL 32825 and further described as Orange County Parcel ID No. 04-22-31-0000-00-019 ("the Jokerst Property"), was included in the Rocking Horse RRE under Ordinance No. 2018-23;

WHEREAS, the Petitioners filed a Petition for Formal Administrative Hearing ("Petition") under Section 163.3184, *Florida Statutes*, on November 15, 2018, challenging the comprehensive plan amendments adopted by Ordinance No. 2018-23, as not "in compliance," as the term is defined in Section 163.3184, *Florida Statutes*;

WHEREAS, the case is styled *1182/3526S Rouse, LLC, and 1185/3626N Rouse, LLC, vs. Orange County*, State of Florida Division of Administrative Hearings Case No. 18-5985GM;

WHEREAS, an Administrative Law Judge with the Department of Administrative Hearings held a final hearing in this case on April 16, 2019 and issued a Recommended Order on the Petition dated October 14, 2019 that the Florida Administration Commission issue a Final Order determining that the Rocking Horse RRE amendments adopted by Ordinance No. 2018-23 are not "in compliance" based on urban sprawl;

WHEREAS, Orange County filed Exceptions to the Recommended Order;

WHEREAS, the Recommended Order and Exceptions are currently pending before the Florida Administration Commission;

WHEREAS, the Parties desire to amicably resolve the disputes between them by entering into this Agreement;

WHEREAS, the Parties have approved this Agreement at a public hearing advertised at least ten (10) days before the public hearing in *The Orlando Sentinel* in accordance with the advertisement requirements of Chapter 125, Florida Statutes;

WHEREAS, Orange County disputes, and continues to dispute, that the comprehensive plan amendments adopted by Ordinance No. 2018-23 are not "in compliance," no Party admits fault or liability of any kind, and each Party wishes to resolve all claims and potential claims among and between them, and further wishes to avoid the inconvenience, expense, and uncertainty of litigating their disputes, and have reached a full and final compromise and settlement of all claims and causes of action between them, whether existing, contingent or potential, it being the express intent of all Parties to buy their peace through this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements provided for herein, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the Parties hereby agree to the following terms and conditions:

1. Recitals. The recitals set forth above are true and correct and are hereby specifically incorporate herein.
2. Remedial Amendment.
 - a. Within thirty (30) days of the Effective Date of this Agreement, the Orange County Board of County Commissioners shall hold a duly noticed and advertised public hearing to consider approval of the following proposed remedial amendment: to remove Petitioner 3626N Rouse's property located at 3626 N. Rouse Road, Orlando, FL 32825 and further described as Orange County Parcel ID No. 04-22-31-0000-00-019 ("the Jokerst Property"), from inclusion in the Rocking Horse RRE, modifying Ordinance No. 2018-23 accordingly, while leaving the remainder of the comprehensive plan amendments adopted by

Ordinance No. 2018-23 intact (the "Remedial Amendment");

- b. In the event the Orange County Board of County Commissioners ("BCC") rejects the proposed Remedial Amendment, or fails to take final action on the Remedial Amendment by February 26, 2021, this Agreement shall be automatically null and void, the Parties shall no longer be bound by any of the recitals, agreements or terms set forth in this Agreement, and the Parties agree to promptly notify the Florida Administration Commission that it may issue a Final Order in the pending proceeding;
 - c. In the event the BCC approves the Remedial Amendment, the Petitioners hereby stipulate and agree that the comprehensive plan amendments adopted by Ordinance No. 2018-23, as amended by the Remedial Amendment, will be "in compliance," and as such, within ten (10) days after the adoption of the Remedial Amendment, the Petitioners shall dismiss the Petition in this case by submitting a Notice of Voluntary Dismissal with Prejudice with the Department of Administrative Hearings.
 - d. In the event the BCC approves the Remedial Amendment but a challenge to the Remedial Amendment is subsequently filed by an affected person, Orange County agrees to defend against such challenge at its own cost and expense.
3. No Admission of Facts or Liability. This Agreement is made regarding disputed facts and legal positions. None of the Parties to this Agreement either expressly or impliedly admits to any liability, obligation, wrongdoing, or fault, and they specifically deny any such allegations. The Parties acknowledge that this Agreement is a compromise of disputed claims and defenses and that the execution of this Agreement does not express, imply, or admit any liability, obligation, wrongdoing, or fault by any of the Parties to it, nor does this Agreement waive any argument that could otherwise be made by either of the Parties. Each of the Parties hereto denies any liability in connection with any claim and intends merely to avoid the time and expense of further negotiation or litigation and to forever buy its peace under the terms of this Agreement.
4. Attorneys' Fees and Costs. All attorneys' fees and costs spent thus far in this dispute between the Parties shall be borne individually by each Party. However, the prevailing party in any legal action or litigation concerning the breach, enforcement, validity, or construction of this Agreement, including appellate and bankruptcy proceedings, shall be entitled to receive attorneys' fees, court costs, and all other reasonable and necessary out-of-pocket expenses of the legal representation.
5. Breach of Agreement. The Parties agree that a Party may enforce this Agreement by using any and all remedies available at law and in equity, including but not limited to specific performance and injunctive relief, in order to ensure compliance with the terms of the Agreement.
6. Further Assurances. Each of the Parties agree to cooperate with each other in

effectuating the terms of this Agreement, and will, if necessary, take such further actions and execute such further documents as are necessary to carry out the intent and provisions of this Agreement. The Parties agree to execute and exchange such additional documentation as may be necessary to accomplish and fulfill their respective obligations and agreements as set forth herein.

7. No Reliance on Outside Statements. Each of the Parties hereby represents and warrants to the other that it knows and understands the contents and effect of this Agreement and that, in its execution, it has not relied on any statement not set forth within this Agreement, and all Parties hereby intend that no Party can or will claim fraudulent inducement in entering into this Agreement.
8. Warrant of Authority. Each of the Parties warrants and represents to the other that, as of the time it executed this Agreement, each Party had the right and authority to execute this Agreement and the person executing this Agreement for each of the Parties is authorized to do so by and on behalf of the Party and that it knows of no liens, legal or equitable interests, or other encumbrances upon any right surrendered by virtue of this Agreement.
9. No Assignment. Each Party represents and warrants there has not been any assignment or other transfer of any interest in any claim in which it may have against any other Party, its agents, employees, subsidiaries, parent companies or affiliates, and each Party agrees to indemnify and hold harmless the other Party, its agents, employees, subsidiaries parent companies, or affiliates, from any judgment, liability, claim, demand, damage, reasonable costs, reasonable expenses and reasonable attorneys' fees incurred by it as a result of any person asserting any such assignment or transfer of any rights or claims under any such assignment or transfer. However, this paragraph does not relate to or prohibit any assignment or other transfer of interest in any claim between or among a Party or its principals, parent companies or subsidiaries or relate to or prohibit any assignment or other transfer of interest in any claim as a result of organizational or ownership changes of a Party.
10. Effect on Other Entities. Each of the Parties warrants that it is entering into this Agreement on behalf of, and that this Agreement is binding upon, itself and its officers, managers, members, shareholders, directors, employees, principals, predecessors, successors, heirs, insurers, insureds, attorneys, lenders, sureties, assigns, agents, guardians, heirs, descendants, devisees, legatees, trustees, legal representatives, executors and administrators, subsidiaries, parents, divisions, partners, joint venturers, and affiliated entities.
11. Advice of Counsel. The Parties represent and warrant that they have had ample time to consider the terms of this Agreement, that they have consulted with their respective counsel, and that they understand and voluntarily accept the terms of this Agreement. All Parties acknowledge that they were afforded ample time to review this Agreement, that they have carefully read and completely understand this Agreement in its entirety and that they have executed this Agreement freely and voluntarily, without any mental,

physical, or economic duress.

12. Merger/Entire Agreement. All negotiations relating to this Agreement are merged herein. There are no promises, agreements, conditions, undertakings, warranties, or representations, oral or written, express or implied, among the Parties as to such matters other than as set forth herein. This Agreement represents and contains the entire agreement and understanding between the Parties and supersedes any and all prior negotiations, agreements, representations, understandings, and communications with respect to the matters contained herein and may only be subsequently modified in a writing signed by both Parties. Each Party agrees that it has not relied upon any representation, warranty, condition, understanding, or agreement of any kind in entering into this Agreement other than those actually set forth in this Agreement.
13. Counterparts and Facsimile Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Facsimile signatures on this document shall be considered as binding as original signatures.
14. No Waiver. No waiver of any provision of the Agreement shall be effective unless agreed to in writing by the Party against whom such waiver is sought to be enforced. The waiver of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach, whether similar or otherwise.
15. Participation in Drafting. The Parties acknowledge this is a negotiated Agreement and that all Parties participated in drafting this Agreement and any ambiguity in or dispute about the meaning of any part of this Agreement shall not be presumptively construed against any of them.
16. Governing Law and Venue. The terms and provisions of this Agreement shall be construed, interpreted, and governed under the laws of the State of Florida, and venue and jurisdiction of any proceeding in connection with this Agreement shall be in Orange County, Florida.
17. Consideration. Each Party hereto agrees and acknowledges that the promises and obligations in this Agreement constitute binding and valid consideration and that pursuant to this Agreement each Party has and will receive reasonably equivalent value and appropriate consideration from each other Party in exchange for entering into this Agreement and making and agreeing to the respective acknowledgements, obligations and releases contained within.
18. Headings. The various headings in this Agreement are for convenience only and shall not be deemed a part of or in any manner affect this Agreement or any of its provisions.
19. Notice. Whenever notice is required or may be provided under this Agreement, it shall be provided via e-mail and certified mail to the following:

As to Petitioners:

1182/3526S Rouse, LLC
and
1185-3626N Rouse, LLC
Attention: Mr. Thomas R.
Jokerst 15912 Eagle Chase
Court Chesterfield, MO 63017

As to Orange County:

Orange County Attorney
201 S. Rosalind Ave.
Orlando, FL 32801

With a copy to:

Derek Bruce, Esq.
Gunster
200 South Orange Ave., Suite 1400
Orlando, FL 32801

20. Effective Date. This Agreement shall become effective upon the date of approval by the BCC.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth above and agree to be bound by its terms.

WITNESSES:

Lois E. Cox Lois E. Cox
Print Name:

Brigget L. Kolb Brigget L. Kolb
Print Name:

1185/3626N ROUSE, LLC

By: Thomas R. Jokerst

Name: THOMAS R. JOKERST

Title: MANAGER

Date: 1/7/2021

WITNESSES:

Lois E. Cox Lois E. Cox
Print Name:

Brigget L. Kolb Brigget L. Kolb
Print Name:

1182/3526S ROUSE, LLC

By: Thomas R. Jokerst

Name: THOMAS R. JOKERST

Title: MANAGER

Date: 1/7/2021

WITNESSES:

Lois E. Cox Lois E. Cox
Print Name:

Brigget L. Kolb Brigget L. Kolb
Print Name:

MANAGER:

Thomas R. Jokerst
THOMAS R. JOKERST

Manager of

1185/3626N ROUSE, LLC

1182/3526S ROUSE, LLC

Date: 1/7/2021

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: _____
Jerry L. Demings,
Orange County Mayor

Date: _____

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

By: _____
Deputy Clerk