

JANUARY 24, 2017 MEETING AT BOARD OF COUNTY COMMISSIONERS

Windermere County Club, LLC

Butler Bay Cluster Plan

RZ-15-10-038

Presentation in Support of Conducting Appeal Hearing opposing
Continuance or Dismissal

Presented By:

Christopher J. Wilson, Esq.

APPEAL OF DISMISSAL RECOMMENDATION BY PLANNING AND ZONING COMMISSION

- Application Filed on August 18, 2015 and prior scheduled hearings have been repeatedly continued by Orange County.
- November 17, 2016 Planning and Zoning Commission Recommendation to Dismiss.
- Appeal filed November 18, 2016
- Board of County Commission required to have de novo hearing on or before January 2, 2017 or as soon thereafter as reasonably permitted by the Board's calendar by County Ordinance 30-45.
- Scheduled Appeal Hearing for Today – January 24, 2017 in accordance with Ordinance 30-45.
- Failure of the BCC to conduct the de novo hearing, including consideration of evidence and testimony and issue a decision is a violation of the County Ordinance and a violation of Appellant's due process.
- Another Continuance will result in the application process being delayed for more than one and a half years, plus additional indefinite delay, precluding the owner's ability to rezone its property to a compatible economically viable use.

BCC HAS A MANDATORY OBLIGATION TO CONDUCT THIS HEARING

- Section 30-45(d)
 - “The board of county commissioners **shall** conduct a trial de novo hearing upon the appeal taken from the ruling of the planning and zoning commission . . . and hear testimony of witnesses and other evidence offered by the aggrieved person and interested parties to the appeal and may in conformity with this article and the zoning regulations, rules and regulations adopted thereunder, reverse, or affirm, wholly or partly, or may modify the . . . recommendation of the planning and zoning commission.”
- Section 30-45(e)
 - “The board of county commissioners **shall** conduct a hearing on the appeal within forty-five (45) days after the filing of the notice of appeal, or as soon thereafter as the board’s calendar reasonably permits.”
- “Shall” is mandatory. State v. Goode, 830 So. 2d 817, 823 (Fla. 2002), Miami v. Save Brickell Ave. 426 So. 2d 1100, 1105 (Fla. 3d DCA 1983).

CONTINUANCE OR DISMISSAL IS INCONSISTENT WITH PRIOR BOARD ACTIONS

- BCC Approved Preliminary Subdivision Plan for this Project in 1985 subject to various conditions:

“Lots 123-140 of Butler Bay, Unit Two, shall be vacated prior to plat approval.”

- No provision in the Orange County Code that allows the BCC to repeatedly continue rezoning decisions. Instead rezoning requests are routinely granted with conditions or contingent on vacation of plats as occurred here.
- BCC Failure to act is inconsistent with its prior action and is a violation of Appellant’s due process.
- Denial of a hearing does not meet minimum requirements for Due Process. Jennings v. Dade County, 589 So. 2d 1337 (Fla. 3rd DCA 1991)

PLANNING AND ZONING AND BOARD OF COUNTY COMMISSION ROUTINELY APPROVE REZONING APPLICATIONS WITHOUT REQUIRING THE APPLICANT TO HAVE ALL DEVELOPMENT RIGHTS

- At the November 17, 2016 Planning & Zoning hearing, Planning and Zoning Commissioner Rick Baldocchi stated:

“We were looking at a rezoning and they wanted to put up a parking garage and there was a debate about internally whether or not they had the right to put up that parking garage. And we decided that was a separate matter from the zoning and that was a contractual matter that had to be dealt differently.

I also am concerned that as an engineer we sometimes bring things to the County that we don't have all the development rights for. For instance, there may be a power easement running through a piece of property, we don't have development rights; but we need the rezoning to try to negotiate with the power company. Listening to the attorneys, and Chris Wilson put some stuff up there and I am sure he was very careful; the County accepted his application. So is there a due process we have to put him through? I've been here seven years and I've never even known dismissal at this point was an option.”

NO CHANGE IN USE IF REZONING IS APPROVED CONTINGENT UPON FUTURE PARTIAL PLAT VACATION

- F.S. § 193.501 (6) (f). “Development right” is the right of the owner of the fee interest in the land to change the use of the land.
- Rinker Materials Corp. v. North Miami. 286 So. 2d 552 (Fla. 1973). Ambiguity in a zoning ordinance is read in favor of the private property owner.
- Plat notes 12 and 13 themselves do not indicate “perpetual” or “permanent.”
- F.S. § 177.101 (3). Same statutory language existed in 1985 and 1986 when Butler Bay Unit Three was approved by County. Everybody knew that plats could be vacated. There was no permanent dedication. Rezoning approval subject to requirement to vacate plat notes 12 and 13 will not change the use of Tract A in notes 12 and 13.

R-CE-C ZONING REQUIREMENTS SATISFIED NO REQUIREMENT FOR PRIOR PLAT VACATION

Section 38-552(a)

A COMPLETE R-CE-CLUSTER DEVELOPMENT ZONING APPLICATION SHALL BE REQUIRED FOR ANY DEVELOPMENT COMING UNDER THIS ARTICLE. SUCH APPLICATION SHALL INCLUDE THE FOLLOWING:

1. THE CONFIGURATION AND DIMENSIONS OF THE PLAN DRAWN TO A SPECIFIED SCALE, NOT TO EXCEED ONE (1) INCH EQUALS TWO HUNDRED (200) FEET.
 2. EXISTING STREET NETWORK AND ANTICIPATED ACCESS POINTS.
 3. NATURAL FEATURES (I.E., LAKES, RIVERS, CONSERVATION AREAS).
 4. GROSS DENSITY.
 5. PROPOSED TYPE OF HOUSING AND LOCATION.
 6. LOCATION OF COMMON OPEN SPACE AND PERCENT OF GROSS LAND AREA.
 7. NAMES OF ABUTTING SUBDIVISIONS.
 8. SOURCE OF WATER AND SEWER SERVICE.
 9. PROPOSED METHOD OF BUFFERING CLUSTER DEVELOPMENT FROM ADJACENT LANDS.
 10. PROPOSED METHOD OF OWNERSHIP AND MAINTENANCE OF ALL COMMON OPEN SPACE AREAS.
- No requirement to obtain plat vacation prior to issuance of rezoning.

REQUEST

- AMEND R-CE-C – CLUSTER PLAN ON 155 ACRE PROPERTY TO PERMIT 95 SINGLE FAMILY LOTS MINIMUM ½ ACRE IN SIZE
- COMPLY WITH FLU R 1 TO 1 DENSITY AND R-CE-C 1 UNIT PER 1 ACRE
- MODIFICATION TO EXISTING CLUSTER PLAN TO CONFORM TO CURRENT REGULATIONS
- NO CHANGE IN USE WILL RESULT UNLESS PLAT NOTES 12 & 13 ARE VACATED

BRYAN DECUNHA

- Golf course and country club developer and operator since 1998.
- Developed two golf courses in Toronto area.
- Sold one and continually successfully operates the other.
- Purchased Windermere Country Club, LLC with the intent to operate it as a golf course.
- Bought out partners after they refused to continue proceeding at loss.

BRYAN DECUNHA

- Capital expenditures in the amount of \$3,200,000.00 were required to replace failed irrigation system, replace the golf cart fleet, deal with a contamination issue and connect to county water.
- Membership declined since 2011 and revenues were insufficient to operate Windermere Country Club, LLC and pay roughly 60 staff to continue operation.
- April, 2016 I made the difficult decision to close the Windermere Country Club.
- Incidents of vandalism required the perimeter fence.

BRYAN DECUNHA

- I have received no offers to purchase the Property “AS IS” without approval for residential development.
- I have received multiple letters of intent, all of which require plat note 12 and 13 to be partially vacated by Orange County.
- Bottom line: The County’s actions and delays in addressing my rezoning application and petition to vacate have and continue to deprive Windermere Country Club, LLC of all economic use of the Windermere Country Club, LLC Property.

STAFF IMPROPERLY RECOMMENDED DEFERRAL OR DISMISSAL

- The County Commission is required to hear all evidence and testimony in favor of approval of the rezoning request pursuant to Section 30-45, Orange County Code.
- Dismissal is inappropriate and a violation of the owner/appellants due process rights.