

WINDERMERE CLUB HOMEOWNERS ASSOCIATION, INC.

OPPOSITION TO WINDERMERE COUNTRY CLUB, LLC'S APPEAL OF P&Z's DISMISSAL

A. Kurt Ardaman

FISHBACK ♦ DOMINICK

ESTABLISHED 1935

ATTORNEYS AND COUNSELORS AT LAW

Rationale for Denial of Developer's Appeal:

- I. BCC unanimously denied developer's request seeking development and access rights.
- II. P&Z unanimously dismissed the developer's rezoning request.
- III. P&Z's dismissal of the request was proper.



Orange County Government

Orange County
Administration Center
201 S Rosalind Ave.
Orlando, FL 32802-1393

Decision Letter

Board of County Commissioners

Tuesday, October 18, 2016

2:00 PM

County Commission Chambers

16-060

Plat Vacation

Bryan DeCunha on behalf of Windermere Country Club, LLC, Petition to Vacate the development and access rights of Tract A (Golf Course) of the Butler Bay - Unit Three development; District 1

Consideration: Windermere Country Club Plat Vacation, **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.**

Location: District 1 The parcel address is 2710 Butler Bay Drive North; S01/T23/R27; Orange County, Florida (legal property description on file in Development Engineering Division)

A motion was made by Commissioner Boyd, seconded by Commissioner Siplin, that this item be **denied**. The motion carried by the following vote:

Aye: 7 - Mayor Jacobs, Commissioner Nelson, Commissioner Thompson, Commissioner Clarke, Commissioner Boyd, Commissioner Edwards, and Commissioner Siplin



THE FOREGOING DECISION HAS BEEN FILED WITH ME
THIS 9TH DAY OF NOVEMBER 2016.

Nali Ray
for DEPUTY CLERK
BOARD OF COUNTY COMMISSIONERS
ORANGE COUNTY, FLORIDA

Note: This document constitutes the final decision of the Board of County Commissioners on this matter. If, upon the Board's subsequent review and approval of its minutes, an error affecting this final decision is discovered, a corrected final decision will be prepared, filed, and distributed.

np

CONVENTIONAL REZONING PUBLIC HEARINGS:

1. Jamie T. Poulos, RZ-15-10-038, District 1 (Butler Bay Cluster Plan)

Consideration: To amend the existing Butler Bay Cluster Plan and rezone two (2) parcels consisting of 155.00 gross acres from R-CE-C to R-CE-C, in order to redevelop the existing Windermere Golf Course and Club House with 95 single-family detached residential homes on minimum ½ acre lots.

Location: 2710 and 2730 Butler Bay Drive north, or generally located north of Lake Butler Boulevard, east of McKinnon Road, southeast of Lake Roberts, and west of Lake Crescent.

Tract Size: 155.00 gross acres

Speakers: Chris Wilson (Applicant Representative)
Kurt Ardaman (Opposed)
Robert McChesney (Opposed)
Paul Kenard (Opposed)
Leigh Dyal (Opposed)
David Tottle (Opposed)
Ed Williams (Opposed)
Fred Hernandez, Jr (Opposed)
Scott Glass (Opposed)
Judith Deltoro (Opposed)

PLANNING ZONING COMMISSION / LOCAL PLANNING AGENCY
Meeting of November 17, 2016

2

Action: In light of the BCC's recent denial of the applicant's Petition-to-Vacate (PTV) application for all previously conveyed development and access rights, the PZC declined to consider the rezoning application or its merits, and **DISMISSED** the case.

Motion / Second: Marvin Barrett / Pat DiVecchio

AYE (voice vote): Marvin Barrett, Pat DiVecchio, Rick Baldocchi, Jose Cantero, Tina Demostene, and JaJa Wade

NAY (voice vote): None

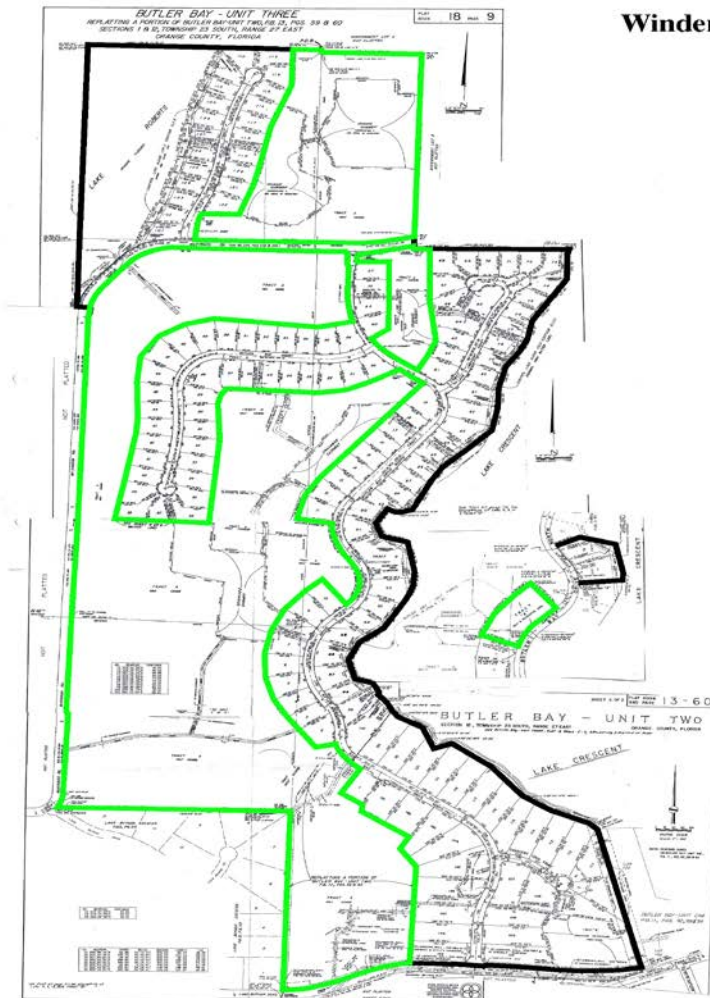
Recused: Paul Wean

Absent: Yog Melwani and James Dunn

CHRONOLOGY:

1. In 1985, Tract A was part of a 502-acre tract that was rezoned to R-CE-C where 38% of the gross acreage was required to be open space.
2. On February 24, 1986, the developer and County entered into a developer agreement that required the Tract A development rights be dedicated to Orange County.
3. On July 21, 1986, the developer platted and the County accepted and approved the Butler Bay - Unit Three plat which dedicated the development rights and access rights over Tract A to Orange County.

Tract A



Windermere Club
Tract "A"

**Tract A is permanent open
space under the County
Code**

1985 County Code

PLANNING AND ZONING RESOLUTION

ORANGE COUNTY FLORIDA

This pamphlet is a reprint of Part I, Chapter 37, and Part II, Planning and Zoning, of the Code of Orange County, Florida, published by order of the Board of County Commissioners.



MUNICIPAL CODE CORPORATION

Tallahassee, Florida

19
Reprinted 19

ARTICLE XXXVI. CLUSTER DISTRICT

Sec. 1. Purpose and intent.

(1) To provide an alternative approach to residential development under specified residential zoning districts.

(2) To enhance the living environment through the creation of permanent open space.

(3) To provide flexibility in lot size, housing styles and building placement for variety in development design compatible with abutting development.

(4) To provide for a more cost-effective development design and thereby providing more affordable housing.

(5) To maintain gross densities compatible with and equal to those possible under the conventional zoning.

(6) To ensure that adequate public facilities and services are provided based upon the net densities of the development.

(7) To encourage the dedication of public lands which serve and benefit the community. (Approved Co. Comm., 11-1-82)

Sec. 2. Processing procedure.

(1) A complete cluster development zoning application.

(2) A cluster development plan to include the following:

(a) The configuration and dimensions of the plan drawn to a specified scale, not to exceed one (1) inch equals two hundred (200) feet;

(b) Existing street network and anticipated access points;

(c) Natural features, (i.e., lakes, rivers, conservation areas);

(d) Gross density;

(e) Proposed type of housing and location;

(f) Location of common open space and per cent of gross land area;

(g) Names of abutting subdivisions;

“permanent open space”

“dedication of public lands which...benefit the community”



NOTE: The identical Purpose and intent section is in current Code Sec. 38-551.

Sec. 7. Common open space.

All common open space areas shall be shown on the cluster development plan. A method shall be provided for assuring the maintenance of all common open space areas in perpetuity, either by transferring ownership and maintenance responsibilities for the open space areas to a trustee or mandatory homeowner's association, or by some other method acceptable to the board of county commissioners. Orange County shall not be responsible for the maintenance of common open space areas.

The owner shall offer to dedicate development rights for all common open space areas to Orange County. The county may accept the offer of dedication. If, however, the county refuses to accept the offer, an alternative method acceptable to Orange County shall be provided to guarantee that common open space areas shall remain in such a state as to maintain the natural character of the area. (Approved Co. Comm., 11-1-82)

Sec. 8. Density bonus.

The developer may offer to dedicate land within the project for a specified public purpose, including, but not limited to, parks, schools, fire stations, utility plants, etc. Acceptance of such offers shall be discretionary with the board of county commissioners or other agencies having authority to accept such an offer.

If the offer of dedication is accepted, the development shall be granted a density bonus equal to an additional twenty-five (25) per cent of the density allowed on land being dedicated.

A density credit based on a percentage of the gross density permitted under Section 3 of this article may be provided for the following conservation areas, provided that dedication of development rights are secured:

	<i>Maximum Transfer Credit¹</i>
Class I conservation area	0 or 20% ²
Class II conservation area	50%

"All common open space areas shall be shown on the cluster development plan."

A method shall be provided for assuring...common open space in perpetuity...by transferring ownership...to a trustee...or by some other method acceptable to the board.

"The owner shall offer to dedicate development rights for all common open space areas to Orange County."

If the County refuses dedication, an alternative must still "guarantee that common open space areas shall ... maintain the natural character of the area."

NOTE: These Common Open Space requirements are in current Code Sec. 38-557

Cluster Development Plan is Part of Current Zoning (The BCC's February 21, 1985 R-CE-C Rezoning)

7. ED SPOMER, "BUTLER BAY CLUSTER", request for a Change in Zoning Classification from R-CE and A-1 to R-CE-C on property which is located Southeast Corner Park Ridge Gotha Road and Windermere Road, extending West of McKennon Road.

(All 1-23-27

SE 1/4 6-23-28

N 1/2 7-23-28

E 3/4 12-23-27

Tract Size: 509 acres

District #3)

Ed Williams, Planning Director, gave a staff report (Exhibit #1 of the Zoning Department Evidence File) and recommended approval, subject to conditions as recommended by the DRC which were highlighted for the Board.

8. Development shall be in accordance with the Cluster Plan dated February 8, 1985, the Zoning Resolution, Subdivision Regulations, and the Shoreline Protection Ordinance.

DATA:	
PROPOSED ZONING	R-CE-C
TOTAL GROSS AREA	502 ACRES ±
*TOTAL NET AREA	472.8 ACRES ±
TOTAL LOTS	340
DENSITY	.72 D.U./NET ACRE
TYPICAL LOT SIZE	110' x 200' (MIN. 1/2 ACRE)
OPEN SPACE	38% OF GROSS AREA

* (LESS WATER BODIES AND CONSERVATION AREAS)

RECEIVED
FEB 08 1985
ORANGE COUNTY
ZONING DEPT.

CLUSTER PLAN

DATA:

PROPOSED ZONING	R-CE-C
TOTAL GROSS AREA	502 ACRES ±
TOTAL NET AREA	472.8 ACRES ±
TOTAL LOTS	340
DENSITY	72 D.U./NET ACRE
TYPICAL LOT SIZE	110' x 200' (MIN. 1/2 ACRE)
OPEN SPACE	38% OF GROSS AREA

(LESS WATER BODIES AND CONSERVATION AREAS)

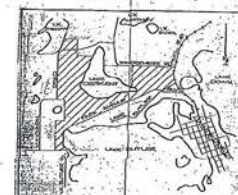
NOTES:

1. HOUSING TYPE AND COST WILL BE DETERMINED BY THE HOMEOWNERS ASSOCIATION.
2. AT BUTLER BAY, UNIT ONE, SINGLE FAMILY-ONLY 1200 SQ. FT.
3. PROPOSED METHOD OF WATER AND SEWER SERVICE WILL BE WELL AND SEPTIC TANK.
4. PROPOSED METHOD OF SURFACING WHERE REQUIRED WILL BE IN ACCORDANCE WITH ARTICLE XXIII SEC. 8 OF THE ORANGE CO. CLUSTER DISTRICT.
5. PROPOSED METHOD OF OWNERSHIP AND MAINTENANCE OF ALL COMMON SPACE WILL BE THROUGH THE ESTABLISHMENT OF A HOMEOWNERS ASSOCIATION.

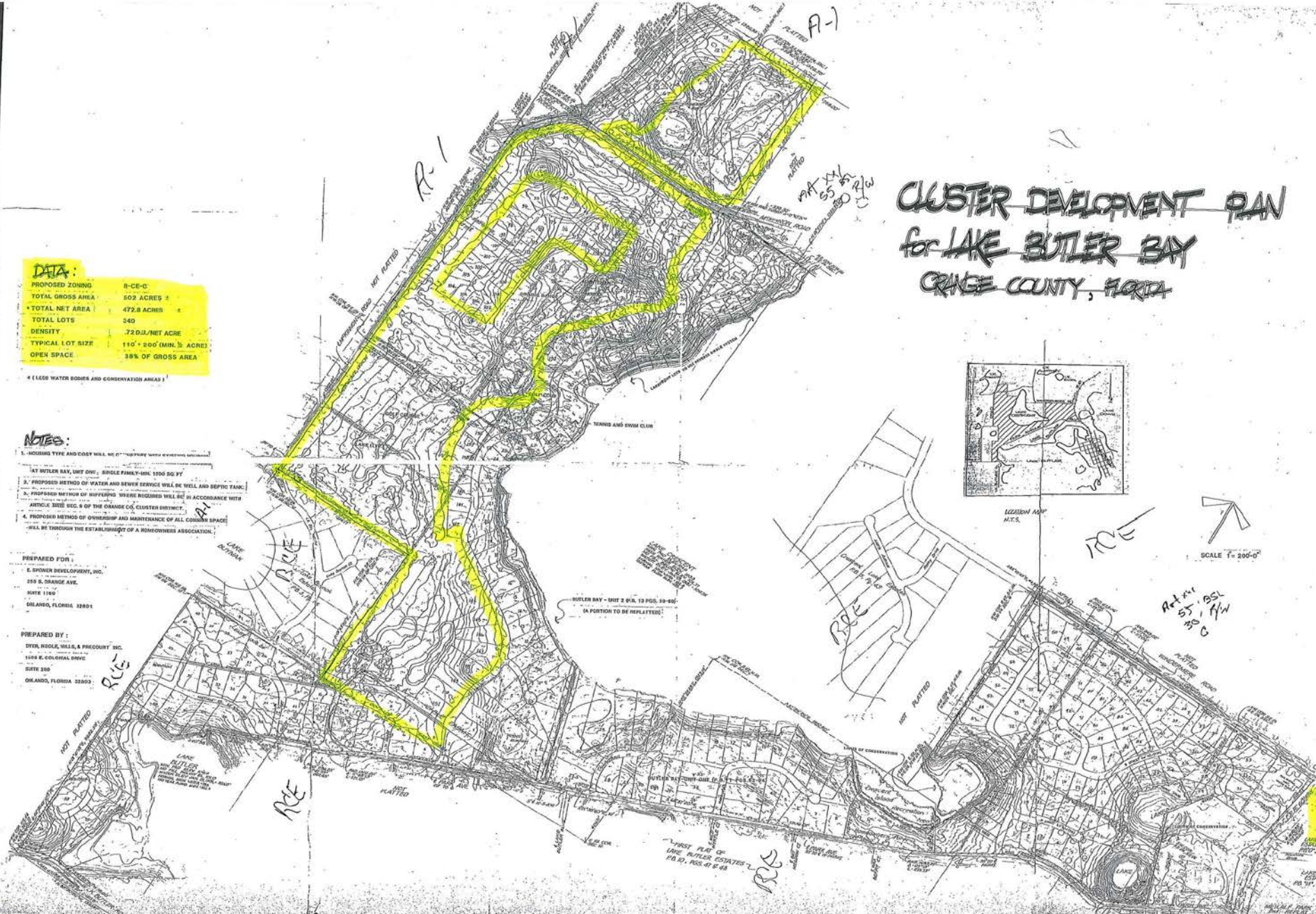
PREPARED FOR:
E. SPORER DEVELOPMENT, INC.
255 S. ORANGE AVE.
SUITE 1100
ORLANDO, FLORIDA 32801

PREPARED BY:
OVER, ROGUE, WILKS & PRECOURT, INC.
1509 E. COLONIAL DRIVE
SUITE 200
ORLANDO, FLORIDA 32803

CLUSTER DEVELOPMENT PLAN for LAKE BUTLER BAY ORANGE COUNTY, FLORIDA



SCALE 1" = 200'-0"



The Dedication of Development Rights Secured Open Space

- **Developer's Agreement** (O.R. Book 3757, Page 1536)-
Approved by BCC on February 24, 1986 (Attached)
 - Condition #12 required dedication of the development rights over Tract A to Orange County.
 - Section 6 confirms that the conditions of approval "assure compatibility of development on the Property with surrounding development and with the surrounding environment."

- **Unit Three Plat** (O.R. Book 18, Page 4) – Approved by BCC on July 21, 1986 (Attached)
 - Golf course identified as "Tract A"
 - Plat Note #12 "Development rights to the Conservation Easement and Tract A are dedicated to Orange County, Florida."
 - Plat Note #13 "Access Rights from Lot 101 and Tract A are dedicated to Orange County, Florida."

Permanent Open Space

- Open space as part of cluster zoning is permanent:
 - ▣ County Code (new and old) provides that one of the primary purposes of cluster zoning is “[t]o enhance the living environment through the creation of permanent open space.”
 - Sec. 38-551 (current)
 - Sec. 1(2), Art. XXXVI (1984 Code).

Private Ownership of Tract A is Irrelevant to Status as Open Space

- Section 34-155(a), County code, old and new, authorizes the inclusion in a subdivision of “private parks and recreation areas” as open space. Note that the old Code did not require that such space be owned by a homeowners association.
- **The old Code expressly contemplates the use of a private golf course as open space:**
 - Sec. 5, Art. XXXVI (1984 Code) provides for the inclusion of “[p]rivately owned and operated recreational facilities” and “[c]lubs such as: Country and golf clubs” as special exceptions within a cluster district.
 - In approving such a use, the relevant County board must consider various criteria including “the area of the site as it relates particularly to the required open space.”
 - Tract A fulfills the bulk of the open space required by the Cluster Development Plan, which is a requirement of the zoning on this property.

THIS IS NOT A REZONING HEARING

Sec. 30-40. - Supplementing, amending the zoning districts and zoning resolution.

(c) (1) The planning and zoning commission shall direct that a public hearing on the application be held. The planning and zoning commission shall thereupon make such investigation as it may determine necessary, including inquiry into the consistency of the request with the comprehensive policy plan, and shall hold a public hearing or hearings, with due public notice, on the application.

(d) When the public hearing is held after giving notice pursuant to subsection (c) above, the planning and zoning commission shall publicly discuss the application and take testimony and evidence from the applicant and public, as appropriate. After the public hearing the planning and zoning commission shall submit its recommendations on the proposed change to the board of county commissioners for official action.

**ORANGE COUNTY
NOTICE OF PUBLIC HEARING**

To Whom It May Concern:

On January 24, 2017, at 2 p.m., or as soon thereafter as the matter may be heard, the Orange County Board of County Commissioners will conduct a public hearing in the County Commission Chambers, First Floor, County Administration Center, 201 South Rosalind Avenue, Orlando, Florida, to consider the appeal described below. You are invited to attend and be heard regarding the appeal.

Appellant: Jamie T. Poulos, Poulos & Bennett, LLC and Windermere Country Club, LLC

Applicant: Jamie T. Poulos, Poulos & Bennett, LLC

Case: Planning and Zoning Commission Case # RZ-15-10-038 (Butler Bay Cluster Plan); November 17, 2016

Consideration: Request to consider the appeal of the November 17, 2016, Planning and Zoning Commission (PZC) Dismissal of Rezoning Case # RZ-15-10-038 (Butler Bay Cluster Plan), in the name of Jamie T. Poulos of Poulos and Bennett, LLC.

Location: District 1; property generally located north of Lake Butler Boulevard, east of McKinnon Road, and southeast of Lake Roberts; Orange County, Florida (legal property description on file in Planning Division—see the vicinity map on reverse side)

If you have any questions regarding this notice, contact the Orange County Planning Division, 407-836-5549, steven.thorp@ocfl.net

PARA MÁS INFORMACIÓN, REFERENTE A ESTA VISTA PUBLICA CON RESPECTO A UNA AUDENCIA PUBLICA SOBRE PROPIEDAD EN SU AREA/VECINDAD, FAVOR COMUNICARSE CON LA DIVISIÓN DE PLANIFICACION, AL NUMERO, 407-836-5686.

You may obtain a copy of the legal property description by calling the Comptroller Clerk of the Board of County Commissioners, 407-836-7300; or pick one up at 201 South Rosalind Avenue, Fourth Floor; Orlando, Florida.

If you wish to appeal any decision made by the Board of County Commissioners at this hearing you will need a record of the proceedings. You should ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

If you require special accommodations under the Americans with Disabilities Act of 1990, please call 407-836-5631 no later than two business days prior to the hearing for assistance. Si usted requiere ayuda especial bajo la ley de Americanos con Incapacidades de 1990, por favor llame al 407-836-3111.

Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners; Orange County, Florida

np/cas/jk
December 19, 2016
c: Applicant/Abutters

REQUEST:

**Respectfully request
the BCC deny the
Developer's appeal**

Individual Homeowners:

Leigh Ann Dyal
12742 Butler Bay Court
01-23-27-1108-00-300

Chesley "Chet" Moody
2322 Butler Bay Drive North
01-23-27-1108-00-170

Gregory Pounds
2309 Butler Bay Drive North
01-23-27-1108-00-850

George Huxhold
12615 Butler Bay Court
01-23-27-1108-00-510

George Aguel
12548 Butler Bay Court
01-23-27-1108-00-240

DEVELOPER'S AGREEMENT

OR3757 PG1536

THIS AGREEMENT is made by and between ORANGE COUNTY, FLORIDA, a political subdivision of the State of Florida ("Orange County") and WINDERMERE LAKES, LTD., a Florida limited partnership, 5401 Kirkman Road, Suite 600, Orlando, Florida 32819 ("Owner").

R E C I T A L S:

1. Owner owns certain real property located in the unincorporated area of Orange County (the "Property") more particularly described in Exhibit "A" attached hereto.
2. Owner applied to subdivide the Property.
3. On November 18, 1985, Orange County conducted a public hearing to consider Owner's request for Preliminary Subdivision Plan Approval for the Property.
4. Orange County has authority to regulate the subdividing of real property located in the unincorporated area of Orange County and has the authority to impose necessary conditions in connection with the review and approval of any such Preliminary Subdivision Plan.
5. At the public hearing on November 18, 1985, the Board of County Commissioners of Orange County adopted certain conditions of approval for the Preliminary Subdivision Plan for the Property based upon the Orange County Subdivision Regulations and based upon considerations relating to the area surrounding the Property, including without limitation, developments abutting the Property, water bodies abutting the Property and other circumstances affecting the Property.
6. The conditions of approval adopted by Orange County assure compliance with the Orange County Subdivision Regulations and assure compatibility of development on the Property with surrounding development and with the surrounding environment.
7. Orange County and Owner desire to memorialize the conditions of approval.

NOW, THEREFORE, in consideration of the foregoing and of the terms and conditions stated below, Orange County and Owner agree as follows:

1. Recitals. The foregoing recitals are true and form a material part of this Agreement
2. Conditions of Approval. The following conditions of approval apply to the Property and shall control all future development of the Property permitted by the Preliminary Subdivision Plan approval granted by Orange County on November 18, 1985 (unless said conditions of approval are amended or modified by Orange County): see Exhibit "A" attached.

APPROVED BY THE BOARD OF COUNTY
COMMISSIONERS AT THEIR MEETING

FEB 24 1986

Florida	Paid
Rec Fee \$	37.00
Doc Tax \$	
Int Tax \$	
Total \$	37.00

THOMAS H. LOCKER,
Orange County
Comptroller
By R. A.
Deputy Clerk

Return to Clerk to BCC - 5th Floor, County Administration Building - Beverly

3. Recording. The parties hereto agree that an executed copy of this Agreement shall be recorded at the Developer's expense in the Official Records of Orange County, Florida, prior to platting all or any part of the Property.

4. Letter from Orange County. Upon written request from the Owner, Orange County, or any successor agency or entity, will execute a document (the form of which is reasonably satisfactory to Owner) which evidences the status of compliance by Owner with the attached conditions of approval. Said document shall be prepared in recordable form and shall be delivered to Owner within ten (10) days of receipt by the County of the request for same.

5. Recording Modifications to Conditions of Approval. Any modifications to the Conditions of Approval referenced in Paragraph 2 above shall be recorded in the Public Records of Orange County, Florida.

6. Effective Date. This Agreement takes effect on the later of the dates stated below.

ORANGE COUNTY, FLORIDA

By:

Bal Harrell
Vice-Chairman, Board of County Commissioners

DATE:

FEB 24 1986

ATTEST: THOMAS H. LOCKER,
Clerk to Board of County Commissioners

By:

Mary D. Harrison
Deputy Clerk

WINDERMERE LAKES, LTD., a Florida
limited partnership

By:

Raymond G. Conway
General Partner

(Corporate Seal)

DATE: January 31, 1986

ATTEST:

By:

Beverly L. Halloran
Secretary

DR3757 PG 1537

STATE OF FLORIDA

COUNTY OF ORANGE

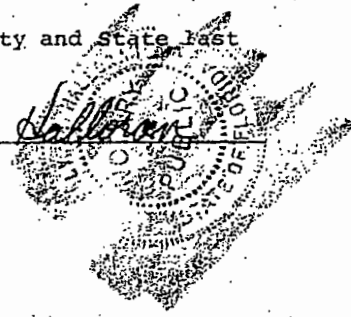
I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared **ROBERT S. HARRELL, VICE-Chairman of the Board of County Commissioners of Orange County, Florida,** to me known to be the person described in and who executed the foregoing Developer's Agreement, and he acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this 24th day of FEBRUARY, 1986.

My Commission Expires:

Notary Public, State of Florida at Large
My Commission Expires November 4, 1989
Bonded Thru Brown & Brown, Inc.

Beverly L. Galloran
Notary Public



STATE OF FLORIDA

COUNTY OF ORANGE

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared **Raymond G. Conway, General Partner of Windermere Lakes, Ltd. a Florida limited partnership,** to me known to be the person described in and who executed the foregoing Developer's Agreement, and he acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this 31 day of JANUARY, 1986.

My Commission Expires:

Stephen D. Feinberg
Notary Public

Notary Public State of Florida at Large
My Commission expires April 19, 1986



OR3757 PG. 538

File
into compliance with revised State Law and to remove inconsistencies and clarify portions of the existing ordinance.

Mr. Ray West, member of the H.A.R.V. Board, was present to answer questions from the Commissioners.

Upon a motion by Commissioner Carter, seconded by Commissioner Harrell and carried, with all present Commissioners voting AYE, Commissioner Treadway was absent, the Board adopted an Ordinance to amend Article IV, as described above.

(Ordinance on file in the office of the Clerk to Board of County Commissioners).

Public
hearing

Preliminary
subdivision
plan

Butler Bay

Notice was given that the Board of County Commissioners would hold a public hearing to consider the Preliminary Subdivision Plan for Butler Bay on the following described property:

That part of the Replat of Metcalf Park, as recorded in Plat Book Q, Page 18, of the Public Records of Orange County, Florida; described as follows:

GR 3757 PJ 1539

Begin on the Northern right of way line of Park Ave. and the Southeast corner of the Homeowners Park of Butler Bay Unit One, as recorded in Plat Book 11, Pages 92 through 94 of the Public Records of Orange County, Florida; thence leaving the Northern right of line of Park Ave. run along the boundary line of said Butler Bay Unit One N.30°41'40"W. 395.90 feet; thence continue along said boundary line run N.87°54'26"W. 308.39 feet; thence leaving said boundary of Butler Bay Unit One run N.02°51'17"E. 655.01 feet; thence N.01°11'12"E. 1300.86 feet to the Southerly right of way line of Windermere Road; thence through the following courses and distances run along the Southerly right of way line of said Windermere Road; thence S.88°38'04"E. 44.92 feet; thence S.87°42'31"E. a distance of 519.40 feet to the point of curvature of a curve concave Southerly and having a radius of 673.31 feet with a central angle of 07°56'11"; thence Easterly along the arc of said curve 93.27 feet to the point of a reverse curve concave Northerly and having a radius of 849.98 feet with a central angle of 07°54'00"; thence Easterly along the arc of said curve 117.20 feet to the point of tangency; thence S.87°40'20"E. a distance of 2069.10 feet to a point on the Westerly right of way of the Seaboard Coast Line Railroad; thence leaving the South right of way of Windermere Road, run S.10°27'59"W. along said Westerly right of way 519.45 feet to the point of curvature of a curve concave Southeasterly and having a radius of 1,490.98 feet; thence Southwesterly 85.07 feet along the arc of said curve through a central angle of 03°16'09" to a point on said curve and also being the Northeast corner of an Orange County School Property as recorded in Official Record Book 1708, Pages 267 and 268 of the Public Records of Orange County, Florida; thence leaving said Seaboard Coast Line Railroad run along said school property boundary line through the following courses and distances; thence N.87°11'23"W. 570.56 feet (570.00 feet per deed); thence S.34°48'40"W. 400.00 feet; thence S. 18°40'17"E. 810.35 feet to the Southwest corner of said school property and said point being on the Northerly right of way of Park Ave.; thence through the following courses and distances run along said Northerly right of way line; thence S.60°38'17"W. 270.99 feet to the point of curvature of a curve concave Northerly and having a radius of 257.52 feet; thence Westerly 187.61 feet along the arc of said curve through a central angle of 41°44'33" to point of tangency; thence N.77°37'10"W. 207.60 feet to the point of curvature of a curve concave Southerly and having a radius of 853.51 feet; thence Westerly 641.67 feet along the arc of said curve through a central angle 43°04'30" to the point of tangency; thence S.59°18'20"W. 586.44 feet to the point of beginning. Containing 103.556 acres.

Subject to Easements and Restrictions of Record.

(NOTE: Legal reflects peaceful occupation for Westerly property line).

EXHIBIT "A"

TOGETHER WITH

Commencing at the Northeast corner of the Northwest 1/4 of Section 7, Township 23 South, Range 28 East, Orange County, Florida, run thence S.02°52'28"W. along the East line of said Northwest 1/4 907.60 feet to the Northerly right of way line of Park Avenue; thence run S.59°18'20"W. 155.22 feet along said Northerly right of way line for the Point of Beginning at the point of curvature of a curve concave Northerly having a radius of 1683.37 feet and a central angle of 09° 19'00"; thence run Southwesterly along the arc of said curve 273.73 feet to the point of tangency; thence run S.68°37'20"W. along said right of way line 2906.07 feet; thence S.21°38'40"E. 10.00 feet; thence S. 68° 00'20"W. along said right of way line 235.00 feet to the centerline of an existing canal; thence leaving aforesaid Northerly right of way line, run N.15°59'40"W. along said canal centerline 1055 feet more or less to the water edge of Lake Crescent; thence run Easterly along said waters edge 1000 feet more or less to the West line of aforesaid Section 7; thence run N.02°52'28"E. along said West line 540 feet more or less to the Northwest corner of the South 1/2 of the North 1/2 of the Northwest 1/4 of said Section 7; thence run S.87°54'26"E. along the North line of said South 1/2 of the North 1/2 of the Northwest 1/4 a distance of 1970.80 feet to the Southwest corner of the East 1/2 of the North 1/2 of the Northeast 1/4 of the Northwest 1/4 of said Section 7; thence continue S.87°54'26"E. 312.20 feet to a point 395.90 feet N.30°41'40"W. from the Point of Beginning; thence run S.30°41'40"E. 395.90 feet to the Point of Beginning.

Containing therein 59.0 acres more or less.

GR3757 PG1540

TOGETHER WITH

For a Point of Beginning begin at the Southwest corner of the Northeast 1/4 of Section 12, Township 23 South, Range 27 East, Orange County, Florida; said point being the Southwest corner of Butler Bay Unit Two as recorded in Plat Book 13, Pages 59 and 60 of the Public Records of Orange County, Florida; and said point also being a point on the Southerly right of way line of Park Avenue and the point of curvature of a curve concave Northwesterly and having a 800.00 foot radius; thence through the following courses and distances along said Southerly boundary of Butler Bay Unit Two; run Northeasterly 322.31 feet along the arc of said curve through a central angle of 23°05'02" to the point of tangency; thence N.67°00'00"E. 189.82 feet to the point of curvature of a curve concave Southeasterly and having a 740.00 foot radius; thence Northeasterly 326.57 feet along the arc of said curve through a central angle of 25°17'07" to the point of tangency; thence S.87°42'53"E. 656.69 feet to the point of curvature of a curve concave Northwesterly and having a 7651.33 foot radius; thence Easterly 199.99 feet along the arc of said curve through a central angle of 01°29'51" to the point of tangency; thence S.89°12'45"E. 213.51 feet to a point on the Northerly right of way line of Metcalf Road as recorded in Official Record Book 1098, Page 150 of the Public Records of Orange County, Florida; thence leaving said Southerly boundary line run S.68°00'20"W. 1659.42 feet along said right of way of Metcalf Road; thence S.21°59'40"W. 60.00 feet; thence N.68°00'20"E. 248.47 feet; thence leaving said Metcalf Road right of way line run S.57°49'00"W. 220.62 feet; thence S.69°02'00"W. 167.63 feet to the Southeast corner of a 30.00 foot wide road right of way as recorded in Official Record Book 1573, Page 427 of the Public Records of Orange County, Florida; thence along the boundary of said road right of way run N.20°58'00"W. 30.00 feet; thence S.69°02'00"W. 430.08 feet; thence S.20°58'00"E. 30.00 feet; to the Southwest corner of said right of way; thence leaving said right of way run S.69°02'00"W. 435.16 feet to the waters edge of Lake Butler; thence through the following courses and distances along the waters edge; run S.31°22' 40"W. 61.31 feet; thence S. 52°43'51"W. 164.27 feet; thence S.62°45' 21"W. 119.33 feet; thence N.81°31'31"W. 148.23 feet; thence S.72°49' 49"W. 110.17 feet; thence S.55°20'20"W. 126.77 feet; thence S. 19°16' 45"W. 92.96 feet; thence S.17°11'20"E. 93.63 feet; thence S.26°44'59"E. 58.42 feet; thence S.68°17'08"E. 122.29 feet; thence S.51°53'10"E. 126.45 feet; thence S.45°46'36" E. 128.97 feet; thence S.33°33'27"E. 124.06 feet; thence S.05°35'17"E. 133.06 feet; thence S. 51°17'01"W. 143.30 feet; thence S.08°36'27"W. 107.42 feet; thence S.19°11'16"W. 163.11 feet; thence S.20°00'13"W. 113.72 feet; thence S. 15°17'30"W. 123.39 feet; thence S.09°57'30"W. 96.60 feet; thence S.86°12'46"E. 64.55 feet; thence N.45°48'27"E. 60.89 feet; thence N.66°27'49"E. 66.45 feet; thence leaving said waters edge run S.36°27'24"W. 107.50 feet to the Northerly right of way line of West Lake Butler Road; thence along said Northerly right of way line run N.83°47'16"W. 78.60 feet to the point of

radius; thence Westerly 180.21 feet along the arc of said curve through a central angle of $21^{\circ}55'40''$ to the point of tangency; thence $S.74^{\circ}17'04''W.$ 196.23 feet to the point of curvature of a curve concave Northwesterly and having a 410.76 foot radius; thence Southwesterly 17.78 feet along the arc of said curve through a central angle of $02^{\circ}28'46''$ to a point on the West line of the East 1/2 of the Southwest 1/4 of said Section 12; thence leaving said Northerly right of way from a tangent bearing of $S.76^{\circ}45'50''W.$ run $N.01^{\circ}40'18''E.$ 2636.92 feet along said West line of the East 1/2 of the Southwest 1/4 of said Section 12 to the Northwest corner of the Northeast 1/4 of the Southwest 1/4 of Section 12 and being a point on the Southerly right of way line of Lake Butler Blvd. and also being the Southwest corner of Lake Buynak Estates as recorded in Plat Book 3, Page 115 of the Public Records of Orange County, Florida; thence $S.89^{\circ}54'58''E.$ 1325.20 feet along the Southerly boundary of Lake Buynak to the Point of Beginning.

Containing therein 59.6027 acres; subject to easements and restrictions of record.

TOGETHER WITH

Butler Bay Unit Two, Plat Book 13, Pages 59-60

OR 8757 PG 1541

For a Point of Beginning, begin at the Southwest corner of the Northeast 1/4 of Section 12, Township 23 South, Range 27 East, Orange County, Florida; thence $N.01^{\circ}39'57''E.$ 1291.88 feet along the West line of said Northeast 1/4 also being the East boundary line of Lake Buynak Estates as recorded in Plat Book 3, Page 115 of the Public Records of Orange County, Florida; to the Northeast corner of the Southeast 1/4 of the Northwest 1/4 of said Section 12; thence $N.28^{\circ}50'29''E.$ 468.57 feet; thence $N.32^{\circ}43'20''E.$ 474.20 feet to the waters edge of Lake Crescent; thence run along the waters edge through the following courses; thence $S.44^{\circ}24'53''E.$ 69.12 feet; thence $S.28^{\circ}25'38''E.$ 120.56 feet; thence $S.64^{\circ}00'10''E.$ 159.71 feet; thence $S.23^{\circ}50'01''E.$ 161.45 feet; thence $N.68^{\circ}24'34''E.$ 110.23 feet; thence $S.55^{\circ}36'31''E.$ 273.80 feet; thence $S.43^{\circ}15'36''E.$ 265.58 feet; thence $S.58^{\circ}50'14''E.$ 185.01 feet; thence $S.69^{\circ}45'37''E.$ 246.99 feet; thence $S.45^{\circ}41'50''E.$ 62.02 feet to a point on the center line of an existing canal also being the Northwesterly line of Lot 102 of Butler Bay Unit One as recorded in Plat Book 11, Pages 92, 93 and 94 of the Public Records of Orange County, Florida; thence $S.15^{\circ}59'40''E.$ 1010.84 feet along the Westerly line of said Butler Bay Unit One to a point on the Northerly right of way line of Park Avenue; thence $S.68^{\circ}00'20''W.$ 167.56 feet along said right of way line; thence $N.89^{\circ}12'45''W.$ 239.34 feet to the point of curvature of a curve concave Northwesterly and having a 7651.33 foot radius; thence Westerly 199.99 feet along the arc of said curve through a central angle of $01^{\circ}29'51''$ to the point of tangency; thence $N.87^{\circ}42'53''W.$ 656.69 feet to the point of curvature of a curve concave Southeasterly and having a 740.00 foot radius; thence Southwesterly 326.57 feet along the arc of said curve through a central angle of $25^{\circ}17'07''$ to the point of tangency; thence $S.67^{\circ}00'00''W.$ 189.82 feet to the point of curvature of a curve concave Northwesterly and having a 800.00 foot radius; thence Southwesterly 322.31 feet along the arc of said curve through a central angle of $23^{\circ}05'02''$ to the Point of Beginning;

Containing therein 63.2832 acres. Subject to easements and restrictions of record.

TOGETHER WITH

A parcel of land situate in Section 1 and 12, Township 23 South, Range 27 East, Orange County, Florida, described as follows:

For a Point of Beginning begin at the Southeast corner of the Northeast 1/4 of the Northwest 1/4 of said Section 12, and said point being the Northeast corner of Lake Buynak Estates as recorded in Plat Book 3, Page 115 of the Public Records of Orange County, Florida; thence $N.89^{\circ}11'43''W.$ 1324.38 feet along the North boundary line of said Lake Buynak Estates and the South line of the Northeast 1/4 of the Northwest 1/4 of said Section 12 to the Northwest corner of Lake Buynak Estates and said point also being the Easterly right of way line of McKinnon Road and a point on a curve concave Northwesterly and having a 118.10 foot radius; from a tangent bearing $N.43^{\circ}26'06''E.$ thence through the following courses and distances along said Easterly right of way run Northeasterly 86.07 feet along the arc of said curve through a central angle of $41^{\circ}45'26''$ to the point of tangency; thence $N.01^{\circ}40'40''E.$ 1230.06 feet to a point on the North line of said Section 12; thence $N.02^{\circ}19'14''E.$ 1200.00 feet; thence leaving said right of way line run $S.87^{\circ}40'46''E.$ 340.00 feet to a point of curvature of a curve concave Southeasterly and having a 411.67 foot radius; thence from a tangent bearing of $N.18^{\circ}30'00''E.$ run Northeasterly 961.94 feet along the arc of said curve through a central angle of $133^{\circ}51'52''$ to the point of tangency; thence $S.27^{\circ}37'08''E.$ 129.82 feet to the point of curvature of a curve concave Northeasterly

and having a 230.00 foot radius; thence Easterly 361.28 feet along the arc of said curve through a central angle of 90°00'00" to the point of a compound curve concave Northwesterly and having a 470.00 feet radius; thence Northeasterly 200.00 feet along the arc of said curve through a central angle of 24°22'52" to a point; thence from a tangent bearing of N. 38°00'00"E run S. 52°00'00"E. 400.00 feet to the waters edge of Lake Crescent also being at a contour elevation of 102.8 feet (Orange County Datum); thence along the waters edge and the 102.8 foot contour elevation through the following courses and distances run thence S. 29°49'44"W. 140.00 feet; thence S. 70°24'19"W. 61.02 feet; thence N. 87°43'55"W. 72.88 feet; thence S. 34°06'48"W. 134.62 feet; thence S. 25°29'52"E. 99.65 feet; thence S. 75°34'55"E. 146.75 feet; thence S. 11°33'52"E. 201.96 feet; thence S. 04°10'29"W. 107.24 feet; thence S. 23°03'37"W. 89.96 feet; thence S. 31°31'13"W. 235.66 feet; thence S. 56°54'41"W. 170.83 feet; thence S. 25°38'35"W. 127.58 feet; thence S. 16°40'49"E. 131.74 feet; thence S. 70°43'14"E. 98.57 feet; thence S. 31°11'24"E. 97.03 feet; thence leaving said waters edge and 102.8 contour elevation run S. 32°43'20"W. 18.00 feet to the Northwest corner of Lot 123 of Butler Bay Unit Two as recorded in Plat Book 13, Pages 59 and 60 of the Public Records of Orange County, Florida; thence continue S. 32°43'20"W. 474.20 feet along the Northwesterly boundary line of said Butler Bay Unit Two; thence continue along said Butler Bay Unit Two boundary, S. 28°50'29"W. 468.57 feet to the Point of Beginning.

Containing therein 99.659 acres. Subject to easement and restrictions of record.

TOGETHER WITH

OR3757 P31542

A parcel of land situate in Section 1, Township 23 South, Range 27 East, Orange County, Florida, described as follows:

Commence at the Southeast corner of the Northeast 1/4 of the Northwest 1/4 of Section 12, and said point being on the Northeast corner of Lake Buynak Estates as recorded in Plat Book 3, Page 115 of the Public Records of Orange County, Florida; thence N. 89°11'43"W. 1324.38 feet along the North boundary line of said Lake Buynak Estates and the South line of the Northeast 1/4 of the Northwest 1/4 of said Section 12 to the Northwest corner of Lake Buynak Estates and said point also being the Easterly right of way line of McKinnon Road and a point on a curve concave Northwesterly and having a 118.10 foot radius; from a tangent bearing of N. 43°25'06"E. thence through the following courses and distances along said Easterly right of way, run Northeasterly 86.07 feet along the arc of said curve through a central angle of 41°45'26" to the point of tangency; thence N. 01°40'40"E. 1230.06 feet to a point on the North line of said Section 12; thence N. 02°19'14"E. 1200.00 feet for a Point of Beginning; thence continue along said right of way line run N. 02°19'14"E. 883.76 feet to the point of curvature of a curve concave Southeasterly and having a 367.99 foot radius; thence Northeasterly 264.02 feet along the arc of said curve through a central angle of 41°06'29" to the point of tangency; thence N. 43°25'43"E. 207.55 feet to the point of curvature of a curve concave Southeasterly and having a 318.57 foot radius; thence Northeasterly 266.58 feet along the arc of said curve through a central angle of 40°56'46" to the point of tangency; thence S. 88°37'31"E. 1035.50 feet to the point of curvature of a curve concave Northwesterly and having a 1187.00 foot radius; thence Northeasterly 341.29 feet along the arc of said curve through a central angle of 16°28'26" to point on said curve; thence leaving said right of way line from a tangent bearing of N. 74°54'03"E. run S. 01°45'56"W. 7.01 feet to the North line of the Southeast 1/4 of Section 1, Township 23 South, Range 27 East, Orange County, Florida; thence S. 88°12'22"E. 898.22 feet along said North line of the Southeast 1/4 to the waters edge of Lake Crescent also being a contour elevation of 102.8 feet (Orange County Datum); thence along the waters edge and the 102.8 foot contour elevation through the following courses and distances; run thence S. 18°51'19"W. 36.96 feet; thence run S. 00°41'46"W. 170.19 feet; thence S. 33°44'53"W. 177.61 feet; thence S. 38°42'40"W. 170.04 feet; thence S. 14°25'00"W. 126.17 feet; thence S. 28°30'13"W. 93.71 feet; thence S. 38°50'41"W. 131.86 feet; thence S. 16°21'54"W. 148.87 feet; thence S. 03°44'18"W. 143.86 feet; thence S. 13°25'44"W. 154.86 feet; thence S. 48°35'14"W. 193.92 feet; thence S. 50°10'14"W. 176.73 feet; thence S. 36°19'51"W. 106.47 feet; thence S. 29°49'44"W. 92.07 feet; thence leaving said waters edge and 102.8 contour elevation run N. 52°00'00"W. 400.00 feet to a point on a curve concave Northwesterly and having a 470.00 foot radius thence from a tangent bearing of N. 38°

angle of 90°00'00" to the point of tangency; thence N.27°37'08"W. 129.82 feet to the point of curvature of a curve concave Southerly and having a radius of 411.67 feet; thence Southwesterly 961.94 feet along the arc of said curve through a central angle of 133°52'52" to the point of tangency; thence from a tangent bearing of N.18°30'00"E. run N. 87°40'46" W. 340.00 feet to the Point of Beginning.

Containing therein 76.5969 acres;

Subject to easements and restrictions of record.

Note: The following section was prepared by others.

That part of the South 1/2 of Government Lot 2 lying North of McKinnon Road right of way (Less the East 758 feet thereof), Section 1, Township 23 South, Range 27 East, lying with the West 1/4 of the Northeast 1/4 of said Section 1

TOGETHER WITH

The Southeast 1/4 of the Northwest 1/4 of Section 1, Township 23 South, Range 27 East (Less McKinnon Road right of way over the Southerly portion thereof)

TOGETHER WITH

All that land lying Northwesterly of McKinnon Road in the East 1/2 of the Southwest 1/4 of Section 1, Township 23 South, Range 27 East.

Location: Between Lakes Robert, Crescent, Buynak and Butler District #3

A public hearing was held and Planning & Development Director Tracy Watson reviewed additional recommendations submitted by the Development Review Committee under date of November 14, 1985, for this project. Mr. Watson reviewed the conditions of approval for Butler Bay.

Attorney Tom Ross, representing the developer, stated that the conditions of approval were acceptable. He discussed the requirements for maintenance of the reverse swales on the lakefront lots.

A short discussion followed regarding minimum one acre lots on south section of the project.

DR3757 PG1543

Attorney Tom Ross stated that the developer agreed to a minimum of one acre lots south of Lake Butler Boulevard.

The following people addressed the Board concerning the Butler Bay project:

1. Dave Riley, representing Lake Crescent Homeowners Association.
2. Attorney Lee Chotas, representing Mr. and Mrs. Hill.
3. Tracy Dent
4. J. B. Rogers, 3725 Lake Bynak Drive

Developer Emory Conway was present and answered questions concerning Lake Crescent.

The Board and staff discussed approval of the north portion and have the applicant withdraw the south portion (Lake Butler Cove), as that plan requires redesign, or add additional stipulations to provide for roadways and drainage. Upon a motion by Commissioner Marston, seconded by Commissioner Carter and carried, with all present Commissioners voting AYE, Commissioner Treadway was absent, ~~the Board approved the Preliminary Subdivision Plan for Butler Bay,~~ subject to the following amended conditions:

1. ~~Development in accordance with the Cluster approval conditions by the P&Z Commission on February 21, 1985, the Preliminary Subdivision Plan dated Received 8/9/85, the Subdivision Regulations, and the Zoning Resolution, unless herein waived. Preliminary Subdivision Plan approval automatically~~

6, in accordance with Subdivision Regulations as amended.

2. Existing wetland vegetation along the shoreline of Lakes Butler, Crescent and Roberts shall be left in its natural state, except for the lake access as allowed by the Orange County Lakeshore Protection Ordinance. The boundary of shoreline wetland vegetation shall be flagged and surveyed and must be shown as a Conservation Easement on the construction plan and plat submittals with development rights dedicated to Orange County. Upon completion of flagging of this area, and prior to construction plan submittal, the applicant shall notify the Orange County Planning and Environmental Protection Departments so that a field verification can be performed. This restriction on vegetation clearing within the easement area shall be recorded in each deeded lot and a copy of such deed provided to the Orange County Planning Department at the time of plat approval. There shall be no fill below the 101' contour on Lake Butler.
3. The two lowland areas east of Lots 116 - 122 (Phase IV) shall be incorporated into the design of the project and must comply with the Mitigation Plan (dated received April 19, 1985), and the recommendations of the Conservation Area Analysis Report by Lotspeich and Associates (dated 2/7/85). After completion of the mitigation program, the applicant shall notify the Orange County Planning and Environmental Protection Departments so that field verification can be performed.
4. Development Plan for the Clubhouse and Tract F shall be processed through the Commercial Site Plan process.
5. The applicant shall enter into a Developer's Agreement with the County to address ownership and maintenance of all common private facilities.
6. The applicant shall provide sidewalks in compliance with the Subdivision Regulations.
7. Lots 123 - 140 of Butler Bay, Unit Two, shall be vacated prior to plat approval.
8. Any building area containing muck shall be demucked and replaced with suitable fill material prior to construction.
9. All lakefront lots, at time of platting, shall have a minimum lot width of 110' at the normal high water elevation.
10. A soil log will be required on each lot prior to issuance of septic tank permit.
11. The developer shall submit a Storm Water Management Plan in conformance with State Regulations for discharge into outstanding Florida waters.
12. Development rights to the Conservation Areas and golfcourse, except for the clubhouse and maintenance facility, shall be dedicated to Orange County.
13. The Lake Butler Cove Plan, to be submitted at a later date, shall have minimum one (1) acre size lots.
14. The drainage system shall not be designed to discharge stormwater into Lake Crescent which will result in a degradation of Lake Crescent water quality. Prior to construction of drainage system, background water quality shall be determined for Lake Crescent and used as a standard for determining water quality. The Developer shall provide to each property owner a copy of the recorded restrictions in order to prevent degradation of the water quality.

Public Works,
Hovercraft,
Inc.

Test of
Boats

Lake Mason/
Taft
Retention
Pond

Upon a motion by Commissioner Harrell, seconded by Commissioner Marston and carried, with all present Commissioners voting AYE, Commissioner Treadway was absent, the Board granted a temporary permit for a period of ninety (90) days for testing of boats by Hovercraft, Inc., at the Taft Retention Pond (Lake Mason) off Boggy Creek Road.

RECEIVED
Shirley A. Lohr
County Engineer, Orange Co., FL

DEC 9 1985

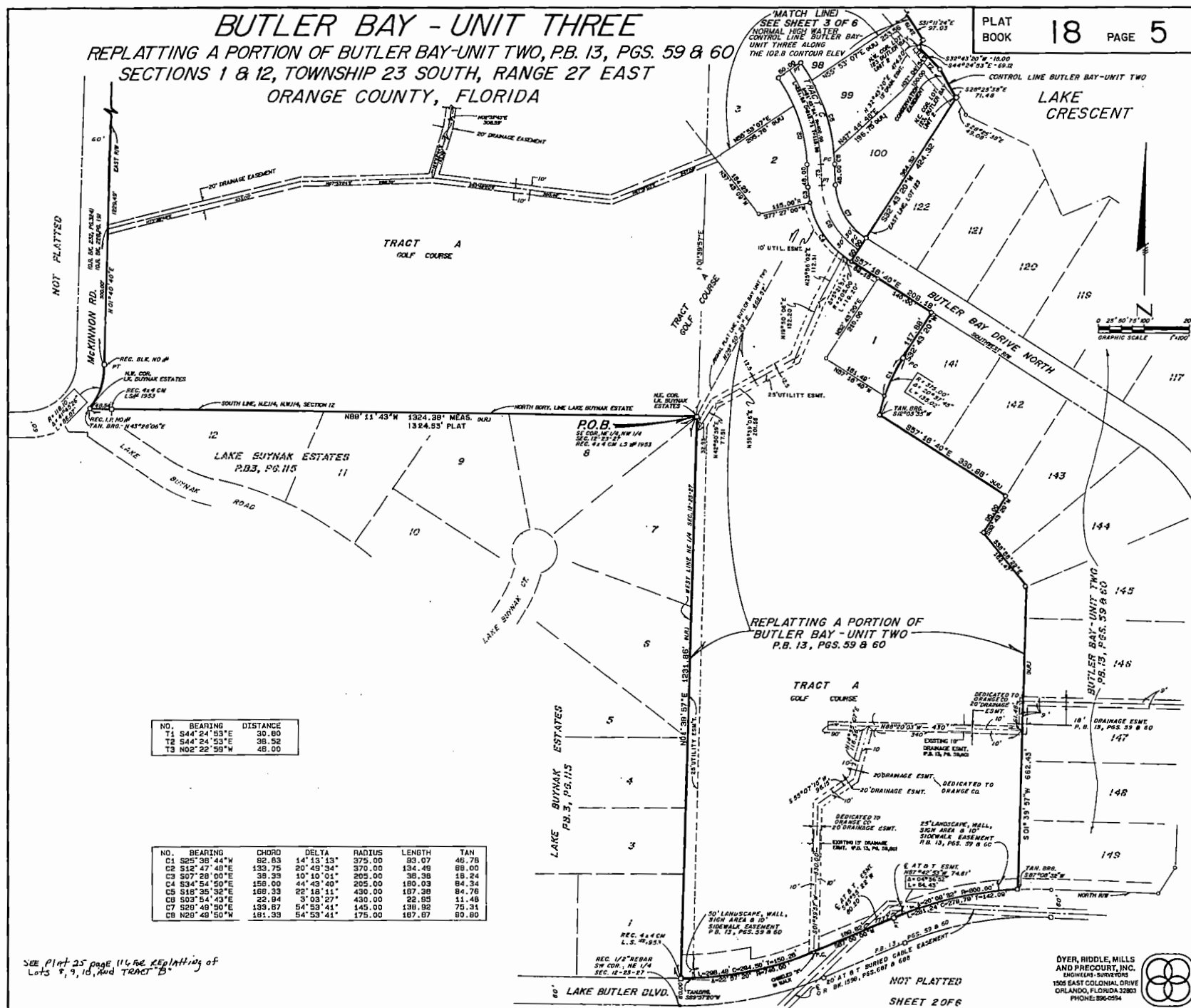
OR3757 PG1544

November 18, 1985

PUBLIC WORKS & Page
DEVELOPMENT DIRECTOR

BUTLER BAY - UNIT THREE
 REPLATTING A PORTION OF BUTLER BAY-UNIT TWO, P.B. 13, PGS. 59 & 60
 SECTIONS 1 & 12, TOWNSHIP 23 SOUTH, RANGE 27 EAST
 ORANGE COUNTY, FLORIDA

LAKE
CRESCENT



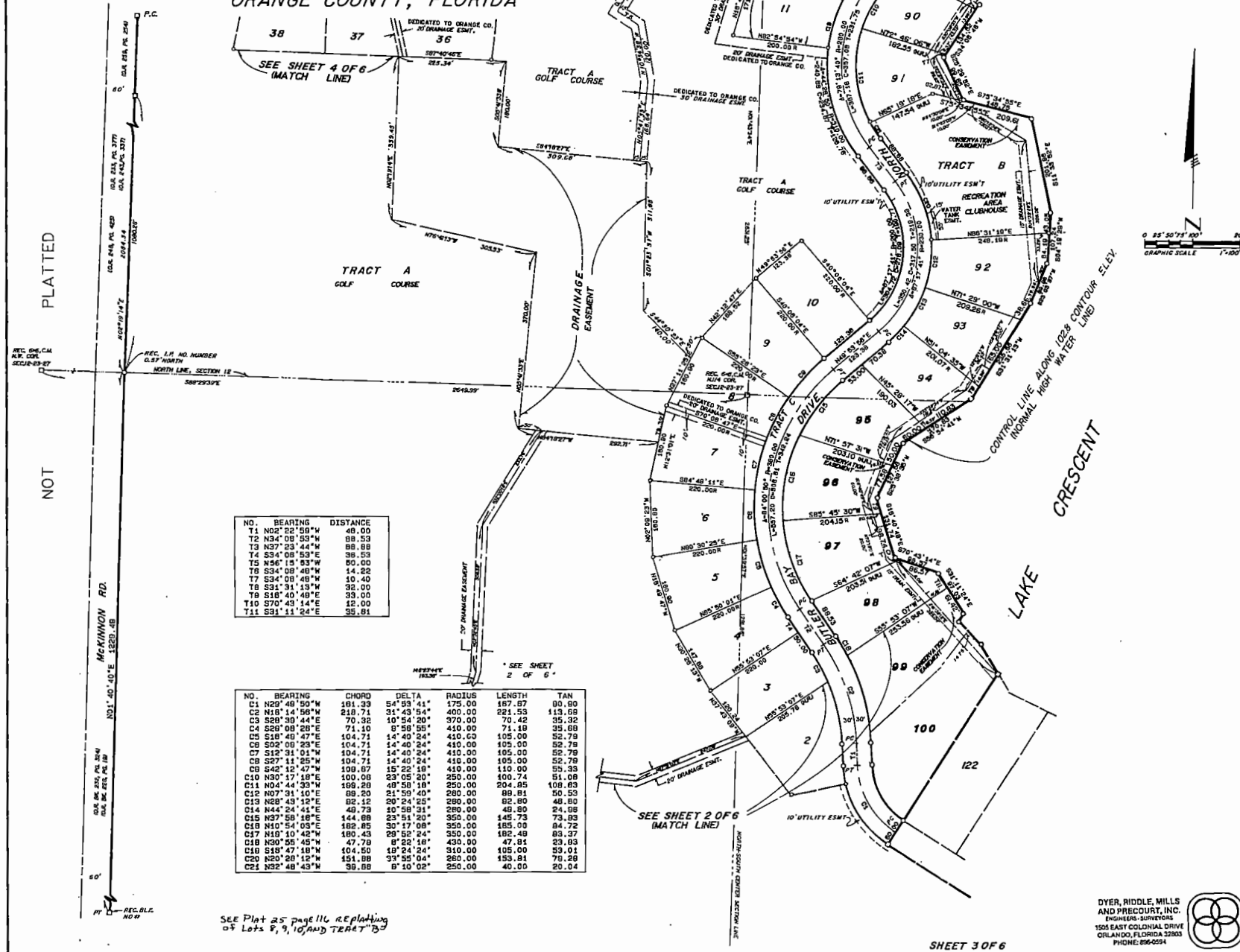
SEE PLAT 25 page 114 for REPLATTING of
Lots 8, 9, 10, AND TRACT "B"

**DYER, RIDDLE, MILLS
AND PRECOURT, INC.**
ENGINEERS • SURVEYORS
1505 EAST COLONIAL DRIVE
ORLANDO, FLORIDA 32805
PHONE: 836-0594



BUTLER BAY - UNIT THREE
REPLATTING A PORTION OF BUTLER BAY-UNIT TWO, P.B. 13, PGS. 59 & 60
SECTIONS 1 & 12, TOWNSHIP 23 SOUTH, RANGE 27 EAST
ORANGE COUNTY, FLORIDA

SEE SHEET 5 OF 6



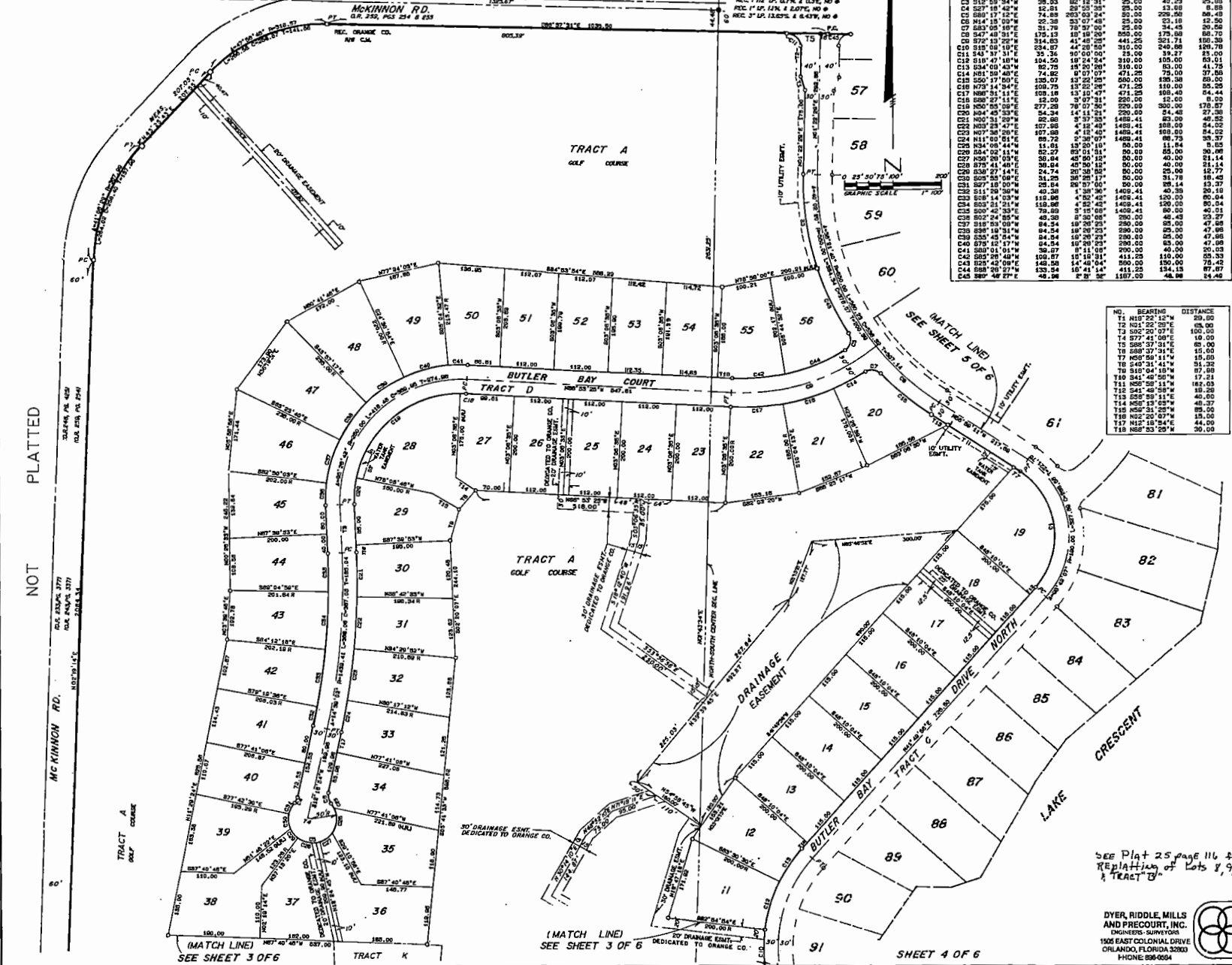
BUTLER BAY - UNIT THREE

REPLATTING A PORTION OF BUTLER BAY-UNIT TWO, P.B. 13, PGS. 59 & 60
SECTIONS 1 & 12, TOWNSHIP 23 SOUTH, RANGE 27 EAST
ORANGE COUNTY, FLORIDA

PLAT BOOK 18 PAGE 7

NO MON. SET
COR. FALLS IN LAKE
S.E. COR. SE1/4, NW1/4
SEC. 12-27

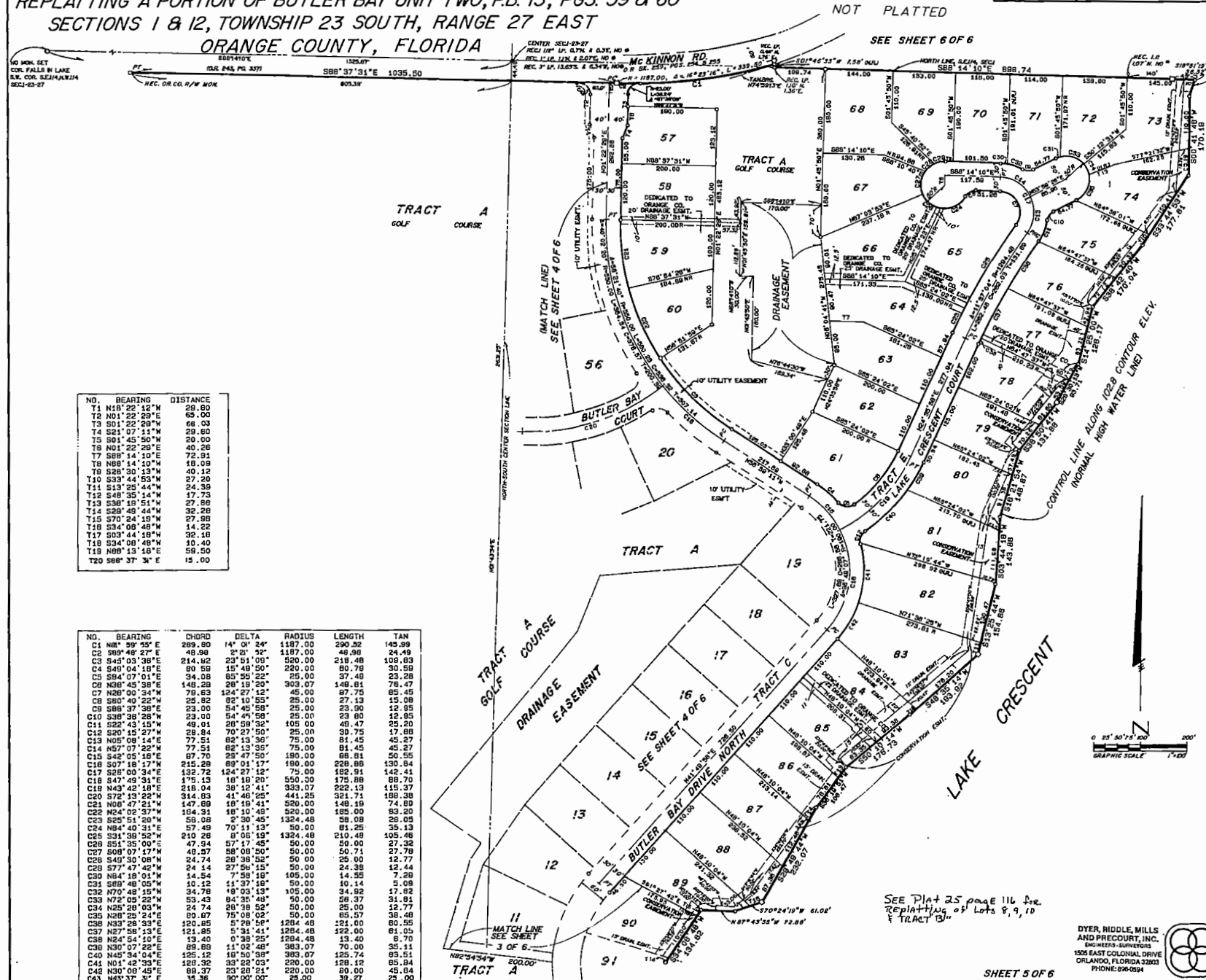
NOT PLATTED



SEE Plat 25 page 116 for
REPLATTING of Lots 1, 9, 10
& TRACT B

DYER, RIDDLE, MILLS
AND PRECOURT, INC.
ENGINEERS-SURVEYORS
1505 EAST COLONIAL DRIVE
ORLANDO, FLORIDA 32803
PHONE 896-0054

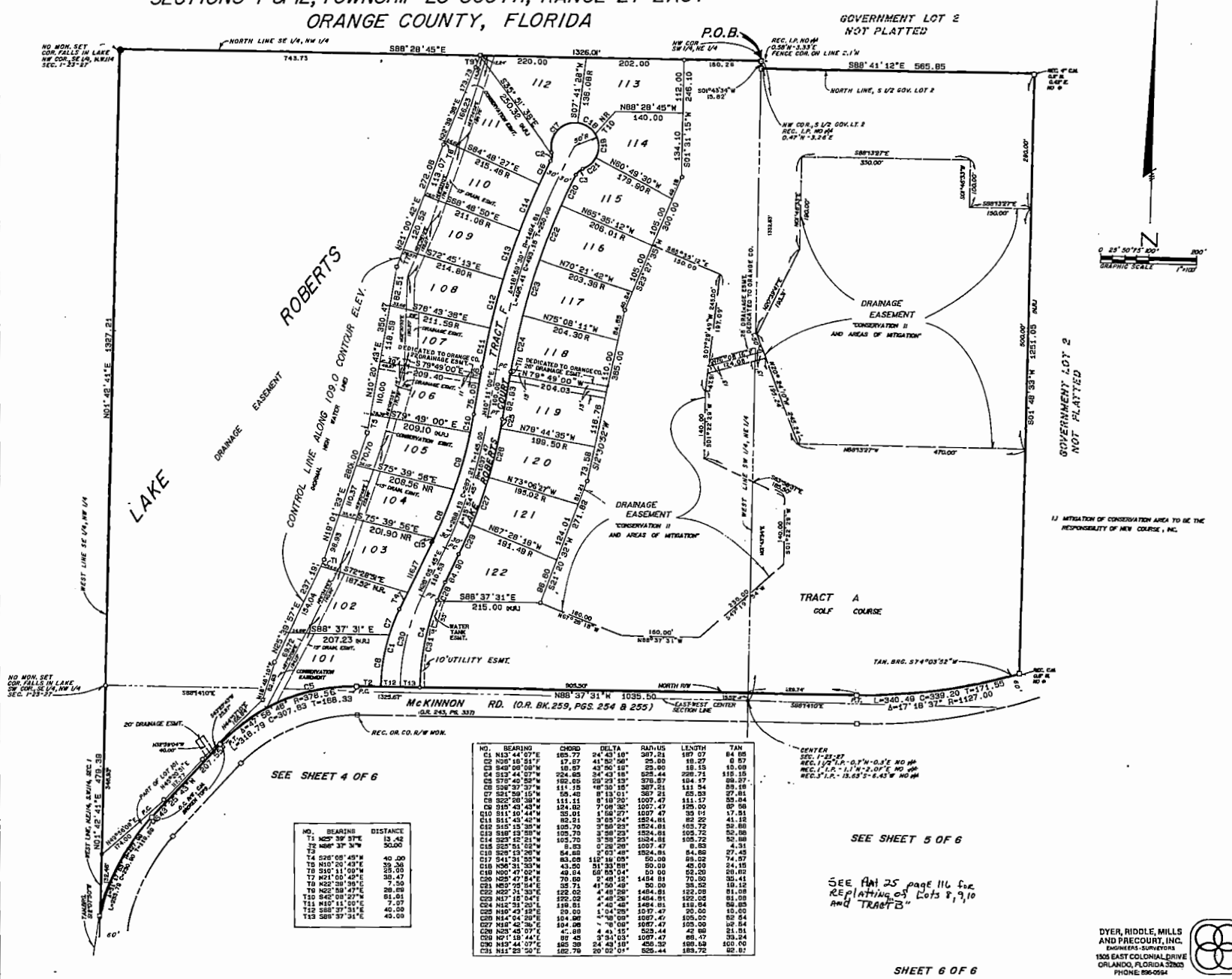


PLAT 18 PAGE 8
BOOK

BUTLER BAY - UNIT THREE

REPLATTING A PORTION OF BUTLER BAY-UNIT TWO, P.B. 13, PGS. 59 & 60
SECTIONS 1 & 12, TOWNSHIP 23 SOUTH, RANGE 27 EAST
ORANGE COUNTY, FLORIDA

PLAT BOOK 18 PAGE 9



DYER, RIDDLE, MILLS
AND PRECOURT, INC.
ENGINEERS-SURVEYORS
1505 EAST COLONIAL DRIVE
ORLANDO, FLORIDA 32805
PHONE: 896-0594

In the Matter of:
ORANGE COUNTY PLANNING AND ZONING COMMISSION

HEARING

November 17, 2016



COPY

www.OrangeLegal.com
800-275-7991

ORANGE COUNTY PLANNING AND ZONING COMMISSION
, HEARING

1 ORANGE COUNTY PLANNING AND ZONING COMMISSION

2 HEARING

3

4 _____/

5

DATE: NOVEMBER 17, 2016

6

TIME: 9:12 A.M. - 10:20 A.M.

7

LOCATION: 201 SOUTH ROSALIND AVENUE
ORLANDO, FLORIDA 32801

8

9

REPORTED BY: JOANNE HAHN, RPR
COURT REPORTER AND NOTARY PUBLIC

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 A P P E A R A N C E S:

2 RICK V. BALDOCCHI, DISTRICT 5 REPRESENTATIVE

3 MARVIN B. BARRETT, DISTRICT 2 REPRESENTATIVE

4 JOSE A. CANTERO, AT LARGE REPRESENTATIVE

5 CHRISTINE LYNN DEMOSTENE, DISTRICT 3 REPRESENTATIVE

6 PASQUALE DIVECCHIO, DISTRICT 1 REPRESENTATIVE

7 YOG MELWANI, AT LARGE REPRESENTATIVE

8 JAJA J. WADE, DISTRICT 6 REPRESENTATIVE

9 PAUL L. WEAN, MAYOR'S REPRESENTATIVE

10 CHRISTOPHER J. WILSON, ESQUIRE

OF: Marchena & Graham, P.A.

11 976 Lake Baldwin Lane, Suite 101

Orlando, Florida 32814-6687

12 cwilson@mgfirm.com

13 A. KURT ARDAMAN, ESQUIRE

OF: Fishback, Dominick, et al.

14 1947 Lee Road

Winter Park, Florida 32789

15 ardaman@fishbacklaw.com

16 WHITNEY E. EVERS, ESQUIRE

OF: Orange County Attorney's Office

17 201 South Rosalind Avenue

Orlando, Florida 32801

18 whitney.evers@ocfl.net

19

20

21

22

23

24

25

1 P R O C E E D I N G S

2 - - - - -

3 MR. CANTERO: We will now move to our
4 advertised public hearings. And it looks like we
5 have six conventional rezoning public hearings.

6 The first matter is RZ-15-10-038.

7 MR. THORPE: Good morning. My name is Stephen
8 Thorpe with the Orange County Planning Division.
9 This is rezoning Case RZ-15-10-038. The Applicant
10 Jamie Poulos with Poulos and Bennett is requesting
11 to rezone a parcel with inverse (ph) acreage of 155
12 acres from R-CE Country Estate Cluster District to
13 RCE, and replace the portion of the existing cluster
14 plan with a new one. The existing cluster plan has
15 approval of 340 single family lots, of which 327 are
16 plotted and a 455-acre golf course, which is the
17 property being discussed today, the development and
18 access rights of the golf course for conveyance to
19 County via plotting and developer's agreement.

20 The Applicant's proposed use is an additional
21 95 single family lots with one detached residential
22 home per lot on the existing golf course. The
23 parcels are located 2710 and 2730 Butler Bay Drive
24 North, which is generally located north of Lake
25 Butler Boulevard, east of McKinnon Road, southeast

1 of Lake Roberts and west of Lake Crescent District
2 1. This site is also within the Windermere Water
3 and Navigational Control District.

4 These parcels are located within the West
5 Windermere Rural Settlement and have a future land
6 use designation of rural settlement one to one.
7 This designation surrounds most of the subject
8 parcels with the rural designation to the northwest.
9 The current zoning today is R-CE-C and the
10 designation expands to north, east and south of the
11 subject parcels, A1 R-CE and the Windermere Estates
12 PD District located to the west.

13 As you see on this aerial this area is
14 substantially developed with single family
15 residential development with suburban lot sizes.
16 And this is the cluster plan submitted by the
17 Applicant. Some still photos; this is a picture of
18 the parcel facing towards the west from McKinnon
19 Road. This is the existing -- or was the existing
20 golf course. And this is a picture of the same
21 parcel facing east from Butler Bay Drive north
22 within the Windermere Club subdivision.

23 A community meeting for the application was
24 held on October 13, 2015 at the Windermere
25 Elementary School. There were 191 residents that

1 were in attendance. The community was adamantly
2 opposed to this request. Issues raised were the
3 perception of incompatibility, increased traffic,
4 extrication of open space and concerns regarding
5 storm water runoff.

6 For today's public hearing, the public hearing
7 notices were sent to 523 property owners in the area
8 extending beyond 500 feet from the subject parcels.
9 To date we received zero commentaries in favor of
10 this request and have received 68 in opposition. As
11 you may recall, this rezoning was originally brought
12 to the commission at the November 17, 2015 Planning
13 and Zoning Commission meeting, but was continued to
14 the April 21, 2016 meeting to allow the Applicant to
15 go through the Petition to Vacate process to vacate
16 the plot notes described in your staff report in
17 order to regain their development and access rights
18 to the subject parcels, which was platted as Tract A
19 and amend and approve an existing developer's
20 agreement with the County.

21 This rezoning application was then continued
22 twice to July and September 2016 Planning and Zoning
23 Commission meetings because the Applicant's PTD
24 request was not heard before the BCC. The
25 Applicant's PTD request was then heard by the Board

1 of County Commissioners on October 18, 2016, who
2 then denied their request for the application. As
3 the development rights to and access rights from
4 Tract A remain with the County, staff's position is
5 that the Applicant does not have the right to rezone
6 or redevelop Tract A without the development and
7 access rights.

8 Therefore, staff is recommending the commission
9 to decline any consideration of the rezoning
10 application or the merits of this application and
11 dismiss this case. Staff is open for any questions
12 you may have. The Applicant is also present.

13 MR. CANTERO: Is the Applicant ready to speak?

14 MR. WILSON: Yes. Good morning. First of all,
15 thank you for your service. I know you are here
16 volunteering your time and we all appreciate that
17 very much.

18 My name is Chris Wilson. I am with the law
19 firm of Marchena & Graham. We are here on behalf of
20 the Applicant. My address is 976 Lake Baldwin Lane,
21 Suite 101, Orlando, Florida.

22 We, of course, disagree with staff's position.
23 Development rights are not defined in the documents
24 that transferred them. We went and looked in the
25 statutes. The only definition we found is the right

1 of the owner and the fee interest of the land is to
2 change the use of the land. We are not asking to
3 change the use of the land. We are asking to rezone
4 the land. We understand that any rezoning that you
5 do is going to be conditioned upon the plat
6 dedication being vacated and the access rights being
7 vacated.

8 The fact that -- when those rights were
9 dedicated in '85 and '86 all the way through today
10 177 101 3 has been in existence. Everyone knew the
11 whole time that if we met certain conditions those
12 could be vacated. That still is the case. There is
13 also the law that says that any ambiguity in the
14 conveyance documents are supposed to go in favor of
15 the landowner.

16 We have submitted an application that meets the
17 requirements of your code. We are going to show you
18 that we did that. Your staff had agreed they
19 brought it forth to you. It was a complete
20 application. Under your Code 30-38.5, all complete
21 applications received by the deadline are supposed
22 to be placed in the agenda for the next available
23 public hearing. Under your powers, 30-35, as
24 Mr. Cantero stated, your job is to look at it and
25 make compatible use determinations and consistency

1 determinations.

2 So our request today is that you proceed to the
3 merits of the case and allow us to go forward with
4 our request for R-CE-C cluster, 155 acres, one to
5 one. We are going to update it to the current
6 regulations. And as I stated, your rezoning will
7 not change any use on the property, because it's
8 going to have to have that condition of plat
9 vacation.

10 MR. WEAN: Hold on a second. Leave that there,
11 if you would. Okay.

12 I see the words to permit 95 single family
13 lots. That's development to me. And so you're
14 asking us to agree, not in a vacuum, to change the
15 zoning, but that change in zoning is for the purpose
16 of developing 95 single family lots. If you don't
17 have the ability to develop the 95 single lots, then
18 why are we considering the zoning change?

19 Our job as we sit here is to consider whether
20 or not the zoning change would be compatible if you
21 were to develop the 95 single lots. If you don't
22 have the ability to develop, then we can't make a
23 determination on compatibility. It seems to me this
24 is a basic fundamental problem of standing. If you
25 don't have the ability to develop, then you have no

1 standing to raise the issue of zoning. It's that
2 simple.

3 MR. WILSON: I disagree with you. I think
4 zoning is on its own. We have the right to come
5 here and ask you to make a determination on
6 compatibility and consistency, subject to vacating
7 those plat notes that will allow us to develop in
8 the future.

9 MR. WEAN: But you don't have the ability to
10 develop in the future. When I went to law school --
11 and I'm sure you got the same spiel that I did; when
12 you buy a piece of property, you buy a bundle of
13 rights. You know, you have a single family home, I
14 have a single family home. I don't have the ability
15 to open a liquor store in my residence. I don't
16 have that right. It's not a right I possess.

17 You have a piece of property, and among the
18 pieces of property -- what you have among the rights
19 you do not have is the right to develop it further.
20 And now you're coming in asking for the ability to
21 rezone it, but you have questions rezoning it for
22 what purpose. You very clearly have said to permit
23 the development of 95 single family lots. You don't
24 have the ability to develop 95 single lots on there.
25 Therefore, you have no standing to ask to rezone it

1 for that purpose. You don't own that right. You
2 have given it up to Orange County.

3 Further, I don't see that you have the ability
4 to have access for that purpose. If you were to
5 develop it, how are you going to access it if you no
6 longer have the right to use the roads that you're
7 asking to use it for. I don't know that you have an
8 ability to access it. So I'm having a problem with
9 the standing issue, because I don't see that you
10 have a right to ask for the rezoning for the purpose
11 of development. And if you said -- if you weren't
12 trying to say for the purpose of developing 95
13 single family lots, I would have asked you what
14 you're doing it for, because I can't make a
15 determination on compatibility unless I know what
16 the purpose of it is. I don't think you have
17 standing here.

18 MR. WILSON: We disagree. I think you can
19 rezone it with a condition that it's subject to plat
20 vacation and you can still make a determination as
21 to compatibility and consistency.

22 MR. CANTERO: I'm inclined to agree with
23 Commissioner Wean, Counselor. The question I would
24 ask to you is, the Petition to Vacate has been
25 denied by the County Commission; so how is this not

1 a moot point in your position?

2 MR. WILSON: The statute still is out there.
3 We still have the right to go ask to have it vacated
4 in the future.

5 MR. WEAN: If and when they vacate it, then I
6 think you have the ability to come back. But since
7 it's been denied by the Commission, I don't see that
8 we have the ability to give you a right on this;
9 because I don't see that you have standing absent
10 the vacation.

11 MR. WILSON: We disagree.

12 MR. CANTERO: I do have some comment cards from
13 the public.

14 Do you have a question?

15 MS. DEMOSTENE: Yes, a question for either
16 staff or the County attorney.

17 This is for the staff and County attorney; the
18 slide he just set up says he's modifying an existing
19 cluster plan. I don't see a package in here -- and
20 I recall that the previous cluster plan, which I'm
21 sure is going to be presented up here at some point
22 today, had other land. I don't see anywhere in our
23 package that there's an amendment to that cluster
24 plan to show how it now meets code. As I recall,
25 all other residences that are in the first cluster

1 plan relied on the open space in this. So if they
2 are only rezoning the open space, there's not --
3 there should be a separate cluster plan to show how
4 that on its own still meets code.

5 MS. EVERS: Well, I think, Commissioner, the
6 point was that staff's recommendation was a
7 dismissal of this because we can't even get to that
8 issue without having the development rights go back
9 to the developer; which obviously has been denied by
10 the board at this point. I think that's why.

11 MS. DEMOSTENE: Makes sense. Perfect.

12 MR. CANTERO: Are there any further questions
13 for the Applicant or staff at this point?

14 The matter was advertised. We are going to
15 open up the public hearing. I have several comment
16 cards from the public. I understand that many of
17 you have given your time to a couple speakers here.
18 The first two on my list are Kurt Ardaman and Ed
19 Williams. I am going to call off everyone's name.
20 Looks like Kurt is going first, Mr. Ardaman. Is
21 Kathleen Levin present? Ed Jarvis, Ginger Spruggs,
22 Tom Muntz, Kathy Burke and James Adams.

23 Mr. Ardaman, he has ten minutes.

24 MR. ARDAMAN: Thank you, Mr. Chairman,
25 Commission members. My name is Kurt Ardaman. I'm

1 with the Fishback Dominick law firm at 1947 Lee
2 Road, Winter Park, Florida, 32789. I'm here
3 representing the Windermere Club Homeowners
4 Association, as well as a number of residents, some
5 of who include Julie and Tony Paluso (ph), Anna and
6 George Agell (ph), Judith and Frank Del Toro (ph),
7 Robert and Karen Machesni, Stacy and Robert Aster,
8 Johnny and Leigh Ann Dyal, George and Diane Huxhold,
9 Greg and Donna Pounds, Diane Hathaway and Michael
10 Kinsley, a number of who live in Windermere Club as
11 residents who purchased their homes in reliance on
12 the Butler Bay Unit 3 plat and the documents in
13 effect since the 1980s.

14 To address the issue, not with respect to the
15 criteria for rezoning and the consistency with the
16 comprehensive plan, because we think it's
17 inappropriate, as some of the comments that you made
18 this morning indicate. But to deal with the
19 question of whether this is appropriate for
20 dismissal; which we believe it is appropriate for
21 this board to dismiss, because the application is
22 not complete and the developer does not have the
23 right to proceed, as you-all have indicated.

24 But because -- as you can see, there are two
25 court reporters here -- we believe the actions of

1 the developer, even after they were denied the
2 Petition to Vacate the development rights and the
3 access rights by the Board of County Commissioners
4 has chosen to exercise an attempt to come back
5 before you, we believe it's being postured for
6 litigation. And it's important, therefore, that we
7 provide the County -- the Planning and Zoning
8 Commission and the board with additional arguments
9 and documents to support your decision, hopefully to
10 dismiss this application as inappropriate.

11 So that's why I'm taking some time that I
12 typically wouldn't do, because not for today's
13 hearing necessarily alone and in and of itself, but
14 for -- to make sure you've got the basis to make the
15 decision that we hope you would make.

16 MR. CANTERO: So is your presentation,
17 Mr. Ardaman, going to be concentrated on the issue
18 of dismissal?

19 MR. ARDAMAN: Correct, yes, in fact, that's the
20 case. Leigh Ann Dyal, the president of the HOA is
21 going to hand out documents to each of you that we
22 would include in the record and give to the County
23 clerk and each of the court reporters, as well. And
24 I will talk about those briefly in a few minutes.

25 The HOA's position has been, at the original

1 time this went before DRC, when it came before the
2 Planning and Zoning Commission previously and today
3 that the developer's application for rezoning is not
4 appropriate, should be dismissed without considering
5 the criteria and consistency with the comprehensive
6 plan.

7 Also, we believe that the developer has waived
8 his right to continue to claim that he has the
9 ability to go forward; because he chose not to
10 challenge the Planning and Zoning Commission's
11 decision previously where you gave the Applicant the
12 opportunity to go to the Board of County
13 Commissioners and seek to have the development and
14 access rights vacated, they did not challenge that
15 decision; they consented, they went forward to the
16 Board of County Commissioners asking for those notes
17 on the plat to be vacated. The Board of County
18 Commission unanimously rejected them.

19 That was the developer's choice; they didn't
20 have to do that. They could have challenged your
21 decision; they chose not to. For their position,
22 they lost. Now they're coming back and saying they
23 still have the right to go forward. Well, they
24 waived that right when they went forward with the
25 application.

1 I also have four reasons I'd like to go over as
2 to why this case should be dismissed. First, it is
3 beyond dispute that as a result of the development
4 rights dedication that's clearly contained on the
5 Butler Bay Unit 3 plat and in the development
6 agreement that the developer processed, agreed to,
7 the County agreed to, County approved the plat in
8 the mid-1980s; the developer lacks the right to
9 develop Tract A, the 155 acres, as a residential
10 subdivision.

11 The factors, therefore, and the criteria
12 described in Section 30-40 of the County code that
13 the developer seeks to have you consider today,
14 which would form the basis of a rezoning and do form
15 the basis for rezoning decision by your board and
16 the BCC are irrelevant; because there is no ability
17 to proceed with that.

18 Secondly, since the developer does not have the
19 necessary property rights to be able to go forward
20 with the development, as Commissioner Wean clearly
21 acknowledged, as well as Chairman Cantero, the
22 rezoning application is incomplete. The County, who
23 holds those development and access rights, they were
24 given to the County in trust for the public and in
25 trust for the residents; that happened back in the

1 1980s, but the County has not signed the
2 application. They are not before you. The County
3 staff, the administration is not proceeding. This
4 is a developer that has not all of the rights to
5 Tract A; they've got certain rights, but they
6 certainly don't have the development or access
7 rights. And that's a necessary component of the
8 application, is to have a complete application.

9 The developer asserted at the beginning of this
10 proceeding today that they had a complete
11 application; they do not. Because the County has
12 not signed the application or consented to the
13 application for rezoning to go forward.

14 As I mentioned, Orange County, not the
15 developer, has the development and access rights.
16 They are owned by the County in trust for Windermere
17 Club homeowners and the public. They're adjacent
18 homeowners that testified at the prior hearing that
19 are here if you proceed with this hearing beyond the
20 dismissal, that are beneficiaries of that trust.

21 Third, the County lacks the authority to grant
22 the rezoning application under Florida law,
23 independent of your own comprehensive plan or your
24 County code. Since at least 1948 the Florida
25 Supreme Court has made clear that where you have

1 property or rights that have been dedicated to a
2 government entity for public purposes, the
3 government entity holds such rights in trust for the
4 public and has no power, unless authorized by the
5 legislature -- which would be the County Commission
6 in this case -- to appropriate such lands for the
7 use and benefit of private persons or corporations,
8 here the developer.

9 That is what happened in this case back in the
10 1980s. Those rights were given, of course, to the
11 County to preserve them in trust. And your code
12 sections in effect then and today actually use the
13 words in trust. So that's what the County is
14 holding. They are holding these development and
15 access rights in trust for the public and for the
16 Windermere Club homeowners. Since the County is
17 holding those rights, under the Florida Supreme
18 Court law for the last 67 years, there is no
19 authority to be able to give those rights, those
20 development private rights to a private developer.

21 Fourth, the County is precluded from granting
22 the rezoning application by various provisions of
23 the County code requiring this Tract A, the 155
24 acres, remain permanent open space. The developer's
25 predecessor -- so this current owner of Tract A is

1 one of a line of developers or golf course operators
2 that have owned this Tract A. But this developer's
3 predecessor in title received back in the '80s and
4 thereafter received substantial benefits at that
5 time in exchange for the development rights
6 dedication. So the developer gave the development
7 and access right to the County in exchange for
8 something. It was a contract.

9 What did the developer get? He got clustering.
10 He got 340 lots. He was able to develop his
11 property. The County said, we'll let you do that.
12 We will give you an approval to do what you're
13 asking for, but what are you going to give us in
14 exchange, because you're asking for a cluster plan
15 development? He said, no problem, we will
16 permanently dedicate our Tract A as open space and a
17 conservation area on portions of Tract A. That's
18 what happened.

19 That original developer and those developer's
20 successors made a lot of money selling lots and
21 selling homes. And every one of those homeowners
22 relied on the plat, relied on the public records,
23 the development agreement in order to be able to
24 enjoy that open space and rely on that. So
25 effectively that was the exchange that was made back

1 then.

2 I'd like to put up the table of contents to the
3 packet that I've handed to you. Each of these
4 documents is submitted into the record. These
5 documents were also presented to the Board of County
6 Commissioners during the Petition to Vacate
7 hearings. They're submitted to you today. Each one
8 of you have those. They contain documentation
9 supporting the Orange County staff's recommendation
10 for dismissal and how and why the application is not
11 consistent with the comp plan and rezoning criteria,
12 as well, if you were to choose to proceed with that.
13 Please dismiss the requests. Thank you very much.

14 MR. WEAN: Mr. Ardaman, I have a question.

15 MR. ARDAMAN: Yes, sir.

16 MR. WEAN: The Applicant has said in his
17 statement to us that he has the right to ask us
18 purely to make a decision on the rezoning
19 application; in other words, is this zoning
20 request -- whatever he's asking for, R-CE-C -- that
21 alone, is that compatible with the current zoning?

22 He's apparently asking us not to look at the
23 question that he's also doing that for the purpose
24 of developing 95 lots. Now, I want your impressions
25 about whether or not our job, as you understand it,

1 is to look at the compatibility of the zoning
2 classification alone, or what that zoning
3 classification is going to be used for. In other
4 words, the ultimate development. When we make a
5 determination on compatibility, are we merely
6 looking at the zoning classification, or are we
7 looking at what that zoning classification is a
8 means toward some end?

9 MR. ARDAMAN: I think it's both. You can't
10 consider the rezoning in a vacuum. The developer
11 has given you his proposed development. So clearly,
12 it would -- I don't think you should reach that,
13 because it's an incomplete application. They don't
14 have the rights. If I went to you and -- excuse me;
15 if I went to my neighbor and signed an
16 application -- let's say I sign an application for
17 somebody else's property and brought it in and said,
18 I'd like you to rezone that property and you don't
19 have that owner's consent; would you process that?
20 No.

21 It's the same thing here. The difference is
22 he's got some of the rights, so he wants you to take
23 some of the rights and look at them and say, okay,
24 some of those rights are consistent with the comp
25 plan and some of those rights that I have as an

1 owner are consistent with the rezoning.

2 MR. WEAN: If we look at the classification
3 without knowing what use, isn't it possible that
4 uses under that classification may be compatible
5 with the current surroundings, and some of the uses
6 that are permissible may not be?

7 MR. ARDAMAN: But he's not asking to look at
8 anything other than 95 lots.

9 MR. WEAN: But he's asking us to not look at
10 the 95 lots. He's saying all you need to do is look
11 at the classification we are asking for, because we
12 aren't looking to develop it; we may eventually get
13 a vacation and the 95 lots will follow later. He's
14 essentially saying, all we're asking you to do is
15 look at the zoning classification we're asking for
16 and that's it.

17 MR. ARDAMAN: If you look at his application,
18 he's asking for R-CE-C. That's exactly what he's
19 got. So the zoning in place today that has been in
20 place for 30-something years is R-CE-C. He's got
21 rights. He's got rights. He got a special
22 exception approved to allow a golf course operation,
23 along with a clubhouse, tennis courts and a pool.
24 That was approved. That's consistent with R-CE-C.
25 We have no objection to that.

1 In fact, the plat shows and says golf course on
2 it. That's consistent with open space. There's no
3 question. What he wants to do is now change your
4 interpretation of that by saying, oh, let's get a
5 rezoning back to the same classification, but let's
6 add 95 lots into that R-CE-C. So we are going to
7 add those lots. You can't consider his application
8 without considering the 95 lots.

9 MR. WEAN: That's my point. The way I
10 understood his application, what he's saying to us
11 is, I only want you to consider the zoning
12 classification, but don't consider the 95 lots. You
13 can't do it.

14 MR. ARDAMAN: There's nothing before you then.

15 MR. WEAN: That's my point.

16 MR. ARDAMAN: You're exactly right.

17 MR. CANTERO: But is it not your position at
18 this moment that his application is incomplete?

19 MR. ARDAMAN: Correct.

20 MR. CANTERO: And that he lacks the standing?

21 MR. ARDAMAN: Absolutely. We think it should
22 be dismissed and not considered further.

23 MS. DEMOSTENE: I want to add one thing for
24 clarification kind of on Paul's; when we look at
25 R-CE rezoning, we don't look at just the text. We

1 look at the text, the uses and the cluster plan. If
2 it were to be approved, we are actually approving
3 the designation on the map, as well as the cluster
4 plan that's included in our staff report. It's
5 definitely a lot more than the attorney had
6 originally presented to us. It was kind of not --
7 wasn't a false statement. I don't know.

8 MR. CANTERO: Commissioner Baldocchi?

9 MR. BALDOCCHI: I hate to be pragmatic in the
10 middle of a legal argument, but the golf course
11 isn't operating, correct?

12 MR. ARDAMAN: The developer has chosen to shut
13 the golf course down.

14 MR. BALDOCCHI: And you represent a number of
15 people that you listed in the community?

16 MR. ARDAMAN: Yes.

17 MR. BALDOCCHI: Is there any consensus on what
18 the community would like to see happen, given if
19 there is never a golf course there?

20 MR. ARDAMAN: But that's a presumption that you
21 have made. We think the developer -- we made the
22 point at the prior hearing that there is a viable
23 way to the golf course. The developer actually did
24 multiple things to destroy the golf course
25 operation. And that was a big subject to the prior

1 hearing. The Commission saw right through the
2 developer's actions and said, denied.

3 MR. BALDOCHI: So the community would prefer --
4 and this is a generalization, of course, to have a
5 golf course continue there.

6 MR. ARDAMAN: Well, you've got different folks.
7 Their primary focus -- the residents' primary focus,
8 the HOA's primary focus it to maintain the open
9 space. They certainly, for the most part, I believe
10 would love to have an operating golf course. This
11 particular owner has chosen to destroy that. But a
12 means to an end; the objective by that owner is to
13 turn it into a very, very profitable residential
14 development.

15 MR. BALDOCCHI: Understood. You know, amidst
16 the legal argument is, like, what's going to happen
17 here long term?

18 MR. ARDAMAN: Practically we think we have a
19 solution. Clearly, the developer has certain
20 rights, and he's in charge of those rights. But he
21 has to also -- he also doesn't have the
22 Architectural Review Board's approval, the HOA's --
23 ARB's approval to do that, and he's required to get
24 that. He's not even submitted an application. He
25 has no rights to do what he's applying for from a

1 private standpoint. We have not asserted that. But
2 there are a number of -- good question. Thank you.

3 MR. CANTERO: Thank you. Our next speaker is
4 Ed Williams. And there are --

5 Yes, sir?

6 MR. WILSON: Mr. Chairman, I want to be sure I
7 can speak.

8 MR. CANTERO: I'll give you a moment to rebut.
9 I will give you rebuttal time, so long as it rebuts
10 what -- we'll give you some rebuttal time.

11 Ed Williams.

12 MR. WILLIAMS: Ed Williams, 920 South Delaney
13 Avenue, Orlando, Florida.

14 MR. CANTERO: According to this you have ten
15 minutes.

16 MR. WILLIAMS: I won't be needing that.

17 I was primarily here today with my affidavit
18 listed on the list in case you did have the hearing
19 to address the compatibility. And there are a large
20 number of policies and issues that this particular
21 plan they have submitted would not be consistent
22 with.

23 But what I'd like to address right now very
24 quickly is the history of the project, so you have
25 that perspective. This was approved as an R-CE

1 one-acre lots subdivision in '81. The developer
2 realized there was -- you know, quick sale of some
3 lots but it slowed down because there were a lot of
4 one-acre lots in western Orange County that were for
5 sale. So he came to the County -- I was the
6 planning director at the time -- and proposed a golf
7 course with half-acre lots and less than one-acre
8 lots on the lake. And in order to do that, he had
9 to give up open space.

10 His idea was very profitable; let's put in a
11 golf course, which will also generate revenue when I
12 operate the golf course and when I eventually sell
13 the golf course. So the point of that whole
14 discussion is, one, the original developer was paid
15 greatly and profited greatly from switching to the
16 cluster plan and giving up the open space and the
17 development rights. He was able to sell half-acre
18 lots, less than one-acre lots on the lake, and
19 everyone else was stuck with the one-acre lots, and
20 the project moved forward very quickly because of
21 that.

22 He was able to charge premiums on the golf
23 course lots. He was able to charge premiums on the
24 lakefront lots. It's interesting that there are
25 only five lots in the whole development that did not

1 have a special premium attached to them, because
2 they weren't either lakefront or golf course. There
3 was clearly a rational nexus between the donation of
4 the development rights and the benefits that he
5 received in the smaller lots and the ability to put
6 the golf course in and profit from those.

7 And in our testimony before the County
8 Commission, that was a major consideration; that he
9 had been paid well and now someone else is trying to
10 double-dip and take another bite of the apple and
11 take more money out at the expense of the
12 homeowners, whose appraisal and damage study showed
13 they would lose 18 to 20 million dollars of their
14 value as a result of the proposed change.

15 I would be happy to answer any questions.

16 MR. CANTERO: Are there any questions for this
17 speaker?

18 I have several other speaker cards. As I call
19 your name, you can stand by the wall and be prepared
20 to speak.

21 Judith Del Toro, Leigh Dyal, Paul Kenard, David
22 Towel, George Huxhold. If you are present --

23 MR. HUXHOLD: I'm George Huxhold and I wanted
24 to donate my time to Kurt Ardaman.

25 MR. ARDAMAN: I think a lot of those folks had

1 dedicated their time to either me or Ed Williams.
2 In addition to that, I think their key is not to the
3 dismissal issue, but to the merits. So if the board
4 chooses to go forward with the dismissal, you can
5 avoid probably a lot of testimony, is my guess.

6 MR. CANTERO: Sir, I see you standing. Are you
7 willing to speak here or are you deferring your time
8 to someone?

9 MR. KENARD: I'm willing to speak, but if
10 you're willing to deny the application, then there
11 is no need for me to speak.

12 MR. CANTERO: Your comments are targeted
13 toward -- could you please state your name for the
14 record? Name and address for the record, please.
15 And you were not on the mic previously when you
16 spoke. But I believe what you said was your
17 comments will be limited to a vote of denial; is
18 that correct?

19 MR. KENARD: That is correct. My name is Paul
20 Kinnard. I live at 3601 Lake Buynak Road,
21 Windermere, Florida. We abut the property. I have
22 approximately one-and-a-quarter to one-and-a-half
23 acres. They are right on the golf course. We
24 bought that house 35 years ago with the
25 understanding of the golf course being built.

1 MR. CANTERO: I'm happy to give you an
2 opportunity to speak, but you're in agreement with
3 the staff's recommendation to deny?

4 MR. KINARD: To deny.

5 MR. ARDAMAN: No, to dismiss.

6 MR. CANTERO: I'm sorry, to dismiss.

7 MR. KINARD: Dismiss, correct.

8 MR. BALDOCHI: Mr. Chairman, I have a point of
9 order. The public hearing occurs before we decide
10 to make a motion or a decision. So, I mean, seems
11 to me like I hate to have people speak who don't
12 need to but -- maybe the attorney can address it --
13 don't we need to hear the entire public hearing? We
14 can't reopen the public hearing if we decide to make
15 a different decision, can we?

16 MS. EVERS: No, but I think the chairman's
17 point is, you know, what the recommendation was was
18 a dismissal. I think he's just clarifying whether
19 these folks are in support of that and if they want
20 to speak in support of the dismissal or the merits
21 of the rezoning.

22 MR. BALDOCCHI: But we do still have the option
23 to recommend denial or approval after the public
24 hearing. I just think we need to do it properly.

25 MS. EVERS: You've got the public hearing open.

1 I don't think there's anything wrong with asking the
2 public the intention of their comments or which
3 direction they are going. If you want to save some
4 time, if everybody is going to say the same thing, I
5 know it frequently saves time to say, okay, which
6 direction are you headed in.

7 MR. BALDOCCHI: I was talking about
8 Mr. Ardaman's comment if you're going to do a
9 dismissal, you can avoid the testimony. I don't
10 want people to pass on their time to speak, and then
11 we make a different decision.

12 MR. CANTERO: I don't mean to give them that
13 impression.

14 MR. ARDAMAN: Mr. Chairman, it's pretty simple.
15 If you-all dismiss it, then there is no need to
16 consider it. If you don't dismiss it, you can
17 proceed with the hearing and hear comments. It's
18 pretty fundamental. If you don't think the
19 application is proper, you agree with the staff's
20 recommendation and you dismiss it, there's no
21 need -- the comments here are -- I don't believe
22 anybody here with the HOA or the residents is here
23 to talk about something inconsistent with the
24 dismissal or not dismissal. Their comments would be
25 key to the rezoning, whether it meets the criteria

1 and whether it's consistent with the comp plan. But
2 if you're not going to hear that because what's
3 before you is not appropriate, then they don't need
4 to testify.

5 I think if you take it up, that question after
6 you hear from Mr. Wilson's comments, if you choose
7 to dismiss it, then you may want to ask the public;
8 say, does somebody want to address the dismissal
9 issue.

10 MR. CANTERO: Let me ask County staff and
11 County legal, if a motion is presented to dismiss
12 this case and it does not pass, can we reopen the
13 public hearing, or it is closed at that point
14 procedurally?

15 MS. EVERS: Joel is saying you can keep it
16 open. Do you want to make a motion before the
17 public hearing is over; is that what you're saying?

18 MR. CANTERO: No. That certainly wasn't my
19 intent.

20 MR. WEAN: Why don't we ask the members of the
21 public if they wish to be heard. And if they want
22 to be heard on the merits, fine. If they just want
23 to be heard on the issue of the denial, let them
24 come forward and be heard.

25 MS. DEMOSTENE: That's my concern; if folks,

1 you know, want to get up here and tell us simply,
2 it's inconsistent, it's inconsistent, it's
3 incompatible and we don't agree with the request, I
4 don't see how that would hurt the recommendation if
5 we know this is basically just pending a lawsuit.

6 MS. EVERS: To Commissioner Baldocchi's point
7 just to clarify the point was we need to hear from
8 the public, we need to go through the regular
9 process that we normally do and have the public
10 hearing, then you all would take a vote.

11 MR. CANTERO: Given that we have two court
12 reporters here, I think it's even more important we
13 follow our process. That's my opinion.

14 MR. KINARD: Again, my name is Paul Kinard. I
15 live on 3601 Lake Buynak Road in Windermere. We are
16 on the southwest corner of the property. As I
17 stated previously, I own about one-and-a-quarter to
18 one-and-a-half acres. And the current redevelopment
19 plan that they are asking for, I would have four
20 houses abut my property. That is a little much.
21 And considering that the minimum size that he has
22 previously stated to the HOA of 2500 square feet in
23 a half-acre lots, that's going to put two-story
24 houses all the way around the perimeter of my house.
25 I find that terrible. That's not what I bought the

1 property for. I bought the property because of the
2 open space. Thank you.

3 MR. CANTERO: Thank you.

4 Are there any other members of the public that
5 wish to be heard?

6 Okay. Please state your name and address for
7 the record. Have you filled out a comment card?

8 MR. GLASS: I have not yet, but I will.

9 MR. CANTERO: Please make sure to do so before
10 you leave.

11 MR. GLASS: I got here a little bit late and
12 wanted to get in. I will take care of that. I
13 wasn't going to speak.

14 But for the record, my name is Scott Glass. I
15 live at 2417 Ridgewind Way, Estates at Windermere.
16 I'm vice-president of the Estates of Windermere
17 Homeowners Association. I speak on their behalf, as
18 well as my own. And since it looks like we are
19 going to litigation, I wanted to get up and preserve
20 our rights to participate.

21 When I bought my house, which is right across
22 McKinnon Road adjacent on the other side to the
23 property in question -- I'm a land use lawyer by
24 trade -- I checked the plat and I saw that the
25 development rights had been dedicated. And that was

1 a huge part of my decision to cave into my wife's
2 pressure to buy that house. There were other
3 factors that led to that she'll tell you, but that
4 was a large factor for me.

5 And Mr. Wilson pointed to a statute -- I didn't
6 see it in time to jot it down -- that defined
7 development rights. But as Mr. Wean knows, basic
8 rule of statutory construction is you look at the
9 document itself, the immediate chapter. If it's not
10 defined there, you turn to is it ambiguous at all,
11 is it understood, is it plain language. I know what
12 development rights are. I don't have to search the
13 entire Florida statutes and find some obscure
14 reference in some connection that may deal with a
15 different topic completely. I don't know where
16 exactly what that was.

17 But I know what development rights are because
18 I deal with them every day, and they don't have
19 them. Their predecessor in interest traded them for
20 valuable consideration, as Kurt indicated. And when
21 this owner bought the property, that stick was not
22 in the bundle of sticks that he bought. And I agree
23 and our association agrees with Mr. Ardaman; unless
24 he comes to the Board of County Commissioners
25 representing me and all the other citizens of Orange

1 County and have sign them sign an owner's affidavit,
2 he doesn't have that right.

3 And even under his definition, if I recall
4 correctly, it was a change of land use. Well, this
5 would be a change of land use. That land has been
6 used since the time that those rights were dedicated
7 as golf course, and as an open area. And he wants
8 to change it to 95 homes. So even under his own
9 definition, I would submit he doesn't have
10 development rights and that's our position. Thank
11 you very much.

12 MR. CANTERO: Thank you.

13 I see another speaker. Have you filled out a
14 comment card, sir?

15 MR. HERNANDEZ: No, sir. I didn't know it was
16 required.

17 MR. CANTERO: Please do so. Are there any
18 other members of the public that wish to be heard?
19 Please do so.

20 State your name and address for the record.

21 MR. HERNANDEZ: Fred Hernandez, 3177 Butler Bay
22 North, Windermere, Florida.

23 When I first moved here about seven years ago,
24 I looked at a home at Oxford Moor, the Oxford Moor
25 development. We were very interested in that home,

1 so doing our due diligence question came to the
2 County to find out what was happening in the area.
3 And I learned there was a high school potentially
4 being built and some other offices being built
5 abutting that property. We walked away. My wife
6 loved the home but we walked away.

7 We found this home at Windermere Country Club
8 and we did the same thing; we did our due diligence,
9 came to the County. We were sure that would remain
10 a golf course, there was no other open land. We
11 actually purchased the home based on the fact that
12 that golf course will remain a green area. The
13 County told us so. So we paid a premium, like most
14 people have said. Now what I'm looking at is the
15 County potentially could change it. And I ask you
16 to please put a harsh stop to this nonsense.
17 There's a lot of time being spent here, a lot of
18 money being spent here. And we know they don't have
19 the rights.

20 I appreciate both your job and the previous
21 commissioners at the prior meeting where it was
22 denied. And I ask you to please deny it once again.
23 Thank you.

24 MR. CANTERO: Thank you.

25 Okay. I see three more members. I assume none

1 of you have filled out a comment card. What I would
2 ask each one of you --

3 You did, ma'am? Did you defer your time to
4 anyone?

5 MS. DYAL: No.

6 MR. CANTERO: I would ask that if you have not
7 filled out a comment card, please do so before you
8 leave here. We have to preserve that for the
9 record. I'm going to -- all of you took your time
10 to come out here. I'm going to let all of you
11 speak. Would the first speaker please come up to
12 the podium, state your name and address for the
13 record and you have three minutes to speak.

14 MS. DYAL: My name is Leigh Ann Dyal. I filled
15 out a comment card. You read my name.

16 MR. CANTERO: Yes, ma'am.

17 MS. DYAL: I live at 12742 Butler Bay Court,
18 Windermere, Florida. I'm the president of the
19 homeowners association. I just wanted to say a
20 little bit of history. I've lived in Windermere for
21 50 years and in the Windermere Country Club for 21
22 of those. About three years ago we heard about that
23 development in the -- all this happening in our back
24 yard. And I went around with petitions and I -- out
25 of 147 homes, I received 133 petitions against

1 development, and six of our homes at that time were
2 in foreclosure.

3 So I submitted them to Scott Boyd about a
4 year-and-a half ago. In that time I became the
5 president of the homeowners association. And we
6 have all worked very hard, including the entire
7 communities surrounding us, which is Chain Du Lac,
8 Lake Buynak, Windermere Country Club, Waterford
9 Point, Windermere Grand and the Estates of
10 Windermere and the Reserves at Belmere.

11 So I just wanted everyone to know that this is
12 a continuation of an entire community, and we are
13 the nucleus of it as the Windermere Club. And we
14 are trying as hard as we can to not have development
15 behind us and keep it permanent open space. Thank
16 you for listening.

17 MR. CANTERO: Thank you.

18 MR. WRIGHT: Good morning. Mel Wright, 2061
19 Roberts Point Drive in Windermere, 34786. I live in
20 the Waterford Point subdivision, which is right
21 across from the golf course. And I'm here on behalf
22 of myself individually, as well as the homeowners
23 association of our community. And we basically
24 adopt Mr. Glass' comments on behalf of Waterford
25 Point and oppose the development.

1 MR. CANTERO: Thank you.

2 Please say your name and address for the
3 record, sir.

4 MR. MACHESNI: Robert Machesni, 12549 Butler
5 Bay Court, Windermere, Florida. I will sign the
6 card when I leave, sir.

7 I'd just like to address the comments from the
8 commissioner about the viability of the golf course.
9 I'd like to report that we commissioned a group,
10 Hampton Golf in Jacksonville, to come and look at
11 the golf course. The golf course has great bones,
12 as they say. This company is headed by MG Orender,
13 who is the past president of the PGA of America.
14 This week alone, we had two groups, Billy Casper
15 Golf, I met with; also two independent groups, one
16 actually go on the property and view the property
17 two days ago. They say the property is fine. They
18 have tremendous interest. One of the groups is
19 actually going to submit an LOI to the owner at this
20 time, probably within a week. We have one Chinese
21 investment group that's also looking.

22 That's without any advertisement of it being
23 golf course if the owner chooses to sell it. That's
24 all I have. Thank you very much.

25 MR. CANTERO: I have no further comment cards,

1 and I don't see any other members of the public that
2 wishes to be heard. I will allow some time for the
3 Applicant to rebut.

4 MR. WILSON: First of all, as to the rezoning,
5 it is R-CE-C to R-CE-C along with the cluster plan
6 which is the 95 units. It wasn't meant to be a cost
7 over, but would be subject to the condition of
8 vacating the rights. Therefore, there would be no
9 approval of any change in the development on the
10 property. I do not agree that we waived anything.
11 This matter was continued to today, so here we are
12 on this matter.

13 Like I said before, from '85 and '86 through
14 today 177 101 3 existed. Everyone knew that meeting
15 two conditions in the code would come back and
16 vacate those rights. So as far as everybody's
17 reliance on it always being a golf course in
18 perpetuity, it's not the case. If the County wanted
19 that, they should have purchased the property and
20 given it back as a golf course. That's not what
21 happened. Everybody realized it was a plat note
22 that could have been vacated in the future.

23 As far as the comments about the County's
24 inability to transfer these back because it was held
25 for public use, it's not held for public use. It

1 was a plat dedication, then it was used as a private
2 golf country club that nobody has access to unless
3 you're a member. There are -- and it looks like
4 you're only going to consider whether or not it
5 should be dismissed or not. We do have a
6 presentation on the merits of the case, as well.
7 The appeal of this de novo, so I reserve to do that
8 presentation to the Board of County Commissioners.
9 I have nothing else.

10 MR. CANTERO: Okay. We will now close the --
11 well, County staff, County legal, he's reserving his
12 right to petition -- is that what you said, or to
13 present -- depending on the outcome of the vote; is
14 that what you're saying?

15 MR. WILSON: We have a presentation on the
16 merits. You're going to, it appears, going to
17 dismiss based on the staff's recommendation. The
18 appeal of this is a de novo hearing at the Board of
19 County Commissioners. We will preserve our right to
20 give that presentation at that time.

21 MS. EVERS: What I would say, Mr. Chairman, is
22 should the committee choose to make a vote on the
23 dismissal, if that fails, then you would move on to
24 the merits of the rezoning; at which point the
25 Applicant could make that presentation. Should this

1 commission uphold the dismissal of the case, then
2 the Applicant would have the ability to appeal that
3 decision to the BCC.

4 MR. CANTERO: All right. So the public hearing
5 is now closed for this matter. We are going to
6 bring it back to the panel for discussion.

7 I'll take the first shot at this. I think it's
8 very easy to look at this and start considering the
9 merits of a rezoning case. But the struggle that
10 I'm having with this matter is, I view this as a
11 two-prong analysis. Number one, do they have
12 standing? And what I'm looking at here is -- then
13 if they have standing then, you know, it now becomes
14 a question of whether the property is compatible and
15 consistent.

16 So the second prong of the analysis is then
17 looking at the rezoning matter. I'm going back to
18 what I've heard at the prior hearings, what I've
19 heard presented at this case -- or at this hearing
20 and my understanding of the staff report. And I'm
21 just going back -- and anybody on the panel can
22 correct me or County staff can correct me; my
23 understanding and the reason for us continuing this
24 case back in November of 2015 was that there was a
25 question of whether this applicant had development

1 rights, or whether he had granted those development
2 rights via a developer's agreement to the County.

3 My understanding is that the answer to that
4 question is yes; that developer's agreement is a
5 two-party agreement between the County and the
6 previous developer, and it runs with the land. It's
7 a contractual relationship. And my understanding is
8 that this developer -- or the previous developer,
9 let's just say the then developer -- entered into
10 this developer's agreement. The Board of County
11 Commissioners reviewed this case and on the question
12 of whether to vacate -- Petition to Vacate, and the
13 matter has been decided.

14 So now the rezoning application is back in
15 front of us as a board. And we are now to consider
16 whether to dismiss or hear it on the merits. I
17 haven't heard anything in the testimony today that
18 demonstrates to me in my view that this applicant
19 has passed the first prong of that analysis; that he
20 has standing, that his application is complete, that
21 this is not a moot point, that he has development
22 rights to proceed forward on a zoning application.

23 I'm struggling with that issue and my view
24 right now is that the Applicant has no standing. I
25 don't see how we can hear the zoning application

1 until we can answer that first question in the
2 affirmative. So the struggle for me is not whether
3 there's standing. But, you know, I also share some
4 of the views of Commissioner Baldocchi, you have a
5 property here that you look at and it's either going
6 to be a golf course or it's not going to be a golf
7 course. Either this current property owner is going
8 to maintain it or not maintain it. And so, you
9 know, what we decide here may or may not determine
10 that or find a solution for that problem.

11 But I'm having trouble going to the second
12 prong of this analysis. Because I'm of the view at
13 this point that this applicant lacks the standing to
14 move forward because they do not have development
15 rights. Those rights were granted to the County in
16 the form of a developer's agreement. The County had
17 an opportunity to hear that at the Board of County
18 Commission hearing. The matter was determined.
19 They declined to vacate that petition. So I don't
20 see that we could move forward with this. I am and
21 certainly inclined at this point to support a
22 dismissal motion.

23 MR. WEAN: Mr. Chairman, before there's a
24 motion, one of the speakers that spoke just at the
25 end I'd like to ask him a question if I may.

1 The gentleman from Waterford Point, are you
2 here?

3 MR. WRIGHT: Yes, sir.

4 MR. WEAN: May I ask you a question, sir?

5 MR. WRIGHT: Yes, sir.

6 MR. WEAN: Are you with the association?

7 MR. WRIGHT: Yes, sir.

8 MR. WEAN: Are you the president?

9 MR. WRIGHT: I am not the president.

10 MR. WEAN: Are you here on behalf of that
11 association?

12 MR. WRIGHT: Yes, sir. I was asked to speak on
13 behalf of the association.

14 MR. WEAN: What is the name of your
15 association's management company?

16 MR. WRIGHT: It's Asher Group.

17 MR. WEAN: Okay. I'm going to have to declare
18 a conflict. Is my law firm your association
19 attorney?

20 MR. WRIGHT: I don't know the answer to that
21 because I'm not on the board anymore. I was once on
22 the board.

23 MR. WEAN: According to my paralegal, we are,
24 so I'm going to declare a conflict.

25 MR. CANTERO: If you'd like to err on the side

1 of caution and declare a conflict --

2 MR. WEAN: I'm going to declare a conflict.

3 MR. CANTERO: We still have a quorum. We have
4 not taken a vote. The conflict has come to the
5 attention of Commissioner Wean. He has declared
6 that for the record -- potential for a conflict.

7 Did you have something to say Commissioner
8 Baldocchi?

9 MR. BALDOCCHI: I do. At first this reminded
10 me of a case. I don't remember the name of the
11 case. But it was International Drive south of Sand
12 Lake Road. We were looking at a rezoning and they
13 wanted to put up a parking garage and there was a
14 debate about internally whether or not they had the
15 right to put up that parking garage. And we decided
16 that was a separate matter from the zoning and that
17 was a contractual matter that had to be dealt
18 differently.

19 I also am concerned that as an engineer we
20 sometimes bring things to the County that we don't
21 have all the development rights for. For instance,
22 there may be a power easement running through a
23 piece of property, we don't have development rights;
24 but we need the rezoning to try to negotiate with
25 the power company. Listening to the attorneys, and

1 Chris Wilson put some stuff up there and I am sure
2 he was very careful; the County accepted his
3 application. So is there a due process we have to
4 put him through? I've been here seven years and
5 I've never even known dismissal at this point was an
6 option.

7 Because once someone gets an application, I
8 thought we needed to make the determination. And
9 I'm in no way arguing in favor of this. I'm just
10 concerned of what the County's obligations are at
11 this point.

12 MS. EVERS: If I could address a couple points.
13 Sounds like the parking garage issue you raised, was
14 that the Hollywood Plaza parking garage?

15 MR. BALDOCCHI: Yes.

16 MS. EVERS: Those were entirely private rights.
17 That wasn't a County issue. What we are dealing
18 with here are development rights that were dedicated
19 to the County specifically. They are on the plat.
20 They were dedicated via the PSP and a development
21 agreement. And those were dedicated pursuant to
22 code provisions at the time in order to get the
23 cluster plan zoning.

24 MR. BALDOCCHI: I understand. But how is that
25 different than dedicating rights to another private

1 entity? I know we are the County, but in the legal
2 world, how is that any different as to dedicating
3 those rights to another party?

4 MS. EVERS: Because if you're designating it to
5 another party that's a private agreement. We are
6 dealing with a public right here; something that's
7 on the plat that obviously you heard folks rely on
8 when they purchased their property.

9 The other point that you made, the other
10 question that you had with regard to the
11 application, there is no doubt this one is very
12 different. I don't think anybody I've talked to on
13 County staff that's been here for decades has ever
14 dealt with this particular issue, in terms of trying
15 to vacate development rights off a plat and from a
16 developer's agreement. So I think in terms of the
17 application what happened was staff was trying to
18 figure out a way to give the Applicant their due
19 process and allow them to go through a process with
20 the County to ask this question.

21 But you'll recall when this came back to this
22 committee in November of last year, the committee
23 continued it and said, we can't hear your rezoning
24 unless you get the County to vacate the development
25 rights and the access rights to Tract A. That

1 didn't happen. So that's why we are back here
2 today. And I think the issue is, as has been stated
3 pretty succinctly up here, standing. I don't think
4 there's standing at this point for them to proceed
5 forward with this.

6 MR. BALDOCCHI: I understand. I think we gave
7 them kind the option last time -- it appeared we
8 were going to vote to deny. And they said, you can
9 have the option to go get the development rights.

10 But anyway the other thing, I do think on being
11 up here for seven years I've heard a lot of times
12 people come up and say, how can we be sure this will
13 never change. My answer has always been, you can't.
14 You know four votes of the commission can change
15 anything. But in this case, I think that the
16 previous commission was sending a very strong
17 message to future commissions by having those rights
18 dedicated to the County. And I think it's a serious
19 matter and they were -- so I would be inclined to
20 honor that whatever way we need to. I just want to
21 make sure we are doing the right process.

22 MR. CANTERO: Understood. What I'm hearing
23 from County legal we are within our right to bring a
24 motion to dismiss if we should so decide.

25 MR. BALDOCCHI: Then I would be inclined to

1 follow their advice.

2 MS. DEMOSTENE: Because I'm not an attorney and
3 I have to rely on the rest of you folks to provide
4 that background, I still put on my hat as a planner;
5 and I look at it as consistence, compliance and
6 compatibility. I think that it's definitely
7 inconsistent with the comprehensive plan. I think
8 it's not consistent with a number of policies and --
9 a number of things inconsistent. I think that it's
10 noncompliant with the land development code for a
11 number of reasons; really to the open space, the
12 previous cluster plan. And then just for my
13 compliant reviews, I look at it like it is
14 incomplete; which goes back to the compliance with
15 land development code and having a compliant plan.
16 So I can see where that can come in.

17 Then I look at the compatibility. And looking
18 at the plan and what's out there, the previous open
19 space and how it impacts that. And I would
20 definitely says it's not compatible either. I
21 realize that staff and the County attorney's office
22 is asking us to make a recommendation of dismissal.
23 I would ask that we also include a finding about it
24 being not compliant and not compatible and
25 inconsistent as a whole.

1 MS. EVERS: Just to clarify, if you're going to
2 make a motion for dismissal, you don't ever get to
3 say whether it is compliant; because you have not
4 had that hearing today; you've not considered the
5 rest of it. So I think either you're going to make
6 a motion for dismissal or move on to the merits of
7 the rezoning. But I don't think you combine the
8 two.

9 MS. DEMOSTENE: Because I still look at
10 everything else says no regardless, so then I just
11 have to rely on County staff.

12 MR. BARRETT: Mr. Chairman, is a motion in
13 order?

14 MR. CANTERO: There's been no motion presented.

15 MR. BARRETT: I place a motion we decline to
16 consider the rezoning application on the merits of
17 the zoning application and dismiss the case.

18 MR. DIVECCHIO: Second.

19 MR. CANTERO: We have a motion and a second.
20 We had a motion by Commissioner Barrett a second by
21 Commissioner Divecchio.

22 Is there any further discussion?

23 We will bring the matter for a vote. All those
24 in favor say aye.

25 (Collective ayes.)

1 MR. CANTERO: Opposed?

2 Motion carries.

3 MR. ARDAMAN: Thank you very much.

4 (Proceedings concluded at 10:20 a.m.)

5 - - - - -

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 C E R T I F I C A T E

2 STATE OF FLORIDA:

3 COUNTY OF ORANGE:

4

5 I, JOANNE HAHN, RPR, being a Registered
6 Professional Reporter and Notary Public, State of Florida
7 at Large, do hereby certify that I was authorized to and
8 did, in Stenotype shorthand, report the foregoing
9 proceedings had at the time and place herein designated;
10 and that my shorthand notes were thereafter reduced to
11 typewriting, by me, through computer-aided transcription;
12 and that the foregoing pages, numbered 3 through 53,
13 inclusive, constitute a true, complete and accurate
14 transcription of my said notes taken therein.

15

16 Witness my hand and official seal on this 30th
17 day of November, 2016.

18

19

20

21

22

Joanne Hahn

23

JOANNE HAHN, RPR
Notary Public - State of Florida
Commission No.: FF 111272
Expires: May 8, 2018

24

25