

SEP 14 2021

Settlement Agreement between Thompson Heights, LLC, Plaintiff/Petitioner and Orange County, Florida, Defendant/Respondent.
File No. 20-1136
Case Nos. 2020-CA-008595-O and 2020-CA-008593-O

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

THOMPSON HEIGHTS, LLC, a Florida
limited Liability Company,

Plaintiff,

CASE NO. 2020-CA-008595-O

vs.

ORANGE COUNTY, FLORIDA,

Defendant.

and

THOMPSON HEIGHTS, LLC, a Florida
Limited Liability Company,

Petitioner,

CASE NO. 2020-CA-008593-O

vs.

ORANGE COUNTY, FLORIDA,

Respondent.

SETTLEMENT AGREEMENT

Plaintiff/Petitioner, THOMPSON HEIGHTS, LLC, a Florida limited liability company
("Thompson Heights"), and Defendant/Respondent, ORANGE COUNTY, FLORIDA, a Charter

County and political subdivision of the State of Florida ("County"), hereby enter into this Settlement Agreement ("Agreement"):

A. STIPULATIONS OF FACT

1. Thompson Heights is the owner of 11.7 acres of vacant real property that is the subject of the above-styled judicial proceedings, and that is located at 627 N. Thompson Road, Apopka, Orange County, Florida 32712, with Parcel Identification Numbers 02-21-28-0000-00-034 and 02-21-28-0000-00-006 (the "Property").

2. The Property is located in the unincorporated area of Orange County, and accordingly is subject to the County's Comprehensive Plan, the County Code, and the County's Land Development Regulations.

3. On January 23, 2020, Thompson Heights filed an application with the County seeking to rezone the Property from A-1 (Agricultural Citrus Rural District) to R-1 (Single-Family Dwelling District) for the purpose of constructing forty (40) detached single-family residential dwelling units with fifty foot (50') wide lots, and the rezoning request was designated by the County as RZ-20-03-019 (the "Rezoning Request").

4. On May 21, 2020, the Planning and Zoning Commission, an advisory body to the Board of County Commissioners ("Board"), held a public hearing on the Rezoning Request, and recommended approval, subject to a restriction that the lot widths be sixty feet (60').

5. On July 28, 2020, the Board conducted a public hearing on the Rezoning Request, and, at the conclusion thereof, voted to deny the request. The Board's Decision Letter denying the request was filed with the Clerk of the Board on August 12, 2020.

6. On August 26, 2020, Thompson Heights filed a Complaint for declaratory and injunctive relief against the County pursuant to Section 163.3215, Florida Statutes, in the Ninth Judicial Circuit challenging the Board's decision on the Rezoning Request in this proceeding styled *Thompson Heights, LLC vs. Orange County*, Case No. 2020-CA-008595-O (the "Section 163.3215 Case").

7. Also on August 26, 2020, Thompson Heights filed a Petition for Writ of Certiorari against the County challenging the Board's decision on the Rezoning Request in a proceeding styled *Thompson Heights, LLC, vs. Orange County*, Case No. 2020-CA-008593-O (the "Certiorari Case").

8. On January 19, 2021, and January 22, 2021, respectively, Thompson Heights filed and served an Amended Complaint in the Section 163.3215 Case, and on April 26, 2021, the County filed an Answer and Affirmative Defenses to the Amended Complaint.

9. On November 19, 2020, Thompson Heights filed an Amended Petition for Writ of Certiorari in the Certiorari case.

10. On or about May 27, 2021, Thompson Heights sent the County a modified request to rezone the Property from A-1 to R-1A (Single-Family Dwelling District), with a maximum number of twenty-six (26) single family detached dwelling units with seventy-five foot (75') wide lots, which has been designated by the County as RZ-21-07-042 (the "New Rezoning Request").

11. The project layout for the New Rezoning Request is generally depicted in **Appendix "A"** attached hereto and incorporated herein by reference.

12. Thompson Heights and the County (collectively, the "Parties") desire to enter into this Settlement Agreement for the purpose of attempting to resolve the Section 163.3215 Case and the Certiorari Case in accordance with the terms below.

B. COVENANTS AND TERMS

1. **Covenants and Terms.** In connection with the Parties' execution of this Agreement, and the covenants and terms herein, the Parties agree as follows:

- a. On the same day as the Effective Date of this Agreement, the Board shall review the New Rezoning Request at a duly noticed public hearing, notwithstanding the time period restrictions set forth in Sections 30-37 and 30-48 of the Orange County Code. When the Board reviews Thompson Heights' New Rezoning Request at the public hearing, the Board shall hear testimony and receive evidence from Thompson Heights and the general public. Nothing in this Agreement may be construed or interpreted to mean that, because it approved the Agreement, the Board is obligated to approve the New Rezoning Request, or to otherwise give, or will give, favorable consideration to the New Rezoning Request; the Board has the authority to approve or deny the New Rezoning Request based on the testimony and evidence received at the public hearing.
- b. If, at the conclusion of the Board's public hearing on the New Rezoning Request, the Board approves the New Rezoning Request, without restrictions (or with one or more restrictions, and Thompson Heights did not elect to

withdraw the request pursuant to subsection 1.c.), such approval shall supersede and replace the Board's denial of the Original Rezoning Request, the Board's denial of the Original Rezoning request shall be deemed vacated, and the Board's approval of the New Rezoning Request shall constitute the County's final decision on the rezoning of the Property. Accordingly, within five (5) calendar days of the Board's approval, Thompson Heights shall voluntarily dismiss with prejudice both the Section 163.3215 Case and the Certiorari Case, and each side shall be responsible for its own attorney's fees and costs in those two cases.

- c. If, at the conclusion of the Board's public hearing on the New Rezoning Request, a member of the Board makes a motion to deny it, or makes a motion to approve it with one or more restrictions, and the motion is seconded, the vote on the motion shall be paused so that Thompson Heights may elect to withdraw the New Rezoning Request. If Thompson Heights elects to withdraw the request, the Board's July 28, 2020, decision on the Original Rezoning Request shall be deemed unaffected or unchanged by the Parties' settlement efforts, including this Agreement and anything done or said at the hearing on the New Rezoning Request, and Thompson Heights may proceed with the Section 163.3215 Case and the Certiorari Case regarding the Board's decision on the Original Rezoning Request.
- d. In the event the Board denies the New Rezoning Request after Thompson Heights elected to not withdraw the request pursuant to subsection 1.c., or the Board fails to review and consider the New Rezoning Request on the same day as the Effective Date of this Agreement (unless Thompson Heights, in its sole discretion, has agreed to an extension of the date of the hearing to consider the New Rezoning Request), the Board's July 28, 2020, decision on the Original Rezoning Request shall be deemed unaffected or unchanged by the Parties' settlement efforts, including this Agreement and anything done or said at the hearing on the New Rezoning Request, the New Rezoning Request shall be deemed to have been withdrawn, and Thompson Heights may proceed with the Section 163.3215 Case and the Certiorari Case regarding the Original Rezoning Request.

2. **Authority.** Each Party represents and warrants, with respect to itself, that the execution and delivery of this Agreement has been authorized by all necessary action of such Party, and that this Agreement constitutes the legal, valid, and binding agreement of each Party, enforceable in accordance with its terms. It is expressly understood and agreed that this Agreement

shall not be binding upon Thompson Heights and the County unless and until the Board approves this Agreement at a duly noticed public hearing, as required by Section 163.3215(7), Florida Statutes.

3. **Governing Law; Venue.** This Agreement shall be construed, interpreted, enforced, and governed in accordance with the laws of the State of Florida. Venue for any action arising out of or related to this Agreement shall be in Orange County, Florida.

4. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the respective successors, heirs, assigns, bankruptcy trustees, representatives, affiliates, officers, directors, partners, members, and joint venturers of Thompson Heights.

5. **Non-Waiver.** Failure by Thompson Heights or the County to insist upon the strict performance of any of the terms, conditions, or provisions of this Agreement shall not be deemed to be a waiver of such terms, conditions, and provisions, and Thompson Heights and the County, notwithstanding such failure, shall have the right hereafter to insist upon the strict performance of any or all such terms and conditions of this Agreement as set forth herein.

6. **Construction; Headings.** The Parties acknowledge that they mutually participated in the negotiation and drafting of the terms of this Agreement and acknowledge that no provision shall be strictly construed against one Party or the other based solely on draftsmanship. The Parties have entered into this Agreement without duress, coercion, or under undue influence of any kind, and are motivated by a desire to potentially avoid costs and time associated with further litigation and to arrive at a fair and reasonable agreement with regard to the dispute. The Parties acknowledge that they have been represented by legal counsel in connection with the negotiation of the terms of this Agreement and that they enter into this Agreement freely and voluntarily, and only after consultation with their respective counsel. Captions and paragraph headings contained in this Agreement are for convenience and reference only. They in no way define, describe, extend or limit the scope or intent of this Agreement.

7. **Interpretation.** This Agreement shall be read and interpreted in such a manner as to give all provisions their ordinary and customary meaning, and all words, terms, and phrases not otherwise specifically defined by a capitalized term or otherwise shall have the same meaning and interpretation as customarily used among lay persons. All words, terms, and phrases specifically defined by a capitalized term shall apply throughout this Agreement in its entirety and not solely to the particular section or paragraph in which the term is first used. In construing this Agreement, unless the context clearly indicates or suggests otherwise, the singular shall be held to include the plural, the plural shall include the singular, and the use of any gender shall include every other and all genders.

8. **Entire Agreement; Amendments.** This Agreement represents the entire understanding and agreement between the Parties with respect to the subject matter hereof. No representations have been made, either express or implied by the Parties, other than those expressly set forth in this Agreement. This Agreement or any part hereof may not be changed, amended, waived, discharged, or terminated except by an instrument in writing, executed by all Parties.

9. **Disclaimer of Third Party Beneficiaries.** This Agreement is solely for the benefit of the Parties, and no right or cause of action shall accrue by reason hereof to, or for the benefit of, any third party not a formal party hereto. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give any other third person or entity any right, remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof, other than as may be expressly stated herein.

10. **Purpose of this Agreement; No Precedent for Other Cases.** The Parties acknowledge and agree that this Agreement is not intended by any Party to be construed, and shall not be construed, as an admission by any Party of any liability, error, mistake, or violation of any law, statute, ordinance, regulation, or other legal duty of any nature whatsoever. Rather, the Parties enter into this Agreement in a spirit of cooperation and compromise for the purpose of potentially avoiding further litigation and a desire to resolve the Disputes. The Parties enter into this Agreement as part of a settlement affecting various factual and legal issues and do not intend this Agreement to be an endorsement of, or precedent for, the use of the terms set forth herein in any other circumstances.

11. **Notices.** All notices and other communications required hereunder shall be in writing and shall be delivered personally, or by registered or certified mail, return receipt requested, postage prepaid, or by Federal Express or other nationally recognized overnight commercial delivery service, fees prepaid for next day delivery. Such notices shall be deemed to have been received: (i) upon delivery, if personally delivered; (ii) upon the earlier of actual receipt or the third day after mailing, if mailed by registered or certified United States mail, return receipt requested, postage prepaid; and (iii) upon the earlier of actual receipt or the next business day if sent by Federal Express or other nationally recognized overnight commercial delivery service, if fees are prepaid for next day delivery. The addresses for delivery of such notices shall be as follows:

(a) To Thompson Heights:

Robert N. Wallen, Manager
6 Ambrose Lane
South Barrington, IL 60010

With a copy to:

Jimmy D. Crawford, Esq.
Lindsay C.T. Holt, Esq.
Crawford, Modica & Holt
702 W. Montrose Street
Clermont, Florida 34711

(b) To the County:

Orange County Administrator
c/o Chris Testerman, Deputy County Administrator
P.O. Box 1393
201 S. Rosalind Avenue
Orlando, Florida 32802-1393

With a copy to:

Orange County Attorney's Office
c/o Joel D. Prinsell, Deputy County Attorney
P.O. Box 1393
Orlando, Florida 32802-1393

or to such other address or addressee as either Party hereto may from time to time designate to the other Party by notice in writing as herein provided.

12. **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and need not be signed by more than one of the Parties and all of which shall constitute one and the same agreement.

13. **Effective Date**. This Agreement shall become effective upon the date of execution by the County, which shall be the last Party to execute it.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in a manner sufficient to bind them on the day and year identified above.

Signed, sealed, and delivered before me:

WITNESSES

THOMPSON HEIGHTS, LLC,
a Florida limited liability company

Bria Wallen
Print Name: Bria Wallen

By: [Signature]

Name: ROBERT WALLEN

Debra Wallen
Print Name: Debra Wallen

Its: MANAGER

Date: July 6, 2021

STATE OF FLORIDA IL

COUNTY OF Kane

The foregoing instrument was acknowledged before me this 6 day of July 2021, by Robert Wallen, as Manager of Thompson Heights, LLC, on behalf of said entity. Said person (check one) ☐ is personally known to me or ☒ produced DL as identification.

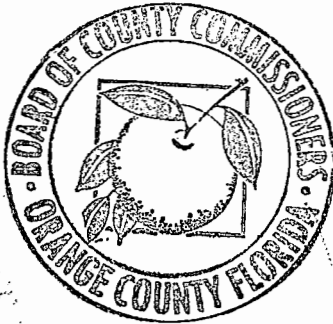


Printed Name: Victoria Hernandez

Notary Public, State of IL

Commission No. _____

My commission expires: 6/8/2024



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

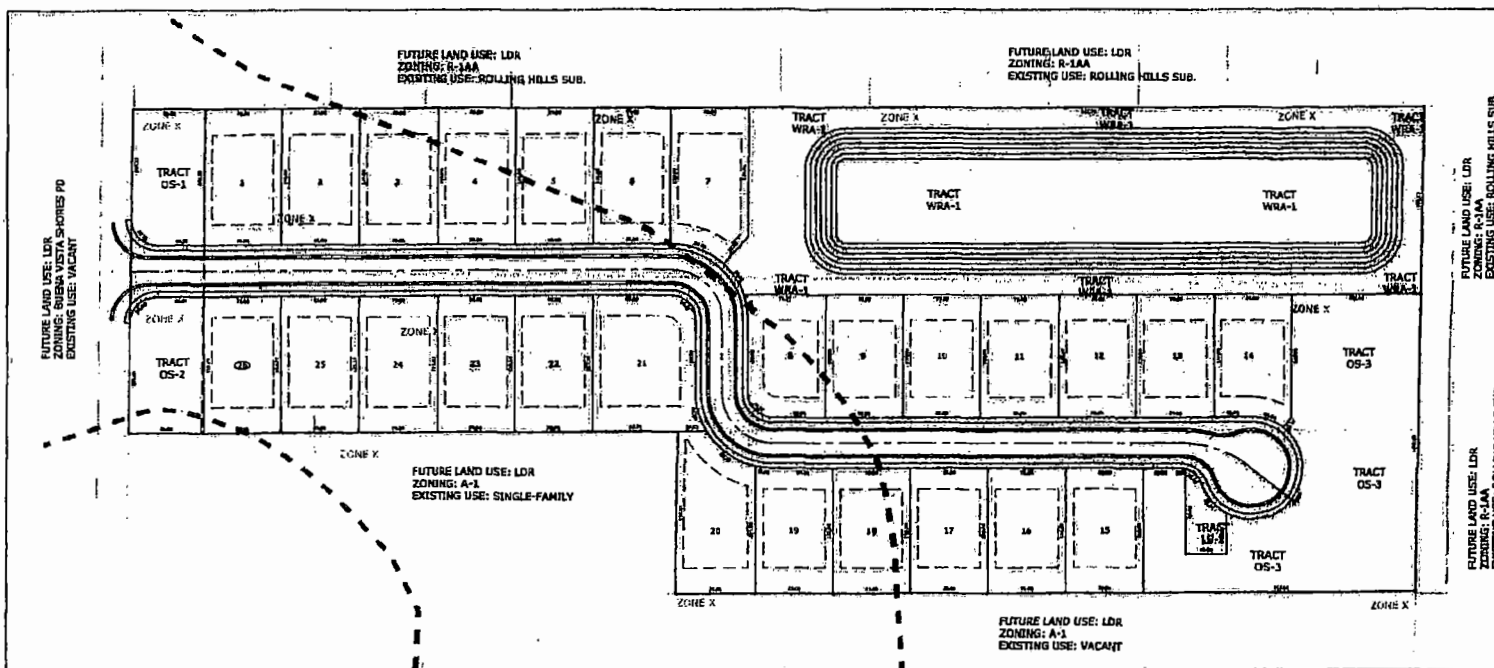
By: *[Signature]*
for Jerry L. Demings
Orange County Mayor

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

By: *[Signature]*
for Deputy Clerk

Date: SEP 21 2021, 2021

GRAPHIC SCALE



Land Development Code (Residential 30%; 25% Wetlands Overlay
11.651C, p. 35) & 4.08 areas (modified for 25%)

Single-Family Residences: 16 d.m. = 9.57 b/gph.d. = 249 A.D.T.

437 0.03

SHEET NUMBER
5 OF 20