

IN THE CIRCUIT COURT OF THE EIGHTEENTH
JUDICIAL CIRCUIT IN AND FOR SEMINOLE COUNTY, FLORIDA

CARILLON COMMUNITY
RESIDENTIAL ASSOCIATION,
INC., and KEN HOFER,

Plaintiffs,

vs.

Case No. 09-CA-1735-16-W

SEMINOLE COUNTY, FLORIDA,
UNIVERSITY OF CENTRAL
FLORIDA, and UNIVERSITY OF
CENTRAL FLORIDA FOUNDATION,
INC.,

Defendants.

AMENDED COMPLAINT

Plaintiffs CARILLON COMMUNITY RESIDENTIAL ASSOCIATION, INC., and KEN HOFER (collectively, the "Plaintiffs"), by and through their undersigned counsel, sue Defendants SEMINOLE COUNTY, FLORIDA, UNIVERSITY OF CENTRAL FLORIDA, and UNIVERSITY OF CENTRAL FLORIDA FOUNDATION, INC., and allege:

PARTIES

1. Plaintiff Carillon Community Residential Association, Inc. ("Association"), is a Florida not-for-profit corporation comprised of the owners of real property within the Carillon subdivision located in Seminole County, Florida.

2. Plaintiff Ken Hofer is the owner of real property in the Carillon subdivision located at 3383 Foxcroft Circle in Seminole County, Florida. Mr. Hofer is also the current President of the Association.

3. Defendant Seminole County, Florida (“County”), is a political subdivision of the State of Florida, with its principal place of business at 1101 East First Street, Sanford, Florida.

4. The County is responsible for implementing the requirements of the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, *Florida Statutes*, including the statutory requirement to adopt a local comprehensive plan and to ensure that all development orders approved by the County are consistent with the Seminole County Comprehensive Plan.

5. Defendant University of Central Florida (“UCF”) is a publicly funded state university, with its principal place of business at 4000 Central Florida Boulevard, Orlando, Florida.

6. Defendant University of Central Florida Foundation, Inc. (“UCF Foundation”), is a direct support organization of UCF, with its principal place of business at 12424 Research Parkway, Suite 140, Orlando, Florida.

7. Venue in this action lies in Seminole County, Florida, because the challenged actions occurred in Seminole County.

GENERAL ALLEGATIONS

8. On or about April 13, 2007, the UCF Foundation and AHG Group, LLC, submitted an application with the County for a major amendment to the Carillon Planned Unit Development (“Carillon PUD”), which includes the Plaintiffs’ single-family neighborhood, to allow a 246,369 square foot University of Central Florida student housing complex to be built on Parcels 201/401 and Parcel 202, Lot 2 therein (“Carillon Major PUD Amendment”).

9. The proposed student housing complex would include living accommodations for 600 UCF college students and would be up to four (4) stories tall. In addition to the four (4) story student housing complex, the Carillon Major PUD Amendment would also include two (2) parking garages of over 280,000 square feet combined and up to four (4) stories in height, a 45,652 square foot religious/student center, and 53,977 square feet of commercial/retail use.

10. Pursuant to the Revised Final Master Plan submitted as part of the Carillon Major PUD Amendment, Parcel 202, Lot 2 would be developed with a four (4) story, 182,435 square foot student rooming apartment building. The student rooming apartment building on Parcel 202, Lot 2 would feature 112 units with 428 student beds. In addition, a two (2) story, 45,652 square foot religious community center and UCF student center would be developed on Parcel 202, Lot 2. A four (4) story parking garage with roof parking, totaling over 200,000 square feet, would also be developed on Parcel 202, Lot 2 as part of the Carillon Major PUD Amendment.

11. As proposed by the Carillon Major PUD Amendment, Parcels 201/401 of the Carillon PUD would be developed with two (2) three (3) story student rooming apartment buildings. The student rooming apartment buildings on Parcels 201/401 would feature forty-four (44) units with 172 student beds, totaling 63,934 square feet. The first floor of such buildings would be used for retail/commercial uses, totaling 35,877 square feet. An additional 18,100 square feet of retail/commercial space would be developed in two (2) separate buildings on Parcels 201/401. A multi-level parking garage, totaling over 75,000 square feet, would also be developed on Parcels 201/401 as part of the Carillon Major PUD Amendment.

12. On January 27, 2009, the Seminole County Board of County Commissioners ("BOCC") voted to approve the Carillon Major PUD Amendment.

13. The BOCC's decision to approve the Carillon Major PUD Amendment is memorialized in the "Carillon Planned Unit Development Developer's Commitment Agreement Addendum #4," which was rendered by the County on March 30, 2009. A copy of the "Carillon Planned Unit Development Developer's Commitment Agreement Addendum #4" is attached hereto as Exhibit "A."

COUNT I

DECLARATORY AND INJUNCTIVE RELIEF PURSUANT TO SECTION 163.3215, FLORIDA STATUTES

14. Count I is an action for declaratory and injunctive relief, pursuant to Section 163.3215, *Florida Statutes*, against Defendant Seminole County, Florida.

15. The Plaintiffs reallege and incorporate by reference Paragraphs 1 through 13 above.

THE LOCAL GOVERNMENT COMPREHENSIVE PLANNING AND LAND DEVELOPMENT REGULATION ACT

16. Chapter 163, Part II, *Florida Statutes*, the Local Government Comprehensive Planning and Land Development Regulation Act ("Growth Management Act"), requires each local government in Florida to prepare and adopt a local comprehensive plan containing mandatory elements that address important issues such as land use, traffic circulation, conservation, and the adequacy of facilities and infrastructure.

17. After a local government has adopted its comprehensive plan, Section 163.3194(1)(a), *Florida Statutes*, requires that all actions taken by the local government in regard to development orders be consistent with the adopted local comprehensive plan.

18. Section 163.3194(3), *Florida Statutes*, defines “consistency” as follows:

(a) A development order or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.

(b) A development approved or undertaken by a local government shall be consistent with the comprehensive plan if the land uses, densities or intensities, capacity or size, timing, and other aspects of the development are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.

19. The County’s approval of the Carillon Major PUD Amendment is a development order which is subject to the consistency requirement of Section 163.3194(1)(a), *Florida Statutes*.

STANDING

20. The Growth Management Act provides for enforcement of the development order consistency requirement by citizens and local governments. Section 163.3215(3), *Florida Statutes*, provides that “[a]ny aggrieved or adversely affected party” may bring a civil action for injunctive or other relief against any local government to prevent the local government “from taking any action on [] a development order . . . which materially alters the use or density or intensity of use” on a tract of property in a manner that is not consistent with the adopted local comprehensive plan.

21. The County’s approval of the Carillon Major PUD Amendment materially alters the allowable uses or density or intensity of uses of the subject property.

22. Plaintiff Carillon Community Residential Association, Inc., is an aggrieved or adversely affected party as defined in Section 163.3215(2), *Florida Statutes*. The Association is a Florida not-for-profit corporation comprised of the owners of 833 single-family homes within the Carillon subdivision in Seminole County, Florida. The Carillon subdivision makes up the vast majority of the Carillon PUD, which also includes the property subject to the Carillon Major PUD Amendment. The Association's property and that of its members is located adjacent to the property proposed for development as a 600-bed student housing complex pursuant to the Carillon Major PUD Amendment. One of the Association's underlying purposes is to promote and protect the health, safety, and welfare of the residents of the Carillon subdivision. Thus, participation in local land use decisions affecting the Carillon PUD, as well as property surrounding the Carillon subdivision, is within the Association's scope of interest and activity. The Association is also the owner of real property within the Carillon PUD.

23. As a result of the BOCC's approval of the Carillon Major PUD Amendment, the Association and a substantial number of its members will suffer an adverse effect to interests protected or furthered by the Seminole County Comprehensive Plan, including, but not limited to, interests related to land use, the protection of residential neighborhoods, compatibility of development, and the protection of sensitive environmental areas. The interests of the Association and its members exceed in degree the general interest in community good shared by all persons. Further, the relief requested in this proceeding, *i.e.*, a determination that the BOCC's approval of the Carillon Major PUD Amendment is inconsistent with the Seminole County Comprehensive Plan, is appropriate relief for the Association to seek on behalf of itself and its members.

24. Plaintiff Ken Hofer is an aggrieved or adversely affected party as defined in Section 163.3215(2), *Florida Statutes*. Mr. Hofer owns property at 3383 Foxcroft Circle in the Carillon PUD, which is adjacent to property on which a portion of the 600-bed student housing complex is proposed to be located. As a result of the BOCC's approval of the Carillon Major PUD Amendment, Mr. Hofer will suffer an adverse effect to interests protected or furthered by the Seminole County Comprehensive Plan, including, but not limited to, interests related to land use, the protection of residential neighborhoods, compatibility of development, and the protection of sensitive environmental areas. The interests of Mr. Hofer exceed in degree the general interest in community good shared by all persons.

**THE BOCC'S APPROVAL OF
THE CARILLON MAJOR PUD AMENDMENT IS
INCONSISTENT WITH THE COUNTY'S COMPREHENSIVE PLAN**

25. The Introduction to the Vision 2020 Seminole County Comprehensive Plan provides, in pertinent part, that the Plan is based on a strategy to "maintain community quality and create neighborhood compatibility." One of the underlying purposes of the Seminole County Comprehensive Plan is to provide "policy guidance and direction toward ensuring a sustainable community for the residents of Seminole County . . . [b]y protecting neighborhoods."

26. The BOCC's approval of the Carillon Major PUD Amendment is inconsistent with, at a minimum, the following requirements of the Seminole County Comprehensive Plan: (a) Objective FLU 2, Policy FLU 2.1, and the Planned Development provisions of the Future Land Use Element; (b) Policies DES 3.3. and 7.7 of the Design Element; (c) Policy ECM 2.1 of the Economic Element; and (d) Policy HSG 2.5 of the Housing Element.

Future Land Element

27. Objective FLU 2 of the Future Land Use Element of the Seminole County Comprehensive Plan, entitled “Protection of Residential Neighborhoods,” provides:

The County shall ensure the long term viability of residential neighborhoods by regulating future development to create compatibility with surrounding land uses.

28. Policy FLU 2.1 of the Future Land Use Element of the Seminole County Comprehensive Plan provides that the County “shall maintain the viability of established . . . neighborhoods by continuing to enforce Land Development Code provisions relating to . . . [b]uilding setbacks and heights.”

29. The “Planned Development” subsection of the “Definitions of Future Land Use Designations” within the Future Land Use Element of the Seminole County Comprehensive Plan requires master plans for planned unit developments, such as the Carillon Major PUD Amendment, to address certain standards, *e.g.*, building height, buffering, lighting, setbacks, etc., to “ensure compatibility with adjacent uses.” To that end, Special Provision D therein recognizes that planned unit developments require special consideration to “maximize compatibility with adjacent uses.”

30. Rather than maximizing compatibility with adjacent uses, the Carillon Major PUD Amendment maximizes the permissible development on the subject property. For example, the Carillon Major PUD Amendment increases the maximum allowable building height on the property to forty-five (45) feet. The Carillon Major PUD Amendment also reduces the required setbacks from 100 feet to thirty-two (32) feet for the student rooming apartment building on Parcel 202, Lot 2. Furthermore, the Carillon Major PUD Amendment increases the density and the intensity of use on the subject property.

31. The 600-bed student housing complex approved as part of the Carillon Major PUD Amendment, which will be up to four (4) stories in height, is not compatible with the residential character of the Plaintiffs' adjacent single-family neighborhood because of its intensity, character, and other adverse impacts associated thereto, including, but not limited to, noise, lighting, litter, traffic, crime, and the transient nature of its residents.

32. By approving the Carillon Major PUD Amendment, the County has violated the requirements of Objective FLU 2, Policy FLU 2.1, and the Planned Development provisions of the Future Land Use Element of the Seminole County Comprehensive Plan, which require that established neighborhoods be protected from incompatible development.

33. Special Provision H of the "Planned Development" subsection of the "Definitions of Future Land Use Designations" within the Future Land Use Element of the Seminole County Comprehensive Plan provides that:

Planned developments adjacent to the Wekiva and Econlockhatchee Rivers and adjacent wetlands . . . shall . . . where permitted, concentrate allowable units on those portions of the development site which are farthest from the surface waters and wetlands, and restrict required open space areas to passive recreational uses.

34. The property subject to the Carillon Major PUD Amendment is located within the Econlockhatchee River Protection Area, as established by the Seminole County Comprehensive Plan, and the eastern portion of Parcel 202, Lot 2 of the Carillon Major PUD Amendment is subject to a conservation easement.

35. Contrary to the development limitation imposed by Special Provision H of the "Planned Development" subsection of the "Definitions of Future Land Use Designations" within the Future Land Use Element of the Seminole County Comprehensive Plan, the Carillon Major PUD

Amendment concentrates the greatest intensity and density of development immediately adjacent to the conservation easement on Parcel 202, Lot 2.

36. By approving the Carillon Major PUD Amendment, the County has violated Special Provision H of the “Planned Development” subsection of the “Definitions of Future Land Use Designations” within the Future Land Use Element of the Seminole County Comprehensive Plan.

Design Element

37. Policy DES 3.3 of the Design Element of the Seminole County Comprehensive Plan establishes design principles for neighborhoods, and requires compatible residential densities and housing types.

38. The 600-bed student housing complex approved as part of the Carillon Major PUD Amendment, which will be up to four (4) stories in height, is not compatible with the established low-density nature of the Plaintiffs’ adjacent single-family neighborhood.

39. Policy DES 7.7 of the Design Element of the Seminole County Comprehensive Plan provides, in part, that the County “will continue to . . . enforce design standards intended to preserve and enhance the natural features of the . . . Econ Protection Area as described in the Comprehensive Plan.”

40. As discussed in Paragraphs 33 through 36 above, however, the Carillon Major PUD Amendment concentrates the greatest intensity and density of development immediately adjacent to the conservation easement on Parcel 202, Lot 2, contrary to Special Provision H of the “Planned Development” subsection of the “Definitions of Future Land Use Designations” within the Future Land Use Element of the Seminole County Comprehensive Plan

41. By approving the Carillon Major PUD Amendment, the County has violated Policies DES 3.3 and DES 7.7 of the Design Element of the Seminole County Comprehensive Plan

Economic Element

42. Policy ECM 2.1 of the Economic Element of the Seminole County Comprehensive Plan provides, in pertinent part, that “the County will . . . [p]rotect neighborhoods from adverse impacts of development.”

43. The 600-bed student housing complex approved as part of the Carillon Major PUD Amendment will have a detrimental impact on the Plaintiffs’ adjacent single-family neighborhood and adversely affect the quality of life of those who own homes or live within the Carillon PUD.

44. By approving the Carillon Major PUD Amendment, the County has violated the requirements of Policy ECM 2.1 of the Economic Element of the Seminole County Comprehensive Plan.

Housing Element

45. Policy HSG 2.5 of the Housing Element of the Seminole County Comprehensive Plan provides:

The County shall maintain compatibility between new developments and existing residential neighborhoods through the application of land use intensity and design standards.

46. The 600-bed student housing complex approved as part of the Carillon Major PUD Amendment, which will be up to four (4) stories in height, is not compatible with the residential character of the Plaintiffs’ adjacent single-family neighborhood because of its intensity, character, and other adverse impacts associated thereto, including, but not limited to, noise, lighting, litter, traffic, crime, and the transient nature of its residents.

47. By approving the Carillon Major PUD Amendment, the County has violated the requirements of Policy HSG 2.5 of the Housing Element of the Seminole County Comprehensive Plan.

48. The Plaintiffs are not required to make an independent showing of irreparable harm as a result of the BOCC's approval of the Carillon Major PUD Amendment. Because the BOCC's approval of the Carillon Major PUD Amendment is inconsistent with the Seminole County Comprehensive Plan, the BOCC's approval constitutes a violation of the Growth Management Act.

49. The Plaintiffs do not have an adequate remedy at law.

WHEREFORE, Plaintiffs CARILLON RESIDENTIAL COMMUNITY ASSOCIATION, INC., and KEN HOFER demand that judgment be entered against Defendant Seminole County, Florida, and that the following relief be granted:

- A. That the Court accept jurisdiction of this cause;
- B. That the Court grant the Plaintiffs a trial *de novo* to determine the consistency of the BOCC's approval of the Carillon Major PUD Amendment with the Seminole County Comprehensive Plan;
- C. That the Court enter a declaratory judgment declaring that the BOCC's decision to approve the Carillon Major PUD Amendment is inconsistent with the Seminole County Comprehensive Plan, and, therefore, invalid;
- D. That the Court enter a temporary and permanent injunction enjoining any development activities authorized by the BOCC's approval of the Carillon Major PUD Amendment;

E. That the Court enter a temporary and permanent injunction enjoining Seminole County from issuing any building permits and/or other development approvals related to the Carillon Major PUD Amendment;

F. That the Court order the removal of all structures associated with the Carillon Major PUD Amendment that are built while this litigation is pending; and

G. That the Court grant such other and further relief as is just and proper.

COUNT II

DECLARATORY JUDGMENT – NECESSITY FOR COMPREHENSIVE PLAN AMENDMENT

50. Count II is an action for a declaratory judgment, temporary injunction, and permanent injunction against Defendant Seminole County, Florida.

51. The Plaintiffs bring this action pursuant to Section 86.011, *Florida Statutes*, which authorizes actions for declaratory judgment; and Section 26.012(3), *Florida Statutes*, and Florida Rule of Civil Procedure 1.610, which authorize circuit courts to grant injunctive relief.

52. The Plaintiffs reallege and incorporate by reference Paragraphs 1 through 13 and 22 through 24 above.

53. The Future Land Use Element of the Seminole County Comprehensive Plan prescribes certain “Standards of Review” for proposed amendments to an existing planned unit development, such as the Carillon Major PUD Amendment. In so doing, the Future Land Use Element states:

A Plan amendment is required if the proposal shows uses . . . not previously approved. The only exception to this criteria is public and quasi-public uses (*e.g.*, libraries, schools, recreation, roads) which provide an areawide benefit to the community.

(Emphasis supplied). Thus, if a proposed revision to an existing planned unit development shows new uses, an amendment to the Future Land Use Map of the County's Comprehensive Plan is required as a condition precedent to such revisions.

54. The Revised Final Master Plan submitted as part of the Carillon Major PUD Amendment includes uses that were not previously approved as part of the Carillon PUD, including C-2 uses (parking garages), student rooming apartments, a religious community center, and a UCF student center.

55. The Carillon Major PUD Amendment also seeks to increase the maximum residential density on Parcels 201/401 and Parcel 202, Lot 2 beyond that allowed pursuant to the approved Carillon PUD.

56. On December 9, 2008, the Plaintiffs, through their counsel, objected to the County's consideration of the Carillon Major PUD Amendment without first requiring the applicants to pursue a plan amendment in accordance with the Future Land Use Element of the Seminole County Comprehensive Plan.

57. Notwithstanding the Plaintiffs' objection, the BOCC proceeded to consider the Carillon Major PUD Amendment at its meeting on January 27, 2009, and voted to approve the same without first requiring a plan amendment to the Seminole County Comprehensive Plan.

58. The BOCC's approval of the Carillon Major PUD Amendment without requiring a plan amendment to the Seminole County Comprehensive Plan has created an actual and present controversy between the Plaintiffs and the County, leaving the Plaintiffs in doubt as to their rights.

59. The Plaintiffs do not have an adequate remedy at law.

60. The Plaintiffs are entitled to and require a judgment from this Court declaring that the BOCC was required to first process and approve a plan amendment to the Seminole County Comprehensive Plan before it could approve the Carillon Major PUD Amendment.

WHEREFORE, Plaintiffs CARILLON RESIDENTIAL COMMUNITY ASSOCIATION, INC., and KEN HOFER demand that judgment be entered against Defendant Seminole County, Florida, and that the following relief be granted:

- A. That the Court accept jurisdiction of this cause;
- B. That the Court enter a declaratory judgment declaring that the BOCC was required to process and adopt a plan amendment to the Seminole County Comprehensive Plan before it could approve the Carillon Major PUD Amendment;
- C. That the Court enter a declaratory judgment declaring void *ab initio* the BOCC's approval of the Carillon Major PUD Amendment, which was done without first requiring a plan amendment to the Seminole County Comprehensive Plan;
- D. That the Court enter a temporary injunction and a permanent injunction enjoining any development activities authorized by the BOCC's approval of the Carillon Major PUD Amendment;
- E. That the Court enter a temporary injunction and a permanent injunction enjoining the County from issuing any building permits and/or other development approvals related to the Carillon Major PUD Amendment; and
- F. That the Court grant such other and further relief as is just and proper.

COUNT III

**DECLARATORY JUDGMENT –
VIOLATION OF THE UCF CAMPUS MASTER PLAN**

61. Count III is an action for a declaratory judgment, temporary injunction, and permanent injunction against Defendants Seminole County, Florida, University of Central Florida, and University of Central Florida Foundation, Inc.

62. The Plaintiffs bring this action pursuant to Section 86.011, *Florida Statutes*, which authorizes actions for declaratory judgment; and Section 26.012(3), *Florida Statutes*, and Florida Rule of Civil Procedure 1.610, which authorize circuit courts to grant injunctive relief.

63. The Plaintiffs reallege and incorporate by reference Paragraphs 1 through 13 and 22 through 24 above.

64. On or about November 30, 2004, the Board of Trustees for UCF adopted the “2005-2015 UCF Campus Master Plan Update” (“UCF Master Plan”).

65. Pursuant to Policy 1.1.3 of the Housing Element of the UCF Master Plan, “University owned housing shall be built on campus grounds.”

66. The 600-bed student housing complex approved as part of the Carillon Major PUD Amendment will be located off-campus from the University of Central Florida.

67. UCF will hold a direct, indirect, and/or equitable ownership interest in the 600-bed student housing complex approved as part of the Carillon Major PUD Amendment.

68. Prior to and during the BOCC’s meeting on January 27, 2009, the County planning staff and representatives of the applicants for the Carillon Major PUD Amendment made statements that the consistency of the Carillon Major PUD Amendment with the UCF Master Plan was not a

review criterion for the BOCC's consideration. Such statements and actions have created an actual and present controversy between the Plaintiffs and the County, UCF, and the UCF Foundation, leaving the Plaintiffs in doubt as to their rights.

69. The Plaintiffs do not have an adequate remedy at law.

70. The Plaintiffs are entitled to and require a judgment from this Court declaring that the 600-bed student housing complex approved as part of the Carillon Major PUD Amendment violates the UCF Master Plan.

WHEREFORE, Plaintiffs CARILLON RESIDENTIAL COMMUNITY ASSOCIATION, INC., and KEN HOFER demand that judgment be entered against Defendants Seminole County, Florida, University of Central Florida, and University of Central Florida Foundation, Inc., and that the following relief be granted:

A. That the Court accept jurisdiction of this cause;

B. That the Court enter a declaratory judgment declaring that the Carillon Major PUD Amendment violates the UCF Master Plan;

C. That the Court enter a temporary and permanent injunction enjoining any development activities authorized by the BOCC's approval of the Carillon Major PUD Amendment;

D. That the Court enter a temporary and permanent injunction enjoining the County from issuing any building permits and/or other development approvals related to the Carillon Major PUD Amendment; and

E. That the Court grant such other and further relief as is just and proper.

RESPECTFULLY SUBMITTED on this 2nd day of July 2009.



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COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via Telefacsimile and United States Mail to **Robert A. McMillan, Esquire**, Seminole County Attorney's Office, 1101 East First Street, Sanford, Florida 32771, this 2nd day of July 2009.



DAVID A. THERIAQUE, ESQUIRE