

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.

**PLAINTIFFS' REPLY TO DEFENDANTS UNIVERSITY
OF CENTRAL FLORIDA AND UNIVERSITY OF CENTRAL
FLORIDA FOUNDATION, INC.'S AFFIRMATIVE DEFENSES**

Plaintiffs CARILLON COMMUNITY RESIDENTIAL ASSOCIATION, INC., and KEN HOFER (collectively, "Plaintiffs"), by and through their undersigned counsel, hereby file this Reply to Defendants University of Central Florida and University of Central Florida Foundation, Inc.'s Affirmative Defenses to Count III of the Plaintiffs' Amended Complaint, and state as follows:

1. On October 16, 2009, Defendants University of Central Florida ("UCF") and University of Central Florida Foundation, Inc. ("Foundation") (collectively, "Defendants"), served their Answer to the Plaintiffs' Amended Complaint, raising the following Affirmative Defenses: (1) UCF does not own the property at issue; (2) Objective 1.2 and Policy 1.2.1 of the UCF Master Plan operate to bar the Plaintiffs' claim; and (3) lack of standing. The Plaintiffs deny each and every allegation of the Affirmative Defenses raised in the Defendants' Answer.

First Affirmative Defense – Non-Ownership Of The Subject Property

2. The Plaintiffs deny the Defendants’ First Affirmative Defense in which the Defendants summarily allege that UCF does not own the property at issue in Count III and, thus, Policy 1.1.3 of the UCF Master Plan does not apply to the proposed 600-bed UCF student housing complex which is the subject of Count III of the Plaintiffs’ Amended Complaint. (Answer at 3). To the contrary, as alleged in the Plaintiffs’ Amended Complaint, UCF will hold a direct, indirect, and/or equitable ownership interest in the 600-bed student housing complex. Pursuant to Policy 1.1.3 of the Housing Element of the UCF Master Plan, however, “University owned housing shall be built on campus grounds.” As conceded by the Defendants in their First Affirmative Defense, the 600-bed student housing complex is “not located on the UCF campus.” (*Id.*). Thus, the Plaintiffs deny the Defendants’ contention that Policy 1.1.3 of the UCF Master Plan does not apply to the 600-bed UCF student housing project at issue in Count III.

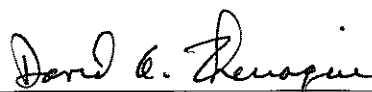
Second Affirmative Defense – Objective 1.2 & Policy 1.2.1 Of The UCF Master Plan

3. The Plaintiffs deny the Defendants’ Second Affirmative Defense in which the Defendants summarily allege that Objective 1.2 and Policy 1.2.1 of the UCF Master Plan “operate to bar Plaintiffs from the relief they are seeking.” (Answer at 3-4). The Defendants’ Second Affirmative Defense fails to set forth a legal defense. The Plaintiffs further deny any suggestion by the Defendants that Objective 1.2 and Policy 1.2.1 of the UCF Master Plan bar the Plaintiffs’ claims regarding the 600-bed UCF student housing complex approved as part of the Carillon Major PUD Amendment.

Third Affirmative Defense – Lack Of Standing

4. The Plaintiffs deny the Defendants' Third Affirmative Defense in which the Defendants summarily allege that the "Plaintiffs lack standing to bring this cause of action." (Answer at 4). The Defendants' argument fails to set forth a legal defense. The Defendants' Third Affirmative Defense is conclusory and sets forth no facts to support the Defendants' assertion. *See Valdes v. Lambert*, 568 So. 2d 117, 118 (Fla. 5th DCA 1990) (striking affirmative defense that was conclusory and set forth no ultimate facts supporting defendant's assertion of defense); *Cady v. Chevy Chase Savs. & Loan, Inc.*, 528 So. 2d 136, 137 (Fla. 4th DCA 1988) (reiterating that "[c]ertainty is required when pleading defenses, and pleading conclusions of law unsupported by allegations of ultimate fact is legally insufficient"). Moreover, it is well established that adjacent property owners, such as the Plaintiffs, have standing to seek declaratory and injunctive relief concerning violations of land use regulations. *See Renard v. Dade County*, 261 So. 2d 832 (Fla. 1972).

RESPECTFULLY SUBMITTED this 10th day of November 2009.



DAVID A. THERIAQUE, ESQUIRE
Florida Bar No. 0832332
S. BRENT SPAIN, ESQUIRE
Florida Bar No. 0320810
LESLIE E. BRYSON, ESQUIRE
Florida Bar. No. 498831
THERIAQUE VORBECK & SPAIN
433 North Magnolia Drive
Tallahassee, Florida 32308
Telephone: 850/224-7332
Facsimile: 850/224-7662

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, and **Janet M. Courtney, Esquire**, Lowndes, Drosdick, Doster, Kantor & Reed, P.A., P.O. Box 2809, Orlando, Florida 32802-2809, this 18th day of November 2009.



DAVID A. THERIAQUE, ESQUIRE