

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

CASE NO. 09-CA-1735-16-W

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

Plaintiffs,

vs.

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

Defendants.

**DEFENDANT, SEMINOLE COUNTY'S
ANSWER TO AMENDED COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF AND AFFIRMATIVE DEFENSES**

Defendant, Seminole County (the "County"), by and through its undersigned attorneys, files this Answer to Plaintiffs, Carillon Community Residential Association, Inc., and Ken Hofer's (the "Plaintiffs"), Amended Complaint for Declaratory Judgment and Injunctive Relief and states:

PREFACE

As a general preface, the paragraph numbers herein correspond to the numbered paragraphs of allegations in the Plaintiffs' Amended Complaint; The County denies the descriptive terms "the proposal" or "the proposed..." wherever they appear in the

allegations because it cannot be ascertained whether those terms refer to the original application, the final approved version or some version in between; and the County denies any other characterizations of the application implied in the Plaintiffs' Amended Complaint other than that the matter involves Addendum #4 to the Developer's Commitment Agreement of the Carillon Planned Unit Development (PUD) relating to Parcel 202, Lot 2 and Parcels 201/401 (hereafter referred to as "Addendum #4").

1. Without knowledge and information therefore denied.

2. Without knowledge and information therefore denied.

3. Admitted.

4. Denied except to admit the County is required by the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes, 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. Without knowledge and information therefore denied.

6. Without knowledge and information therefore denied.

7. Admitted as to Counts I and II and denied as to Count III.

8. Denied except to admit on or about April 13, 2007, the UCF Foundation and AHG Group, LLC submitted an application to the County for a major amendment to the Carillon Planned Unit

Development for a mixed development related to parcels 201/401 and Parcel 202, Lot 2 and to admit Carillon PUD includes single family parcels not included among the parcels to be amended.

9. Denied except to admit the approved mixed use development includes a residential component for a maximum of 600 beds up to four stories tall with parking of approximately 280,000 square feet up to four (4) stories in height, approximately 53,977 square feet of commercial/retail use and a community center of approximately 45,652 square feet.

10. Denied except to admit that the approved revised final master plan includes an apartment building on Parcel 202, Lot 2 of approximately 182,435 square feet of up to four (4) stories in height, in part, of 112 units and 428 beds; includes a two-story community center of approximately 45,652 square feet on Parcel 202, Lot 2; and includes a four (4) story parking structure with roof parking, totaling approximately 200,000 square feet, on Parcel 202, Lot 2.

11. Denied except to admit the approval on Parcels 201/401 included rooming apartment buildings including one floor of retail and two floors of rooming apartments with 44 units with 172 student beds approximately, totaling approximately 63,934 square feet; the approved retail commercial uses totaled approximately 35,877 square feet; and two separate buildings of approximately 18,100 square feet of retail/commercial space and

parking of one story with roof parking of approximately 75,000 square feet.

12. Denied except to admit that on January 27, 2009 the Seminole County Board of County Commissioners (BCC) voted to approve Addendum #4 to the Developer's Commitment Agreement for the Carillon Planned Unit Development ("PUD") ("Addendum #4").

13. Denied except to admit that the BCC approved Addendum #4 which was recorded on March 30, 2009.

14. Without knowledge and information therefore denied.

15. Defendant, Seminole County, realleges and incorporates by reference each response to paragraphs 1 through 13 of the Answer herein.

16. Denied except to admit that Chapter 163, Part II, Florida Statutes, requires each local government in Florida to prepare and adopt a local comprehensive plan.

17. Admit.

18. Admit.

19. Denied except to admit that Addendum #4 is a development order subject to the consistency requirement of Section 163.3194(1)(a), Florida Statutes.

20. Denied except to take notice of Section 163.3215(3) and let the statute speak for itself.

21. Denied and incorporate responses to Paragraphs 12 and 13 above.

22. Without knowledge and information therefore denied.

23. Denied.

24. Without knowledge and information therefore denied.

25. Admit.

26. Denied.

27. Admit.

28. Admit that Policy FLU 2.1 is stated in part and let the remainder of Policy FLU 2.1 speak for itself.

29. Admit that Special Provision D is stated in part and let the remainder of the Planned Development subsection of Definitions of Future Land Use Designations speak for itself.

30. Denied except to admit that Addendum #4 increased the maximum allowable building height on the parcels to 45 feet and active/passive setback buffer waivers were granted as to Parcel 202, Lot 2 reducing the setback from 100 feet to 32 feet in part.

31. Denied except to incorporate the responses from Paragraph 9 and 12 above.

32. Denied.

33. Admit that Special Provision H is stated in part and let the remainder of Special Provision H speak for itself.

34. Admit except deny that Addendum #4 encroaches on the conservation easement.

35. Denied.

36. Denied.

37. Denied except to admit Policy DES 3.3 of the Design Element of the Seminole County Comprehensive Plan Vision 2020 establishes design principles for neighborhoods and let the Policy speak for itself.

38. Denied and incorporates response to Paragraph 9 above.

39. Admit.

40. Denied.

41. Denied.

42. Denied except to admit that Policy ECM 2.1 is stated in part and let the Policy speak for itself.

43. Denied and incorporates responses from Paragraphs 8 and 9 above.

44. Denied.

45. Admit.

46. Denied and incorporates response from paragraph 9 above.

47. Denied.

48. Denied.

49. Denied.

50. Without knowledge and information therefore denied.

51. Without knowledge and information therefore denied.

52. Defendant, Seminole County reincorporates by reference the responses alleged in preceding paragraphs.

53. Denied except to admit the Future Land Use Element of the Seminole Comprehensive Plan speaks for itself.

54. Denied.

55. Denied.

56. Denied except to admit that Plaintiffs, through their counsel, objected in a letter dated December 9, 2008, to the County's consideration of Addendum #4 without first requiring the applicants to pursue a plan amendment.

57. Denied except to incorporate admission in paragraph 12 above.

58. Denied.

59. Denied.

60. Denied.

61. Without knowledge and information therefore denied.

62. Without knowledge and information therefore denied.

63. Defendant, Seminole County reincorporates by reference the responses in preceding paragraphs.

64. Without knowledge and information therefore denied.

65. Without knowledge and information therefore denied.

66. Without knowledge and information therefore denied.

67. Without knowledge and information therefore denied.

68. Denied except to admit that prior to the BCC meeting on January 27, 2009, County planning staff confirmed that the BCC is not bound by the UCF Master Plan.

69. Denied.

70. Denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

71. The executed Addendum #4 referenced above was recorded on March 30, 2009. The original complaint was filed February 26, 2009. The Amended Complaint was not served until July 6, 2009 after the April 29, 2009 statute of limitations deadline for Section 163.3215, alleging new causes of action and new parties. New parties were not added timely as to Counts I and II. Any claims or actions challenging Addendum #4 under 163.3215 not filed by April 29, 2009 are barred by the statute of limitations such as challenges to approved uses or other approvals to the property granted through prior development orders and Count II to the extent it challenges consistency with the Comprehensive Plan.

72. To the extent that the Amended Complaint raises claims regarding approvals which were granted prior to Addendum #4 (Amended Complaint #54,55,21,26,30,31,32,33,34,35,36,38,40,41,43,44,46,47,48) the Statute of Limitations has run as to those development orders issued prior to Addendum #4 barring claims against them.

SECOND AFFIRMATIVE DEFENSE

73. As to Counts I and II, Plaintiffs failed to join indispensable parties, AHG Group, LLC and University of Central Florida Foundation, Inc., property owners of the parcels which are the subject of this litigation, persons materially interested, either legally or beneficially in the subject matter of the suit, making it impossible to completely adjudicate the matter without affecting their interests.

74. Counts I and II are actions for declaratory judgment.

75. Section 86.091, Fla. Stat. (2009) provides, in part, that "No declaration shall prejudice the rights of persons not parties to the proceedings."

76. Plaintiffs clearly seek in the Amended Complaint the invalidation of a development order granted by the Seminole County Board of County Commissioners in favor of the above-referenced property owners of the subject property, but without timely joining such property owners in this action.

77. The provision of Section 163.3215, Fla. Stat. (2009) authorizing actions against a local government for declaratory relief must be read in pari materia with Section 86.091 in a way that requires the property owners to be named as party defendants in a proceeding seeking to invalidate their development order.

78. Because of the Plaintiffs' failure to timely name the property owners as party defendants in this action, if Plaintiffs prevail in this action, there will be the untenable result that the un-named property owners will have the unrestricted right to proceed with their project under their development order, but the County would, by such judgment, be prohibited from issuing subsequent approvals in furtherance of the development order, to the prejudice of the property owners, in violation of Section 86.091.

79. Procedural due process requires that the property owners have notice and opportunity to be heard before they can be deprived of an established property right.

80. In that AHG Group, LLC and University of Central Florida Foundation, Inc. are indispensable parties who had to be named by April 29, 2009, Counts I and II are barred by the Statute of Limitations.

81. The Statute of Limitations bars amendment of the complaint to name additional defendants after April 29, 2009.

THIRD AFFIRMATIVE DEFENSE

82. Count II which purports to be a Ch. 86, Fla. Stat. declaratory judgment action, is in reality a consistency challenge that can only be brought under Section 163.3215(3), Fla. Stat. (2009). As such, it had to be filed no later than April 29, 2009 (thirty days from rendition of the Order).

83. Because Count II of the Amended Complaint was not timely brought, it is time barred.

FOURTH AFFIRMATIVE DEFENSE

84. Count I fails to state a cause of action in that Addendum #4 does not materially alter the density or intensity of prior approvals.

85. Count II fails to state a cause of action in that Addendum #4 does not approve future land uses that were not approved by prior approvals.

FIFTH AFFIRMATIVE DEFENSE

86. Count III fails to state a cause of action against Seminole County.

87. By the express terms of Section 1.2 of the Seminole County Land Development Code, which provides in part that "it is not intended by this Code to interfere with, abrogate, or annul any lawful... agreements between parties provided, however, that, where the ordinance imposes a greater restriction... than are imposed or required by other ordinances, resolutions, rules, regulation, or by lawful easements, covenants or agreements, the provisions of this Code shall control." Therefore, the development order that is the subject of this action does not abrogate or annul the University of Central Florida Master Plan.

88. If the property owners are subject to independent requirements with respect to their development, imposed by the

UCF Master Plan, Seminole County's approval of the challenged development order would have no effect on the property owners' independent requirement to comply with the UCF Master Plan.

89. The approval of Addendum #4 does not abrogate the University of Central Florida Master Plan in any way as to any party.

90. No part of the UCF campus within the jurisdiction of the UCF Master Plan is located within unincorporated Seminole County.

91. The Seminole County Board of County Commissioners is neither regulated by, nor subject to, the UCF Master Plan.

92. There is no actual and present controversy in Count III involving Seminole County, and therefore, there is no cause of action against Seminole County in Count III.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to David A. Theriaque, Esq., 433 N. Magnolia Drive, Tallahassee, FL 32308-5083 and Janet Courtney, Esq., P.O. Box 809, Orlando, Florida 32802-2809 by U. S. Mail this 9th day of November, 2009:

RESPECTFULLY SUBMITTED,

ROBERT A. McMILLAN
County Attorney
for Seminole County, Florida
Florida Bar No: 0182655
Seminole County Services Building
1101 East First Street
Sanford, Florida 32771
Telephone: (407) 665-5736
Facsimile: (407) 665-5749
Attorney for Seminole County

By: K Furey Tran

KATHLEEN FUREY TRAN
Assistant County Attorney
Florida Bar No.: 0089486

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