

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

Defendant.

DEFENDANT, SEMINOLE COUNTY'S MOTION TO JOIN PARTIES

Defendant, SEMINOLE COUNTY ("COUNTY"), by and through its undersigned attorneys and pursuant to Florida Rule of Civil Procedure 1.210(a), hereby moves for joinder of AHG GROUP, LLC ("AHG") and UNIVERSITY OF CENTRAL FLORIDA FOUNDATION, INC. ("UCF FOUNDATION") as parties to Counts I and II of the Amended Complaint and alleges as follows:

1. Florida Rule of Civil Procedure 1.210(a) provides in part that "Any person may at any time be made a party if that person's presence is necessary or proper to a complete determination of the cause." The addition of AHG and UCF FOUNDATION as parties to Counts I and II of the Amended

Complaint is necessary and proper to a complete determination of the cause.

2. In Counts I and II of the Amended Complaint, Plaintiffs have sued the COUNTY for declaratory and injunctive relief. In their prayer for relief, Plaintiffs request a temporary and permanent injunction enjoining all development activities on property owned by AHG and UCF FOUNDATION; enjoining the COUNTY from issuing any building permits and/or other development approvals to AHG and UCF FOUNDATION; and ordering the removal of all structures built while the litigation is pending on property owned by AHG and UCF FOUNDATION.

3. In Paragraph 8 of the Amended Complaint, Plaintiffs acknowledge that AHG and UCF FOUNDATION are the parties that submitted the land use application that is at issue in this lawsuit, which was approved by the Board of County Commissioners (Paragraph 12-13, Amended Complaint).

4. The COUNTY previously filed its Motion to Dismiss Counts I and II of the Complaint for failure to join indispensable parties. At the October 8, 2009 hearing that occurred on that motion, counsel for the Plaintiffs agreed that AHG and UCF FOUNDATION "have every right to proceed as a party"

in the lawsuit. (See October 8, 2009 hearing transcript, p. 16 attached).

5. Chapter 86, Florida Statutes, sets forth the requirements for declaratory relief. Section 86.091, Florida Statutes, provides in part: "No declaration shall prejudice the rights of persons not a party to the proceedings." Failure to join AHG and UCF FOUNDATION as parties would prejudice their rights as the owners of the property and development approvals that Plaintiffs are seeking to enjoin.

6. All parties who have an interest in the controversy should be joined. Any person may be made a defendant who has or claims an interest adverse to the plaintiff. *Ding v. Jones*, 667 So.2d 894, 897 (Fla. 2nd DCA 1996). Any person at any time may be made a party to an action if his presence is proper to a complete determination of the cause. *Garner v. Ward*, 251 So.2d 252 (Fla. 1971). See also *G & J IMB. Corp. Inc. v. Smith*, 398 So.2d 844 (Fla. 5th DCA 1981) rev. den. 407 So.2d 1103 (Fla. 1981), (the trial court properly required that the owners of radio towers on the plaintiff's land be joined and this action to compel city and building inspector to enforce zoning laws and to compel removal of the towers). In *Howse v. Moody*, 14 Fla. 59 (1872) (in a lawsuit to set aside as fraudulent a judicial sale in reference to real property, all persons claiming a present

interest in the property should be made parties to the proceedings).

7. It is proper to bring a Section 163.3215 action against the developer/property owner as a party. The owner and developer of the property should be joined as parties where declaratory and injunctive relief affecting their development approvals and property interests are being determined in the proceedings. See *Bay County v. Harrison*, 13 So.3d 115 (Fla. 1st DCA 2009) (homeowner and organization of concerned citizens brought action against county **and developer** under section 163.3215 alleging inconsistency with comprehensive plan); *Buck Lake Alliance, Inc. v. Leon County*, 765 So.2d 124 (Fla. 1st DCA 2000) (plaintiff challenging development as inconsistent with comprehensive plan under section 163.3215 filed complaint against county **and developer**); *Payne v. City of Miami*, 927 So.2d 904 (Fla. 3rd DCA 2005) (marine industry organization brought action under section 163.3215 **against developer** and city alleging city decision to rezone property was inconsistent with comprehensive plan); See *Homosassa River Alliance, Inc. v. Citrus County*, 2 So.3d 329 (Fla. 5th DCA 2008) *rev. denied* 16 So.3d 132 (Fla. 2009) (environmental group and area landowner brought action under section 163.3215 against county **and**


property owner challenging consistency of property owner's application for development approval with comprehensive plan).

8. Although Section 163.3215 provides statutory authority under which declaratory actions may be brought, the statute was designed to be construed liberally to provide remedies to a broad class of aggrieved parties. See *Bay County v. Harrison*, 13 So.3d 115, 118-119 (Fla. 1st DCA 2009). The construction that permits the property owner and applicant developer to be joined as a party to assure a full adjudication of all the interests involved should control over any other construction that would defeat the statute's purpose or achieve absurd results.

WHEREFORE, the COUNTY requests that the Court order joinder of AHG and UCF FOUNDATION as parties to Counts I and II of the Amended Complaint.

DATED this 13th day of January, 2010.

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By: 
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail to: DAVID A. THERIAQUE, ESQUIRE, S. BRENT SPAIN, ESQUIRE, and LESLIE E. BRYSON, ESQUIRE of Theriaque, Vorbeck & Spain, 433 North Magnolia Drive, Tallahassee, Florida 32810 and JANET M. COURTNEY, ESQUIRE, Lowndes, Drosdick, Doster, Kantor & Reed, P.A., 215 North Eola Drive, Orlando, Florida 32801, this 13th day of January, 2010.

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7 SEMINOLE COUNTY, FLORIDA,
8 UNIVERSITY OF CENTRAL FLORIDA, and
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9 FOUNDATION, INC.,

10 Defendants.

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12
13
14 BEFORE THE HONORABLE
ALAN A. DICKEY
15 JUDGE OF THE COURT

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17
18 REPORTED BY:
19 LINDA M. GOODALL, RPR
In Courtroom G
20 Seminole County Courthouse
Sanford, Florida
21 October 8, 2009

22 APPEARANCES:

23 DAVID A. THERIAQUE, ESQUIRE
S. BRENT SPAIN, ESQUIRE
24 433 North Magnolia Drive
Tallahassee, FL 32308-5083
25 Attorneys for Plaintiffs

1 MR. THERIAQUE: So on those grounds, Your Honor,
2 we would request that the Court deny the motion to
3 dismiss. If the property owner and the applicant desires
4 even today to ore tenus move to intervene, we won't
5 object to that. They have every right to proceed as a
6 party if they desire to, but the statute specifically
7 limits the party we were supposed to name which was the
8 County and that's what we have done. Thank you, Your
9 Honor.

10 THE COURT: Thank you.

11 Response.

12 MS. FUREY-TRAN: Thank you, Your Honor. I would
13 just like to point out to you -- may I approach with a
14 copy of Section 86.091?

15 THE COURT: Yes, of course you can.

16 MS. FUREY-TRAN: Since this is a declaratory
17 judgment, Your Honor, Section 86.091 and 163.3215 must be
18 read in para materia, therefore no declaration shall
19 prejudice the rights of persons not parties to the
20 proceedings. It is very clear, Your Honor, that they
21 have not named the parties that are required to be named.

22 A resulting decision that would be adverse to the
23 property owners would leave the County in an odd position
24 of having on both sides a judgment against as far as an
25 injunction and a property owner with development rights