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April 5, 2010

Lewis W. Stone, Esq.
Stone & Gerken
4850 N. Highway 19-A
Mt. Dora, Florida 32757

Re: Sorrento Commons, LLC v. Lake County, Florida
Special Master Hearing

Dear Lewis,

In response to your letter dated March 9, 2010, acknowledging that this hearing remains open until today, April 5, 2010, please find enclosed a Recommended Order as prepared by the Petitioner, Sorrento Commons, LLC. A copy of the Recommended Order has been sent to Melanie Marsh, Attorney for Lake County.

It has been a pleasure working with you throughout this process.

Sincerely,

AKERMAN SENTERFITT

Cecelia Bonifay
For the Firm

IN AND BEFORE A SPECIAL MASTER
IN AND FOR LAKE COUNTY

SORRENTO COMMONS, LLC
Petitioner **File No. SM-1-09**

vs.

LAKE COUNTY, FLORIDA, a political Subdivision of the State of Florida,
Respondent
_____/

SPECIAL MASTER'S RECOMMENDED ORDER

On October 5, 2009, Sorrento Commons, LLC ("Sorrento Commons") filed a petition for a special master proceeding under the Florida Land Use and Environmental Dispute Resolution Act, contained in Section 70.51, Florida Statutes, involving a development order or enforcement action by the Board of County Commissioners of Lake County, Florida ("Lake County"). The petition was found by Lake County to be sufficient, and the special master mediation was held on March 1, 2010, and March 4, 2010. As no settlement was reached between the parties during the course of the mediation, this Recommended Order follows.

ISSUE

Whether Lake County's denial of a zoning amendment requested by Sorrento Commons was unreasonable or unfairly burdens the real property owned by Sorrento Commons.

STIPULATED FACTS

1. In 1988, Lake County adopted Ordinance #20-88, which rezoned property generally located in the Sorrento area and south of State Road 46, at the intersection of State Road 46 and County Road 437, from PUD (Planned Unit Development) to CP (Planned Commercial), for the development of a corporate office, car storage and service center for a car leasing company.

2. In 2009, Sorrento Commons filed an application with Lake County to amend Ordinance #20-88, in order to permit the redevelopment of the property with a total of 50,000 square feet of Neighborhood Commercial (C-1) and limited Community Commercial (C-2) uses.

3. On September 2, 2009, the Lake County Zoning Board recommended approval of the request by a vote of five to one.

4. On September 22, 2009, the Lake County Board of County Commissioners denied the request by a vote of four to one.

5. The property has a Future Land Use designation of Mt. Plymouth-Sorrento Urban Compact Node (Non-Wekiva). The property is also located within a designated Neighborhood Activity Center on the County's Future Land Use Map. The Mt. Plymouth-Sorrento Urban Compact Node designation allows residential uses at a maximum density of 5.5 dwelling units per acre, and commercial uses are permitted in Neighborhood Activity Centers.

ANALYSIS AND DISCUSSION

Lake County takes the position that the requested zoning amendment was properly denied because it is inconsistent with the Lake County Comprehensive Plan. Specifically, Lake County states that the request is inconsistent with Policy 1-3A.1(3)(c) of the Comprehensive Plan because it exceeds the maximum amount of commercial square footage allocated by the Plan to the intersection where the property is located. In addition, Lake County states that the request is inconsistent with Policy 1-3.4 of the Comprehensive Plan due to the absence of infrastructure improvements necessary to accommodate 50,000 square feet of commercial uses on the property.

Policy 1-3A.1(3) of the Comprehensive Plan contains the development criteria for properties located within Neighborhood Activity Centers, including the property owned by Sorrento Commons. Subsection (c) allows "combined commercial allocations" in these centers from 10,000 to 50,000 square feet of gross leasable area. The parties disagree on the meaning of the phrase "combined commercial allocations," and how it should be applied to limit the amount of development on the property.

According to Lake County, the phrase "combined commercial allocations" means that no more than 50,000 square feet of commercial uses can exist within a quarter-mile radius of any Neighborhood Activity Center. According to evidence presented by Lake County, 34,900 square feet of commercial development currently exists within a quarter mile of the intersection of SR 46 and CR 437, leaving only 15,100 square feet of commercial development available to the Sorrento Commons property. Lake County's calculations include all nature of existing commercial development, including retail stores, offices, restaurants/bars and a warehouse. Lake County includes these developments in its calculations regardless of whether they are considered vested because some or all occurred prior to the adoption of the Comprehensive Plan in 1991.

Unlike Lake County, which interprets the phrase "combined commercial allocations" as a blanket 50,000 square-foot restriction on the entire Neighborhood Activity Center, Sorrento Commons interprets the same phrase as limiting an individual shopping center to no more than 50,000 square feet of combined commercial (i.e., retail, restaurant and office) development. In support of its position, Sorrento Commons points to Policy 1-3A.1 which describes a Neighborhood Activity Center as a *type of shopping center*, not as a discrete geographic area. Sorrento Commons points to the absence of any quarter-mile radius test in the Comprehensive Plan as further evidence that it should not apply in this case. Rather, according to Sorrento Commons, the only geographic limitation applicable in this case is contained in Policy 1-3A.1(3)(a), which states that Neighborhood Activity Centers must be located at the intersections of collectors, or at the intersection of a collector and an arterial. Thus, it is Sorrento Commons' position that the requested zoning amendment is consistent with the Comprehensive Plan

because it limits the extent of proposed commercial development to 50,000 square feet, and because the property is located at the intersection of a collector road and an arterial road.

Sorrento Commons further argues, in the alternative, that it is altogether exempt from the "combined commercial allocation" limitation pertaining to Neighborhood Activity Centers, because the property qualifies as a Community Activity Center instead. Under Policy 1-3A.1(2)(a.) of the Comprehensive Plan, Community Activity Centers allow commercial uses from 50,000 to 500,000 square feet of gross leasable area, without any "combined commercial allocation" or similar restriction.

Sorrento Commons argues that it qualifies for treatment as a Community Activity Center because it meets the locational criteria contained in Policy 1-3A.1(2) pertaining to such centers, notwithstanding the fact that the Future Land Use Map designates the property as a Neighborhood Activity Center. Sorrento Commons points to Policy 1-1.6 in the Comprehensive Plan as justification that no future land use map amendment is necessary in order for the property to be developed as a Community Activity Center. This policy states, in part, as follows:

> "New commercial development shall be allowed within the Urban Land Use category[1] *without a Comprehensive Plan Amendment* provided such development meets the locational criteria for commercial activity centers within the Data, Inventory and Analysis support document for the Comprehensive Plan, and meets the criteria established within other policies of the Comprehensive Plan."
>
> (emphasis added).

However, it is unnecessary to address Sorrento Commons' argument that it qualifies as a Community Activity Center, because this special master finds that Sorrento Commons' requested zoning amendment is consistent with the criteria for a Neighborhood Activity Center. It is this special master's opinion that the "combined commercial allocation" restriction found in Policy 1-3A.1(3)(c) clearly and unambiguously applies to limit the square footage on individual shopping centers to no more than 50,000 square feet. See State v. Vanbebber, 848 So.2d 1046, 1049 (Fla. 2003) ("When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.") (quoting Holly v. Auld, 450 So.2d 217, 219 (Fla. 1984)). According to the plain language of Policy 1-3A.1, regarding commercial development in land use classifications, the various Activity Centers are "shopping center types."[2] The plain language of Policy 1-3A.1(3)(c), allows multiple shopping centers, each containing up to 50,000 square feet of commercial development, to be categorized as Neighborhood Activity Centers, so long as they are located at the intersection of collector roads,

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[1] Policy 1-20.4(2)d. of the Comprehensive Plan provides, in pertinent part, that properties such as the one owned by Sorrento Commons that lie within the Mt. Plymouth-Sorrento Urban Compact Node and outside of the Wekiva River Protection Area Boundary "*shall* utilize the development regulations of Lake County which pertain to the Urban land use category." (emphasis added).

[2] Policy 1-3A.1 states as follows: "Urban areas should be served by *shopping facilities*, which are designed and planned around market and service areas. These areas are generally categorized under one of the following shopping center types...." (emphasis added).

or at the intersection of a collector and an arterial, and are otherwise consistent with the remaining policies of the Comprehensive Plan.

To interpret the restriction as limiting to 50,000 square feet, in the aggregate, all commercial development within a quarter-mile radius of a given intersection is to read language in the Comprehensive Plan where it does not exist. Furthermore, were Lake County's interpretation to be upheld, it would surely create an unfair burden on those property owners who have similar land development entitlements (i.e., commercial zoning and site plan approval), but only one owner is allowed to pull a permit for 50,000 square feet because it arrived at the permitting office sooner than the other.

Likewise, Lake County's interpretation would allow neighborhood shopping centers to locate up to a quarter-mile away from an intersection, despite the Comprehensive Plan requirement that they be located "at the intersection." The language of Policy 1-3A.1(3)(a) is precise in its requirement that the shopping center be "at the intersection." By comparison, Policy 1-3A.2(a) regarding Community Activity Centers allows that type of shopping center to be either "at the intersection," or "at an appropriate distance from an intersection." Therefore, a quarter-mile standard may be appropriate for Community Activity Centers, but such a standard is contrary to the precise locational criteria for Neighborhood Activity Centers contained in the Comprehensive Plan.

Similarly, this special master finds that there is no basis to support Lake County's claim that the requested zoning amendment is inconsistent with Policy 1-3.4 of the Comprehensive Plan. This policy states that the "density and intensity of commercial uses shall be compatible with the ability of public facilities to provide adequate services according to adopted level of service standards." However, the evidence shows that Sorrento Commons met this requirement when it applied for, and obtained from Lake County, a Deferral of Concurrency Determination prior to the zoning hearing. On its face, the Deferral of Concurrency Determination permitted Sorrento Commons to "defer the concurrency review that is required by Chapter 163, Florida Statutes, pursuant to the Comprehensive Plan and Land Development Regulations" to a later stage in the development process (i.e., at site plan), for the specific purpose of avoiding such a review at the zoning amendment stage. Clearly, it would be unreasonable for Lake County to tell a property owner requesting a zoning change not to worry about concurrency until the site plan stage, only to deny his or her project because it didn't meet concurrency at the zoning stage.

CONCLUSION AND RECOMMENDATION

For the foregoing reasons, this special master finds that Lake County's denial of Sorrento Commons' requested zoning amendment was unreasonable and constitutes an unfair burden on the use of the Sorrento Commons property. I therefore recommend that the Lake County Board of County Commissioners approve the zoning amendment requested by Sorrento Commons.

ISSUED and SUBMITTED in accordance with the requirements of Section 70.51, Florida Statutes, and served on all parties this _____ day of _____, 2010.

_____
Lewis W. Stone
Special Master

cc: Melanie M. Marsh, Esq.
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