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County Attorney
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IN AND BEFORE A SPECIAL MASTER
IN AND FOR LAKE COUNTY

SORRENTO COMMONS, LLC

Petitioner,

File No. SM-1-09

V

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 parties agreed that all statutory procedural requirements prior to the special master hearing had been satisfied. The special master mediation was held on March 1, 2010 and March 4, 2010. As no settlement was reached, a special master hearing was held. The parties agreed that the special master hearing would remain open until April 5, 2010, so that the parties could provide supplemental documentation or proposed orders.

STANDARD OF REVIEW

Florida Statutes Chapter 70.51(19) provides the standard by which the special master provides a recommendation.

The standard is whether or not the special master finds that the development order at issue is unreasonable or unfairly burdens the use of the owner's property.

PROCEDURAL HISTORY

1. Petitioner is the owner of approximately 17.71 acres in Lake County, Florida, located at the southeast corner of the intersection of State Road 46 and County Road 437 (the "Property"). Respondent is a political subdivision of the State of Florida.

2. On or about March 30, 1998, Lake County adopted Ordinance 20-88, which rezoned the Property from PUD (Planned Unit Development) to CP (Planned Commercial). Ordinance 20-88 limited development of the Property to a corporate office, car storage and service center for a fleet leasing company.

3. In May 2009, Petitioner filed an application with the County to amend Ordinance 20-88 to allow for the redevelopment of the Property with commercial uses permitted in the C-1 and C-2 zoning districts, not to exceed 50,000 square feet of leasable building area.

4. On September 2, 2009, the Lake County Zoning Board held a public hearing in accordance with the Lake County Code to consider the Petitioner's rezoning request, and hear argument and evidence from the Petitioner, staff and members of the general public. The Zoning Board approved the Petitioner's rezoning request and submitted its advisory decision to Lake County.

5. On September 22, 2009, Lake County held a public hearing in accordance with the Lake County Code to consider the Petitioner's request, and heard argument and evidence from the Petitioner, staff and members of the general public. Immediately thereafter, Lake County issued a development order which denied the Petitioner's request. The denial was based on the grounds that the Petitioner's request was inconsistent with the Lake County Comprehensive Plan.

6. On October 5, 2009, the Petitioner filed a Petition for a Special Master hearing, alleging that the County had improperly interpreted its adopted Comprehensive Plan, and, in so doing, had unreasonably denied the Petitioner's request for rezoning and unfairly burdened the use of Petitioner's land.

ISSUE

Does Lake County's denial of Petitioner's requested zoning amendment to Lake County Ordinance 20-88, unreasonably and unfairly burden the real property owned by Sorrento Commons?

CONCLUSIONS OF LAW

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 limited commercial uses are permitted within Neighborhood Activity Centers.

Petitioner has argued that the Property is entitled to the benefits of classification as a Community Activity Center. Petitioner's property is not located within a Community Activity Center because: (a) the Future Land Use Map is clear that it is within a Neighborhood Activity Center; and (b) it does not have Urban or Urban Expansion Land Use.

Lake County Comprehensive Plan Policy 1-3A.1, states that Neighborhood Activity Centers are to be located at the "intersections of collectors, or at the intersection of a collector and an arterial," and that they allow "combined commercial allocations from 10,000 to 50,000 square feet of gross leasable area."

Petitioner argues that "Combined Commercial Allocation" is site or project specific and is not intended to include existing parcels within the Center. Petitioner argues that, in particular, those developments in existence at the enactment of the Comprehensive Plan are grandfathered. Such an interpretation would defeat the intent of the Comprehensive Plan.

"Combined Commercial Allocation" means all commercial allocations within the Neighborhood Activity Center. It is not the intent of the language to allow the maximum square footage per project or parcel of land.

Petitioner has argued that the County misreads its Comprehensive Plan where it uses a one-quarter mile radius to calculate existing development.

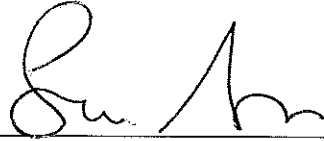
An interpretation that "intersections" are to include all real estate within a one-quarter mile radius is reasonable. An interpretation based on lots abutting the intersection would be susceptible to manipulation based on the size or division of the parcel and could not practicably be used to enforce the purpose of the regulation.

Petitioner's requested amendment to County Ordinance 20-88 which requested 50,000 square feet of new construction in a Neighborhood Activity Center which had existing commercial leasable structures was in excess of the development allowed by the Comprehensive Plan and therefore was not consistent with the Comprehensive Plan.

RECOMMENDATION

Pursuant to the findings above and Florida Statutes 70.57(19)(a), I do not find that the actions of Lake County were unreasonable or unfairly burdened the use of Petitioner's property and recommend that the decision of the Lake County Board of County Commissioners remain undisturbed, and this proceeding is ended subject to the owners retention of all other available remedies.

ISSUED and RESPECTFULLY SUBMITTED in accordance with the requirements of Section 70.51, Florida Statutes, and served on all parties this 19th day of April, 2010.



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Special Master

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