DISPUTE RESOLUTION PROCEEDING UNDER SECTION 70.51, FLORIDA STATUTES

IN RE:

DENIAL BY THE CITY OF OCALA REQUEST FOR REZONING TO R-3 PROPOSED BY 200 CLUB OF OCALA, LLC O/B/O CATALYST DEVELOPMENT PARTNERS II, LLC

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CITY'S RESPONSE TO PETITION

City of Ocala, a Florida municipal corporation ("City"), hereby responds to the Request for "Relief Under the Florida Use & Environmental Dispute Resolution Act [F.S. §70.51]" (the "Request for Relief"), filed herein by 200 CLUB OF OCALA, LLC and CATALYST DEVELOPMENT PARTNERS II, LLC (collectively "Petitioner"), as follows:

1. **Generally**.

1.1. This response is filed by City pursuant to Section 70.51(16)(a), Florida Statutes.

1.2. City is the "governmental entity that issued the development order" at issue in this proceeding, as set forth in Section 70.51(16)(a).

1.3. The development order at issue is the May 3,022 decision by the Ocala City Council to deny Petitioner's application to rezone its property to the City's R-3 zoning classification. Such action by the City constitutes a "development order" as set forth in Section 70.51, Florida Statutes, the "Florida Land Use and Environmental Dispute Resolution Act" (the "Dispute Resolution Act").

2. **Facts**. Petitioner's Request for Relief sets forth mixed statements of facts and legal argument. City generally agrees with the alleged facts set forth in the Request for Relief. Further, City adds the following facts:

2.1. City Council considered the application at two public meetings, the first consisting of introduction and first reading on March 1, and the second and final hearing on May 3, 2022 (following continuances dated March 15 and April 19, respectively).

2.2. At each meeting, the City Council record contained an agenda packet that included, without limitation, the following materials:

2.2.1. Planning Department Staff report.

2.2.2. Minutes of February 14, 2022, Planning & Zoning Commission meeting.

2.2.3. Maps depicting location and existing uses of property as well as surrounding properties.

3. **City Position Concerning Petitioner's Request**. City's response to the requests of Petitioner set forth in the Request for Relief are as follows:

3.1. City believes that Petitioner is entitled to a hearing under Section 70.51(17) of the Act if the parties are unable to resolve the dispute at the first hearing with the special magistrate. Counsel for City and Petitioner have agreed that such a hearing will occur following the parties' efforts to settle this dispute pursuant to the Dispute Resolution Act.

3.2. City disagrees with Petitioner's request that the special magistrate enter findings that the denial of the Application "unreasonably or unfairly burdens the use of" the property. As set forth in greater detail below, the special magistrate should find to the contrary.

4. **Statement of Public Purpose**. As required by the last sentence of Section 70.51(16)(a) of the Act, the public purpose of the City's action is as follows:

4.1. In denying the application for rezoning, City Council was exercising the duties imposed upon it by the City Charter and Florida Statutes concerning the rezoning of Petitioner's property.

4.2. As the Florida Supreme Court has held in *Board of County Commissioners v. Snyder,* 627 So.2d 469 (Fla. 1993), the City's decision to deny the application will be upheld if it is supported by substantial competent evidence.

4.3. *Snyder's* holding was further summarized and applied by the Court in a rezoning case in *Miami-Dade Cnty. v. Walberg*, 739 So. 2d 115 (Fla. Dist. Ct. App. 1999), where the Court stated:

> The Florida Supreme Court, in the *Snyder* decision, succinctly stated the burden that must be met by a property owner and the agency when a request is made to rezone property. The Court held as follows:
>
> > [A] landowner seeking to rezone property has the burden of proving that the proposal is consistent with the comprehensive plan and complies with all procedural requirements of the zoning ordinance. At this point, the burden shifts to the governmental board to demonstrate that maintaining the existing zoning classification with respect to the property accomplishes a legitimate public purpose. In effect, the landowners' traditional remedies will be subsumed within this rule, and the board will now have the burden of showing that the refusal to rezone the property is not arbitrary, discriminatory, or unreasonable. If the board carries its burden, the application should be denied.
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> *Board of County Comm'rs of Brevard County v. Snyder,* 627 So.2d 469, 476 (Fla.1993). Although a zoning change may be consistent with the comprehensive plan, the landowner is not presumptively entitled to such use. Additionally, a property owner is not entitled to relief by proving consistency alone when the board action is also consistent with the comprehensive zoning plan. "Where any of several zoning classifications

is consistent with the plan, the applicant seeking a change from one to the other is not entitled to judicial relief absent proof the status quo is no longer reasonable." *Snyder,* at 475.

> As the *Snyder* court found:
>
> > [T]he comprehensive plan is intended to provide for the future use of land, which contemplates a gradual and ordered growth....
> >
> > [A] comprehensive plan only establishes a long-range maximum limit on the possible intensity of land use; a plan does not simultaneously establish an immediate minimum limit on the possible intensity of land use. The present use of land may, by zoning ordinance, continue to be more limited than the future use contemplated by the comprehensive plan.
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> *Snyder,* at 475, citing *City of Jacksonville Beach v. Grubbs,* 461 So.2d 160, 163 (Fla. 1st DCA 1984).

Miami-Dade Cnty. v. Walberg, 739 So.2d at 117 (emphasis added).

4.4. As applied to this case:

4.4.1. Initially, it must be clarified that the Medium Intensity / Special District Land Use is not purely a multifamily or residential land use designation. In fact, as set forth in the Staff Report (included in the May 3, 2022, City Council agenda), the land use category is intended to facilitate "developments with two (2) or more uses." Further, "this mix is intended to promote a walkable urban form." As indicated in the Staff Report, a wide range of uses are permitted in the category including residential office, commercial, public, recreation, education facilities and institutional.

4.4.2. Petitioner has not met its burden of establishing that its rezoning request is consistent with the City's comprehensive plan because it does not propose a development with two or more uses or promote a walkable urban form.

4.4.3. Notwithstanding the foregoing, if it is determined that Petitioner has proven that the rezoning request is consistent with City's comprehensive plan and that its application complies with procedural requirements of the City's Zoning ordinance, then, pursuant to *Snyder*, the City is prepared to meet its burden by showing that the refusal to rezone was not "arbitrary, discriminatory, or unreasonable." In fact, the City Council's decision not to rezone the party was neither arbitrary, discriminatory nor unreasonable.

4.5. The property's Medium Intensity / Special District Land Use designation provides for a wide range of zoning categories. Denial of a request for rezoning to a specific zoning designation such as, in the case at bar, the City's R-3 zoning district, does not prohibit or preclude rezoning to another available zoning district.

4.6. Further, the City Council was presented with the following competent substantial evidence that supported its decision to deny the rezoning application:

4.6.1. The Council agenda packets, including the maps set forth therein, establish that the property is contiguous to single family residential uses (in the adjacent "Sonoma" neighborhood) and Saddlewood Elementary School. *See Walberg*, 739 So.2d at 117 (Site maps available to local government are substantial competent evidence).

4.6.2. Testimony and agenda packets established inadequate transportation infrastructure evidenced by road congestion and safety issues. Specifically:

a. Policy 12.1 of the City's Comprehensive Plan, cited in the Staff Report, provides that "the City shall require that all development have adequate services and facilities including water, roads…to the extent required by state law, other provisions of this Comprehensive Plan, or the City's Land Development Code."

b. It was established and acknowledged by the applicant that "transportation infrastructure is not currently in place to accommodate the potential level of development." *See* Staff Report, p. 2.

c. While significant road improvements are planned for Southwest 43rd Court (which is part of a large-scale, long-term expansion of four-lane right-of-way circumnavigating the City's southwest quadrant from the existing intersection of SW 42nd Street and SR 200 on the southern end to NW 44th Avenue's intersection with CR 326 on the northern end) informally known as the 44th Avenue Extension, testimony of City staff and the applicant confirmed that such improvements could not currently be funded by the City and were dependent on a state appropriation which had not been approved by Governor Desantis.

d. Significant testimony was presented concerning the current traffic problems on Southwest 43rd Court and adjacent roads (including stacking at its intersection with Southwest 40th Street). Such fact-based testimony by citizens constitutes substantial competent evidence. *Walberg*, 739 So.2d at 117 (Citizen testimony in a zoning matter is perfectly permissible and constitutes substantial competent evidence, so long as it is fact-based.)

e. Factual witness testimony also pointed out the lack of sidewalks in the area, which is a heightened concern due the project's proximity to Saddlewood Elementary School.

4.6.3. Council could have found that Petitioner failed to meet its burden under *Snyder*, to prove that its rezoning was consistent with the City's comprehensive plan in that all the parties, including Petitioner, acknowledge that traffic on Southwest 43rd Court was problematic.

4.7. In its Request for Relief, Petitioner contends that its development was subject to certain conditions including those set forth in the accompanying Chapter 163 Development Agreement, requiring a traffic study and corresponding mitigation and/or proportionate fair share payments. It is important to note that the City is under no obligation and has wide discretion concerning whether to enter into a contract of any kind, including a Development Agreement.

4.7.1. Further, while terms and conditions of a Development Agreement could have been found by City Council to be sufficient mitigation of the lack of concurrency, City Council has discretion to make a zoning determination without regard to matters of concurrency. This may include, but is not limited to, determinations that mitigation is insufficient, that proposed road improvements are incompatible, or that traffic impacts are too intense to be effectively mitigated in light of neighborhood characteristics.

4.8. Testimony and evidence also included concerns about the speed of growth in the neighborhood and the intensity of the proposed development being incompatible with adjacent uses.

4.9. To reiterate, without regard to traffic concerns, Council could have found that Petitioner failed to meet its burden under *Snyder*, to prove that its rezoning was consistent with the City's Comprehensive Plan in that it does not propose a mix of two or more uses.

4.10. Finally, the City Council's decision to deny the application does not unreasonably or unfairly burden the use of Petitioner's property.

4.10.1. The property still has the same lack of zoning designation as it has held since 2013 and since it was purchased by Petitioner (200 CLUB OF OCALA, LLC).

4.10.2. The property has a wide range of available zoning classifications that it may request in the Medium Intensity / Special District category.

4.10.3. Petitioner had no reasonable expectation that City Council would approve this rezoning request to R-3.

5. **Conclusion**.

5.1. Petitioner is entitled to the dispute resolution provisions of the Dispute Resolution Act, including a later hearing by the special magistrate in the event that the parties are unable to settle the matter at the first hearing.

5.2. If such hearings are held, the special magistrate should not find that the City Council's denial of the rezoning application unreasonably or unfairly burdens the use of Petitioner's property. Rather, such decision was supported by substantial competent evidence and may not be overturned unless it is proven to be arbitrary, discriminatory or unreasonable.

WHEREFORE, City responds to the Petition for Relief as set forth above.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished this 20th day of June, 2022, by email to:

- Fred Roberts, Esq. (Fred@kleinandkleinpa.com);
- R. William Futch, Esq. (Bill@futchlaw.net);
- Jeremy T. Powers, Esq. (Jeremy.Powers@marion.k12.fl.us);
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