

**BOARD OF COUNTY COMMISSIONERS****SEMINOLE COUNTY, FLORIDA****MAY 10, 2011**

The following is a non-verbatim transcript of the **BOARD OF COUNTY COMMISSIONERS MEETING OF SEMINOLE COUNTY, FLORIDA**, held at 9:31 a.m., on Tuesday, May 10, 2011, in Room 1028 of the **SEMINOLE COUNTY SERVICES BUILDING** at **SANFORD, FLORIDA**, the usual place of meeting of said Board.

**Present:**

Chairman Brenda Carey (District 5)  
Vice Chairman Carlton Henley (District 4)  
Commissioner Bob Dallari (District 1)  
Commissioner John Horan (District 2)  
Commissioner Dick Van Der Weide (District 3)  
Clerk of Circuit Court Maryanne Morse  
Acting County Manager Joe Forte  
County Attorney Robert McMillan  
Deputy Clerk Eva Roach

Pastor David Knox, Christ Episcopal Church, Longwood, gave the Invocation.

Commissioner Van Der Weide led the Pledge of Allegiance.

**AWARDS AND PRESENTATIONS**

A video was shown recognizing the accomplishments that the Seminole County Cultural Arts Council has done.

Commissioner Dallari introduced Steven Nelson, Seminole County Cultural Arts Council President, and stated Mr. Nelson and the Council's Board have done a lot of work throughout the community in trying to support the arts and trying to find funds for same.

**Motion** by Commissioner Dallari, seconded by Commissioner Van Der Weide to adopt appropriate Resolution #2011-R-87, as shown on page \_\_\_\_\_, congratulating Barbara Ann Riggins for being selected as Seminole County's "Artist of the Year 2011".

Districts 1, 2, 3, 4 and 5 voted AYE.

28DAB. Those present at the meeting will be the five County Commissioners; Acting County Manager Joseph Forte; County Attorney Robert McMillan; Assistant County Attorneys David Shields, Arnold Schneider and Donna Wysong; and a Court Reporter as required by law. She said the meeting will be approximately one hour.

Chairman Carey recessed the meeting at 10:03 a.m. to convene the Attorney-Client Strategy Session in Room 3024, and reconvened the Board of County Commissioners meeting at 10:53 a.m.

Chairman Carey stated the closed Strategy Session has been completed and the BCC meeting is now reopened. The Board has finished their morning session and if there is no other business before Board, she will recess the meeting until 1:30 p.m.

Chairman Carey recessed the meeting at 10:55 a.m., reconvening at 1:30 p.m., with all Commissioners and all other Officials with the exception of Clerk of Court Maryanne Morse, who was absent, and Deputy Clerk Eva Roach who was replaced by Deputy Clerk Jane Spencer, who were present at the Opening Session.

#### **PROOFS OF PUBLICATION**

**Motion** by Commissioner Van Der Weide, seconded by Commissioner Dallari, to authorize the filing of the proofs of publication for this meeting's scheduled public hearings into the Official Record.

Districts 1, 2, 3, 4 and 5 voted AYE.

#### **PUBLIC HEARINGS**

##### **THE SPRINGS PUD MAJOR AMENDMENT/**

##### **Saxon and Clark, Continued**

Continuation of a public hearing from April 26, 2011, to consider a Major Amendment and Rezone to The Springs PUD (Planned Unit Development) and the Revised Final Master Plan and Addendum #9 to the Developer's Commitment Agreement, a portion of Tract 19 consisting of approximately 1.19 acres,

located on the north side of West S.R. 434, approximately 1/4 mile west of Markham Woods Road, as described in the proof of publication, Saxon and Clark.

Joy Williams, Planning and Development Division, addressed the Board to present the request, stating the subject site (Tract 19A) was originally designated recreation and open space for The Springs PUD which was approved in 1977. In 1976, the subject site obtained site plan approval from the Board of County Commissioners for a real estate office which was utilized as commercial use until the building was removed in 2008. Ms. Williams stated that this came before the Board in 1994, and the request to change the permitted uses were denied. In 1996 a lawsuit was filed and a final judgment was issued stating that the Homeowners Association had no ownership, access or easement rights to the property.

Ms. Williams advised that the applicant is requesting a Major Amendment and rezone to allow for CN (Restricted Neighborhood Commercial) permitted uses with the exclusion of the following: fire stations, libraries, locksmiths, luggage shops, physical fitness studios, post offices, public and private schools, shoe repair shops, tobacco shops, and toy stores. This request is compatible with Tract 18 of The Springs PUD adjacent to the east, which also permits CN uses. The subject site will utilize the existing joint access drive from Tract 18 and will maintain the required 50-foot buffer along West SR 434, as well as provide a 25-foot building setback and a 10-foot landscaped buffer along the northern boundary line of proposed Tract 19A. After removing the subject site from the total open space calculations, the PUD still meets the open space criteria as required by the Seminole County Land Development Code.

Ms. Williams noted that on January 25 of this year the Board of County Commissioners denied the request 4 to 1. She stated that the current proposed amendment is consistent with

the previously considered amendment except that the current proposal excludes ten of the CN permitted uses and includes a 10-foot landscaped buffer along the northern boundary line of proposed Tract 19A. She stated that the Planning and Zoning Commission (P&Z) unanimously approved the request with the conditions that the northern buffer be planted with canopy trees, sub-canopy trees and shrubs that will reach 100% opacity within one year of planting, and that the existing canopy trees on the northern buffer be retained.

Ms. Williams stated that staff recommends approval and requested that the Staff Report be made part of the record.

Attorney Damon Chase, representing the applicants Donnie Saxon and Tom Clark, addressed the Board to advise that the application was before the Board in a similar form a few months ago and explained that there was a lot about the history that needed to be presented to the Board that wasn't presented before. On staff's aerial map, Mr. Chase indicated the location of Petty's Meat Market and explained that it was allowed by a 1981 amendment to the PUD which allowed it to be CN zoning with some restrictions even though it is close to the condominiums.

Mr. Chase displayed a rendition (copy received and filed) of the proposed building. He stated this building will stand in the place of the other building that was being used as a commercial building for 30 years. He displayed a list of Permitted Uses (copy received and filed) for the CN zoning and indicated the uses they were deleting which would make it consistent with the 1981 Petty's application. He stated that this application includes a 10-foot 100% opacity landscape buffer on the northern property line. He noted that that is new to this application.

Mr. Chase reviewed a list of Proposed Findings (copy received and filed). He introduced a transcribed portion of a hearing (copy received and filed) and reviewed some of Attorney

Ken Wright's comments with regard to non-conforming use, open space and that it was a temporary office. Mr. Chase read Section 30.451(e) (copy received and filed) of the Land Development Code, Development Standards for Planned Unit Development, which defines Open Space. He stated that it is undisputed that this property for decades has been privately owned and does not qualify as Open Space. He read the Definition of Nonconforming Use (copy received and filed) of Section 2.3 of the Land Development Code. He stated that this property was used for a commercial purpose for 30 years and for the purposes for which it was set up in the original PUD. This property was always permitted to be a commercial use, not a non-conforming use.

Mr. Chase referenced page 5 of The Springs PUD Agreement (copy received and filed) and pointed out that Item #1 does not say temporary use, but says there can be a real estate sales building in that area. He referenced Addendum #5, which was adopted in 1981, which indicates Petty's Meat Market can have CN zoning. He stated their property and the Petty property are almost identical; they sit right next to each other and both front SR 434.

Mr. Chase referred to The Springs PUD Major Amendment (copy received and filed) and discussed compatibility with surrounding properties. He displayed an original map (copy received and filed) of the building. He stated that the building was huge, not a trailer, with a paved parking lot and septic tank which still functions. He indicated on the map the entrance to both Petty's and the subject property, the fence and road behind the property and where the houses are located.

Mr. Chase stated that a non-conforming use cannot be expanded. He displayed a Request for Permitting (copy received and filed) for an expansion to the building, a one-story frame realty office. He stated that the permit was granted and the fire chief signed off. The Seminole County Building Department

issued a permit to expand the structure on November 26, 1980. No variance was ever applied for because it wasn't a non-conforming use and not necessary. He discussed the accompanying documents (copy received and filed) from the Fire Department and displayed a schematic which illustrated the construction changes to a permanent structure.

Mr. Chase displayed a 1977 brochure (copy received and filed), not presented at that last hearing, that Earl Downs created which described The Springs and talks about what a wonderful community it is. He stated that one of the arguments made is that this property was sold and promised to remain open space forever. He noted that on the map in the brochure, their lot and the lot where Petty's is located are the only pink-colored lots. The legend on the map indicates pink is Office Center. The dark green is forest, parks and greenbelt. He discussed the greenbelt area and stated that no greenbelt easement or restriction existed with regard to those two parcels, that they were different.

He referenced a copy of a warranty deed (copy received and filed) from Earl Downs to the Carrolls on August 25, 1977 and noted that the conveyance identifies declarations, covenants and restrictions as they had been recorded. He next referenced a 1984 deed (copy received and filed) for the subject parcel and noted that it does not contain such restrictions. It was not subject to the deed restrictions. He pointed out that the two parcels have never paid an assessment. He stated this information was not presented at the last hearing.

With regard to The Springs not being given an opportunity to purchase the subject property, Mr. Chase referenced Board of Directors Meeting Minutes from The Springs Community Association (SCA) for May 1986 and June 1986 (copies received and filed) which discuss Mr. Downs' offer to sell a parcel of land to the SCA for \$250,000 and the SCA's decision not to purchase. Mr. Chase stated that the developer then sold the

property to Nancy Holmes. He explained that in 1990, the Springs Association sued the developer for a declaratory action.

Mr. Chase referenced page 3 (#13) and page 4 (#17) of the Second Amended Complaint (copy received and filed) and stated that in this, the SCA was essentially saying aren't those properties on SR 434 part of the open space greenbelt. Mr. Chase then reviewed page 4 (d and e) of the Defendant's Motion to Dismiss and Memorandum of Law (copy received and filed) which was filed by the Developer. Mr. Chase stated that Judge Mize on April 1, 1991 issued an Order Granting Defendants' Motion to Dismiss with Prejudice (copy received and filed) which means that the issue could not come back up again. He noted that Judge Mize opined that the Plaintiff was precluded from challenging Defendants' title to the real property at issue. He noted that this was not previously presented to the Board.

Mr. Chase stated that the property owners next came back and applied to change the use of the whole parcel to C-1 on April 12, 1994. Referring to the BCC Minutes and Agenda backup from April 12, 1994 (copy received and filed), Mr. Chase reviewed the staff's presentation and advised that the Board denied the request due to questions of ownership and what the actual use of the property was.

Mr. Chase referenced a February 17, 1995 letter (copy received and filed) from Attorney Ken Wright to John Dwyer, Seminole County Planning Department. Mr. Chase explained that Mr. Wright's letter (with an attached business card) indicates that an additional business, Suncraft Construction, is operating from the subject property and requests that the County cite the property for a code violation. Mr. Chase referenced the Code Enforcement Board minutes (copy received and filed) from June 29, 1995 which indicate that the code violation case (operating a construction business in violation

of the PUD) was dismissed. He then discussed the appeal process for code violation cases and stated that the Code Board's decision was not appealed.

Mr. Chase referenced the language in the 1995 Notice of Special Recreation Lease Purchase Assessment (copy received and filed) which required each unit owner at The Springs to be a member of the Association with various community assessments. He explained that the Petty parcel and the subject parcel are not part of the Association and do not get assessed dues. He stated that members of The Springs are treated differently than the subject parcel and always have been.

Mr. Chase discussed the 1995 lawsuit with The Springs Association. He reviewed the arguments of Counsel on page 3 (#7), page 5 (#10), and page 11 (#20) of the Motion for Summary Final Judgment and Memorandum of Law in Support Thereof (copy received and filed). He reviewed page 5 and page 8 of the Memorandum Brief of Facts in Support of Motion for Summary Final Judgment and the attached affidavits of Nancy Holmes and Tammy Jean Scott (copy received and filed).

Mr. Chase discussed the Stipulated Final Judgment Quieting Title (copy received and filed), which was entered in 1996, and advised that Judge Brock found that the Association had no past, present, or reversionary ownership right, easement right, license right, right of access, or right to compel the conveyance of the Springs Chase property nor the right to initiate a proceeding or lawsuit or bring a defense with respect to any of the foregoing.

Mr. Chase reviewed a Special Warranty Deed (copy received and filed) which conveyed the Recreational Lease property to the Association. He discussed Schedule B (#5) of the Title Insurance Policy (copy received and filed) that the Association received with that deed which lists terms and restrictions. He stated that while all of the property that the Association purchased was subject to the terms listed in #5, the Warranty



Deed (copy received and filed) from Spring Chase to Saxon and Clark has no such language because the property was not subject to those terms. He added that certainly title insurance companies do not miss those particular items when they are writing title insurance (copy received and filed).

Mr. Chase advised that in 2004 Donnie Saxon purchased this property as a commercial property and used it at all times as a commercial property for the storage of his furniture and Saxon and Clark's potential use.

With regard to the argument concerning the property being taken for eminent domain and that being the only reason for the application, Mr. Chase referenced the Department of Transportation Certificate of Value (copy received and filed) which indicated the property value was \$277,800. The reason for the value was because in 2007, the property was listed as a "one-story office non" on the Property Appraiser data sheet (copy received and filed). He referenced DOR Use Code 1700 (copy received and filed) and explained that the "non" means "non-professional service one-story."

Commissioner Henley stated that while a lot of documents have been presented, he believes most of them are irrelevant to the real issue and deal with ownership of the parcel, which was a question between the HOA and the property owner. The issue, in his mind, for the Board to decide is when the Board allowed the placement of an office building on that property, did they rezone the property to commercial. Commissioner Henley requested the County Attorney speak to what the practice was in the past and still is the practice today about allowing offices to be placed on properties for a specific purpose.

Mr. McMillan explained that currently in the code, PUD's can have temporary sales offices while the PUD is being sold out. He stated that was the practice, that the Board would authorize a temporary sales office in a PUD on property that wasn't zoned commercial or anything that supported the

temporary sales office, like model homes in the project. He stated that staff did go back and look at the PUD document which says what Mr. Chase says it says. They tried to go back and find the original Board authorization in 1976 to see if they could find exactly what it said, and none of the documents that they could find actually said it was temporary, although that was the general practice back then and still is today.

Chairman Carey asked if the document, referenced by Mr. Chase, that said that this office was allowed is accurate. Mr. McMillan explained that the PUD document says a real estate office, that had been previously approved in 1976, could be placed on this property that was designated open park land.

Upon inquiry by Commissioner Dallari, Nicole Guillet, Growth Management Director, addressed the Board to state that there was originally one large lot which has now been divided into two lots. She stated her understanding is that it was created by deed. There was a sales transaction that created the two lots. She advised that the lots do meet the County's lot split requirements; they are the correct size and have the correct access. She stated that the lots did not go through the normal lot split procedure and the split was done a number of years ago, but they do meet the criteria for individual lots.

Commissioner Dallari asked Ms. Guillet to review the open space requirements and whether or not this property is part of the PUD open space for The Springs.

Ms. Guillet explained that there is a requirement in the Land Development Code for a minimum of 25% open space in PUD's. The open space has to be available to the public and can't be in private ownership where it is not available to the public. It has to either be a tract that is publicly owned or it can be dedicated to the public through easements. She stated that in The Springs, the open space is available through a combination of both easement and actual tracts.

Upon further inquiry by Commissioner Dallari, Ms. Guillet stated that the subject property was originally designated as open space in the PUD; however, as a result of the Quiet Title action, it no longer qualifies as open space; so it is not a piece of property that could be counted towards the required open space within the PUD.

Upon inquiry by Commissioner Dallari, Ms. Guillet stated that there was a real estate office on the property at one point. As to whether or not a permit could be pulled today to replace the building, she stated that the conditions of the PUD authorize a real estate office on the site; so unless the County Attorney's Office said otherwise, Growth Management would interpret that to allow a real estate office. She said from a planning and development standpoint, a building permit could be pulled to put an office building on the property.

Upon inquiry by Chairman Carey as to whether or not these parcels are or are not part of The Springs' open space, Ms. Guillet stated that she has not reviewed the documents; but based on current definition of open space and the status of the property as a result of Quiet Title, the parcels would not qualify as open space.

Upon inquiry by Commissioner Horan, Ms. Williams stated that Parcels 19A and 19B are separate parcels but are currently all part of Tract 19. Commissioner Horan clarified that Parcel 19A is owned by Saxon and Clark, 19B (referred to as the Poppa Jay's property) is owned by Saxon and Clark, and Parcel 19 is owned by The Springs Association.

Commissioner Horan questioned whether or not, if the Board grants the application, the PUD will still have 25% of open space that is owned by itself or an easement. Ms. Guillet responded yes and Mr. Chase stated they would have 36.56% open space.

A discussion ensued with regard to how 19A and 19B came into existence in 1984.

Mr. McMillan stated that while the two parcels were created by deed, that does not constitute a new parcel for land development purposes. They have not actually gone through the process of splitting them, but they could be split into those two parcels because both parcels, under the code, would meet the requirements for a split. He stated there was not a formal split done through the split process.

Commissioner Horan asked if the use on Lot Number 18 was non-conforming. Mr. McMillan advised that according to the PUD agreement, Parcel 18 was commercial in the original PUD, designated for commercial use while neither 19, 19A, or 19B were. Mr. Chase stated that Parcel 18 became CN in Amendment 5. Mr. McMillan stated that in the original PUD, Parcel 18 was designated commercial office and it was provided that all of 19 would be permanent open park land with the permission to use it as a real estate sales office.

Upon inquiry by Commissioner Horan as to whether or not the existence of a real estate office on 19A would be a non-conforming use, Mr. McMillan explained that would go back to the whole issue of whether or not the office was temporary or not. It was permitted, as it is now. The code today provides that you can have a temporary sales office to sell the lots in a PUD. It was authorized until it was no longer authorized again.

Chairman Carey clarified that according to the documents in the Board's package and what was presented here today, it was allowed to be a real estate office. It didn't say temporary. Mr. McMillan stated that staff could find no document where it said temporary real estate office.

Upon inquiry by Commissioner Henley, Ms. Guillet stated that the condition would not lapse for non-use because it is a condition of a zoning. PUD criteria are zoning criteria. She stated if it had been a special exception and they didn't use it, they could have lost it. If it was, in fact, a legal non-

conforming use, failure to continue that use would have terminated the right to it. She said the determination as to whether or not the condition was terminated depends on whether or not it was a legal non-conforming use. Commissioner Henley stated that it all goes back to the intent of the original Board allowing a building to be used there for that purpose. Mr. Chase stated that the intent of the Board is not legally something that can be relied on and one must go by the documents, especially when talking about 30 years ago and putting people on notice as to what their property can be used for.

With regard to the lot split, Mr. Chase referred to Section 35.2 of the Land Development Code (copy received and filed) which describes the requirements for a lot split and advised that the parcels satisfy the subdivision requirements.

Mr. Chase displayed a map (copy received and filed) delineating green space absent the subject parcels and indicated that the amount is still more than 25%. He pointed out that the Petty's Meat Market parcel approves of their request and that the Association is neutral, neither opposes or approves.

Mr. Chase discussed the damage that was done to the permanent building in the hurricanes and the repair attempts. He stated that Code Enforcement required the building to be repaired or torn down. He explained that after the building was torn down, DOT requested of the County's staff what the status was and staff, unaware of any of the lawsuits, stated that the property would revert back to open space because staff believed it was owned by the Association. The Department of Transportation, on November 4, 2009, then came back and reduced its offer to \$89,000 (copy of Certificate of Value received and filed). He stated that the information provided to DOT was erroneous and DOT changed its offer, which is why the applicant has come to the BCC, the legally appropriate remedy.

Mr. Chase reviewed the current tax bill (copy received and filed) and indicated that the taxes have been paid.

Mr. Chase reviewed the Affidavit (copy received and filed) of Tina Williamson, Planning and Development Division Manager, which was filed in the DOT case and states the advice given to Richard MacMillan, an appraiser hired by FDOT, was incorrect.

Mr. Chase discussed the petitions that were filed at the last hearing and explained why he believes the petition (copy received and filed) was not clear. He displayed a copy of a message blog (copy received and filed) which states that a 10,000 square-foot building would be built. He advised that all they were trying to do is replace what was a deteriorated building with something very beautiful and very similar in size.

Mr. Chase stated that they would like to continue the use of their property for the purposes for which they purchased it and be able to continue their property rights as they were given at the time of purchase. He explained why he believes this is a property rights case and stated the right thing to do is fix this problem and grant the request which is consistent with the rest of the PUD, consistent with what this Board has done before through Amendment 5 of the PUD granting the CN usage to the Petty's lot and he requested the Board's approval.

Upon inquiry by Commissioner Henley, Mr. McMillan stated that Tract 18, Petty's, was designated Commercial Office and then there was the addendum to make it CN. All of Tract 19 was designated as Recreation; and the provision said The Springs, which was this parcel and 22 adjacent acres, would be permanent park land and a real estate office, approved by the Board on June 8, 1976, shall be permitted as shown in this area.

Discussion ensued with regard to the amended uses on these parcels.

Mr. Chase summarized that there was a 30-year-old building, beaten up by the storms, which they tore down and tried to replace. He discussed the DOT problem and advised that before they were cited for the code violation, it was valued at \$18 a square foot which was consistent with the purchase of the property as a commercial use in 2004. It wasn't until after the erroneous statement by this particular government that DOT reduced it down to \$3 a square foot.

Upon inquiry by Commissioner Henley, Mr. Chase stated that he submitted a map that calculates the percentage of open space at 36-plus. He discussed how easements were dedicated over certain parcels of private property in order to maintain the green space, which was the dedication to government which qualified as open space. He added that doesn't exist on their property. Every time there was a lawsuit about that, the property owners have prevailed that the Association has no right, title or claim or any easement over and across the two parcels. He stated that the reason why the lawsuits and the code enforcement hearing are so important to this application is because they show that these two parcels were never treated as being part of the green space or open space.

Brett Lindquist, 1807 Palm View Court, addressed the Board to state that he is the CEO of a mortgage firm about a half of a mile from the location and has dealt with Saxon and Clark on a business level for at least 10 years. He believes this type of business in the area would be a great asset, be well maintained and have a great presence on SR 434.

Jes Baru, 108 Bridgeway Circle, addressed the Board to state that he has lived in The Springs since 1977. He stated that when he first received the circulated petition, he did not understand and believed it would be commercial like Subway and a pizza parlor and was the first one to sign the petition. When he came to the hearing the first time to object, while

listening, he realized that it would be one little building which is better than leaving it as an empty lot.

John Doerr, 121 Autumn Drive, addressed the Board to state that he was representing Allyson Hidalgo who is the owner of Petty's. He stated that Ms. Hidalgo has seen the property not being maintained either by The Springs or the people that have owned it.

Mr. Doerr stated that he has lived in the community for 11 years and has seen the deterioration of the fence in that area. He stated that he and Ms. Hidalgo support this request.

John English's name was announced and it was determined that he was not in attendance.

John Parke, III, 120 Woodmill Road, addressed the Board to state that he is a member of The Springs. He stated he has been a builder/developer and believes that what is being proposed will be a great buffer between the commercial and office residential. It will greatly enhance the value of the property as well as make The Springs more valuable. He said the entrance to The Springs is unkempt and needs to be upgraded because it is an eyesore for the entire community of Seminole County.

Mr. Parke pointed out that The Springs had an opportunity to buy the property in 1985 and passed on it. He stated that again in 1995, when they bought the rec lease, they did not make an offer for 19A and 19B. In his opinion, The Springs wants all of the benefits of the property but none of the responsibility of the ownership. He requested that the Commissioners approve the item and enhance the entire area.

John English's name was again announced and it was determined that he was not in attendance.

Attorney Ken Wright, Shutts and Bowen, addressed the Board to state that he represents a number of homeowners from The Springs who are in opposition to the application. Mr. Wright reviewed a document (copy received and filed) which was an



objection by the owner in 1994 to the Property Appraiser's assessment of that property as being other than open space and recreation. He stated that there was a subsequent reduction in the taxes.

Mr. Wright provided a PowerPoint presentation (copy received and filed) that outlines an argument that he made 90 days ago to the Board. He requested that the minutes from the January 25, 2011 BCC meeting (copy received and filed) and the minutes from the BCC meeting 16 years prior (copy not received and filed) be made a part of the record.

Mr. Wright stated he believes the arguments that Mr. Chase articulated are the same from the prior hearing. He stated that it is difficult to elevate the legitimacy of having a hearing on essentially the same application twice in 90 days and believes the changes that have been mentioned are insignificant. He believes this is about the condemnation action and an attempt to gain a property value for a temporary sales office.

Mr. Wright stated this may be about property rights but there are two sides with property rights. He believes this was the first PUD in Seminole County and that a sales office was allowed in The Springs PUD. It did not state, as did the property to the east, that it was going to be future commercial. It stated that it was going to be open space and that within that area was an ideal location for a temporary sales office for The Springs PUD.

Mr. Wright stated that the answer to this matter is neither in the Land Development Code, nor in staff's recommendation; but rather, the answer rests in the Commission's good judgment.

Linda Shakar conceded her time to Mr. Wright.

Mr. Wright continued that the Board made Findings of Fact as recently as 90 days ago. He stated he is not sure that it is right that he is here and that the Saxon folks are here.

These processes, which are required of the County and required of the applicant, are to protect and, in this case, to protect a group of homeowners from needing to come to the Board and mount an objection every 90 days. He does not see anything in this application that distinguishes it from the previous application other than an explanation about a number of issues in a lawsuit having to do with very esoteric legal issues having to do with a quiet title action determining ownership to a piece of property which The Springs people knew they didn't own and did not purchase.

Mr. Wright noted that four of the Commissioners decided 90 days ago that it was an inappropriate use, and he requested that the Board do that again today.

Robert Shakar, 125 Red Cedar Drive, addressed the Board to discuss three flaws (copies received and filed) in the application. He reviewed Flaw 1 which deals with open space allocations. He stated that the applicant has supplied a chart that changes the open space allocation. In Flaw 2, Mr. Shakar directed the Board to Addendum 3 of The Springs PUD dated September 25, 1979 regarding all property owners being a member of The Springs Community Association. He reviewed Flaw 3 which deals with permanent open park land. Mr. Shakar stated permanent means forever, it should not be changed.

Walter Temple, 105 Sand Pine Lane, addressed the Board to state that he has been a resident of The Springs since 1977. He stated that he is surprised they did not have to wait a year or more to come back and does not see any substantial change from 90 days ago. He stated he does not see any changes since 1970, the 1977 Master Plan and 1994, when he appear before the Board.

Mr. Temple gave a brief history with regard to the commitment from the developer for permanent park land which was 22.46 acres in Tract 19. He stated that developer first leased the land; and due to a state law change, he then had to sell

the property. Upon the sale, three acres ended up in the developer's personal hands.

Mr. Temple stated in '94, he was offered the property along with the realty company. After meeting with the staff, he was convinced that it was open land and it was a temporary sales office so it made no business sense to buy it.

With regard to condemnation, Mr. Temple stated that he believes that seller to Saxon Clark and Saxon Clark missed a wonderful opportunity to right a wrong and get a return of their investment.

Nancy Kennedy conceded her time to Mr. Temple.

Mr. Temple continued that twice this item has been denied by the Board and he requests that they do it a third time.

Donald Ullrich, 131 Bridlewood Lane, addressed the Board to state that while they didn't put temporary or a date for removal of the sales office in 1977, in '81, when the same developer, Mr. Downs, asked for a sales office for Springs Landing, it was temporary and he got a closing date. He stated that the statement that is in the PUD, permanent open park land, was believed when they bought.

Mr. Ullrich stated that the land that was recreational and open space was to be turned over to the community. He stated that the second mistake made in the process was when Mr. Downs decided to sell the land and not turn it over to the Association. He believes the only way to correct that mistake is to not let the land be developed any further. He stated he opposes the proposal for rezoning.

Linda McAleer, 264 Spring Run Circle, addressed the Board to state that she was the president of The Springs Community Association Board of Directors when this came before the BCC in 1994. She stated that The Springs was the first PUD in Seminole County and staff admitted to not having any previous experience with PUD's and to learning as they went along. She advised that the PUD showed residential and commercial areas to

be developed but also the recreational and open spaces that would not be developed.

Ms. McAleer described the temporary sales office that was located next to the commercial property that is Petty's Meats and stated that the parcel was described as open space and located adjacent to the clubhouse parking lot and recreation area. She described the neighborhood's perimeter fence and stated that there was a gate in that fence which allowed for easy access for realtors and prospective buyers yet maintained neighborhood security. She discussed comments made by the realtors with regard to the area being an open space barrier between the recreational area and SR 434.

Ms. McAleer stated that the developer did come to the Association wanting to sell the open space parcel. She stated that everyone had been told that that parcel was part of the recreational area.

Toby Robinson conceded her time to Linda McAleer.

Ms. McAleer continued that the developer did sell the parcel and the new owner tried to change the PUD in 1994. She stated that the original surveyor's description for the recreation lease had, in fact, omitted the parcel in question from the legal description of the recreation area but still left it as open space. The developer made no effort to change the PUD designation from open space to commercial. In 1994 when The Springs Community Association Board objected to changes in the PUD, the BCC voted 5-0 against the request to change the zoning. Ms. McAleer described the attempt by the owner to sell the property to the Homeowner's Association.

Ms. McAleer stated that she does not feel it is the responsibility of the Homeowner's Association or Seminole County to make sure that no one suffers a financial loss from making a poor investment. Changing the PUD will be a bell that cannot be unrung in the future. She stated that the purpose of a PUD is to totally plan a neighborhood, including the

commercial outparcels, and protect the residents of that neighborhood. She requested that the Board vote no.

Christina Lathrop, 328 Spring Run Circle, addressed the Board to state that she has been a practicing landscape architect in Central Florida for over 20 years whose work is primarily commercial. She stated that she is very much opposed to the possible precedent that is potentially being set here today. In the original PUD, this parcel was conceived as permanent open park land. She believes that the property ownership issue is muddying up the fact that it is currently zoned recreation open space and that the original intent was a temporary sales office. She discussed the watershed, aquifer (how allowing permanent commercial use will infringe on the spring), and the fact that currently there is pervious land within the immediate spring watershed.

Chairman Carey pointed out that this particular site currently has a parking lot on it.

Ms. Lathrop stated that she does not believe it is possible to create 100% opacity. She stated that she is opposed to the amendment change.

Upon inquiry by Commissioner Horan, Ms. Lathrop stated that to be 100% opaque would be impossible because of air space, movement and the fact that the parcel is shady.

Upon inquiry by Chairman Carey, Ms. Lathrop stated that there is the fence line, the access road on The Springs property and then the wooded area that slopes down to the spring.

Ronald Kenney, 113 Wild Holly Lane, addressed to Board to state that he and his wife have owned two homes in The Springs since the early '90's. He submitted Petitions, as shown on page \_\_\_\_\_, with the signatures of 335 Springs residents opposing the rezoning. He stated that the financial support for the effort has come from the voluntary contributions of these people and is not part of the Association's budget. Mr.

Kenney stated that he believes The Springs is a special place and the PUD should not be amended.

Chairman Carey recessed the meeting at 3:30 p.m., reconvening at 3:37 p.m.

Attorney Vicki Levy Eskin, 100 Woodmill Road, addressed the Board to state that she lives in The Springs and is representing several homeowners that live in The Springs. She discussed a Title Search Report (copy received and filed) on Tract 19 that she had prepared. She stated that the search took nearly three and a half weeks, instead of the usual two to three days. She stated she requested a search on the entire Tract 19 and that it did say that the tract was subject to the PUD amendment. Ms. Eskin stressed that this is not an ownership issue. She stated that just because she and her husband own their property, that doesn't mean that she can erect a cell phone tower or knock down the building and put up a law office. It means that she would have to come back and request a zoning change and have a darned good reason for the request.

Ms. Eskin stated that she believes everyone speaking on the other side has a pecuniary interest. She referenced the site plan from 1976 (copy not received and filed) that specifically refers to the plat as a sales office.

H. Gold conceded her time to Vicki Levy Eskin.

Ms. Eskin continued that ownership does not mean that you can do whatever you want, and she believes this is all about money. She stated the Board should make its decision, not based on money, but based on whether or not the building will benefit the people that live in The Springs. Ms. Eskin stated that it is not easily accessible to get to either Petty's or this piece of property. She described how the fence and the property that the sink hole is on has deteriorated and stated that both are owned by Saxon and Clark. She stated that the people who live in The Springs do not want this and believe it

is not the right time for this Board to change the decision it made 16 years ago or 90 days ago.

Barbara Gibson, 107 Wild Hickory Lane, addressed the Board to state she has lived in The Springs for 19 years. She described the wildlife in the community. She stated she feels strongly the area attempting to be rezoned should remain open space as it has been since the PUD was established in the mid-1970's. She stated there was a small real estate office approved by the BCC in 1977 to help the developer sell out the establishment, but the parcel was not rezoned. She stated that the area running from the commercial area established by the developer on the corner of SR 434 and Markham Woods Road to the entrance to The Springs was kept an open area. She discussed the rezoning effort in 1994 which was denied by the BCC. She believes that most of the objections in the earlier request still exist today. She asked that the Board deny the request to rezone.

Rhoda Phillips conceded her time to Bob Shakar.

Mr. Shakar stated that Mr. Chase had indicated that on the site there is a septic tank still in operation. He submitted the State of Florida Department of Health construction permit(copy received and filed) that indicates that the septic tank has been destroyed and removed. He added that he has verified with Utilities, Inc. that there is no sewer line going to the site.

Mr. Shakar stated that The Springs made a mistake when they thought they were buying all of the property and it did not happen that way. What was said to them was you should have known, too bad. He stated that the property owner knew what the previous zoning situation was, knew what the allocation was for this neighborhood and yet they are still here saying they should be able to change this. He stated this is a property rights issue in the sense that the residents had a contract with the County which says permanent open park land. Mr.

Shakar stated that there is nothing new in this application. He stated that permanent open park land means forever.

John Ondo conceded his time to Ken Wright.

Mr. Wright stated that this application is not significantly different and is essentially the same one that was filed 90 days ago. He requested that the Commissioners look at the application and not the argument that has been made.

Don Eskin, 128 Woodmill Road, addressed the Board to state that he is opposed and hopes the Board's decision is the same as it was 90 days ago and the time before that. He has heard nothing new.

Belinda Davis's name was announced and she stated that she had previously surrendered her time.

Barbara Perez, 134 Wisteria Drive, addressed the Board to state that she has lived in The Springs since 1978. She stated she is here to bring the Board's attention to past decisions made in regard to zoning and development. She believes the best prophet of the future is the past. She discussed the last parcel that was developed in the Sabal Point subdivision, which backs up to property in The Springs, regarding drainage onto her property. She stated that her property is as good as a retention pond and is being destroyed because permission was given to build in an area that has created insurmountable problems to others. Ms. Perez submitted photographs (received and filed) of her property. She stated that she has concerns that commercial development on this elevated site will have a dramatic effect for the future of The Springs.

Mike Wadley, 14 East Washington Street, addressed the Board to state that he is a professional land planner and has been asked by some of the residents to evaluate the zoning request. He stated that the request should be denied based on the opinion that he does not believe there can be a finding of consistency between the Future Land Use map and the zoning.



Although they are PUD, there cannot be a zoning that is inconsistent with the Future Land Use map and the Future Land Use map designates this parcel as part of a 22.46-acre permanent open park land tract. That is in the developer's commitment agreement and in the PUD documents. He stated that the Future Land Use map would need to be amended before you could rezone. Mr. Wadley stated that the finding in 1994 was that commercial land use would be inconsistent with the developer's 1976 commitment to maintain this property as part of the 22.46 acres of open space land.

Upon inquiry by Commissioner Horan, Mr. Wadley stated that by statute there cannot be any development that is inconsistent with the Future Land Use designation. If there is a rezoning request that is inconsistent with the Future Land Use, you first have to amend the Future Land Use before can you amend the zoning. He stated that while the Future Land Use is PD, the tract is designated as permanent open park land.

Upon inquiry by Chairman Carey, Ms. Guillet stated that staff's interpretation is that the change in use would be consistent with the PD land use designation.

Bonnie Bloom's name was announced and she declined to speak.

In rebuttal, Mr. Chase stated that the land use was consistent with the Future Land Use map (copy received and filed). He noted that he had previously showed a picture of the river that runs in between the houses and the subject property so there will not be any flooding.

Mr. Chase stated the things new to this application are the brochure, the code enforcement matter, the additional lawsuit, the historical use of the property plus an affidavit to better explain the DOT matter. He stated that most importantly, he offered information to rebut earlier claims with regard to non-conforming use, open space and there being a temporary building, a trailer.

Mr. Chase stated that there is no legitimate public purpose for denying this application. It is consistent with the PUD and consistent with Petty's Meat Market. With regard to this property remaining an open space, he noted that this parcel has not been an open space since the 1970's and it does not qualify as open space. It has been used for a commercial purpose at all times since the 1970's.

Mr. Chase stated that while Mr. Kenney submitted petitions with 335 signatures, there are 2,500 people in The Springs which means there are 2,115 people who did not sign the petition. He stated that he believes the statements in the petition are misleading. This is not a non-conforming use or a temporary structure or open space.

With regard to the landscape buffer, Mr. Chase stated that 10 feet of viburnum would be 100% opaque and added that the 10 feet would not be in the shade. He reviewed the brochure that shows that the subject lot was designated office center. He noted when people were going out to purchase property, they weren't going to the public record and reviewing the PUD but were likely looking at the brochure which did not promise open space.

Chairman Carey stated that at the time that the developer brought The Springs forward, it was with great controversy that the BCC allowed it to be developed because it was a favorite swimming hole of many people in Central Florida.

Mr. Chase stated that the developer offered the property to The Springs and they did not purchase it.

With regard to the objection to the way the property was being classified and taxed as discussed by Mr. Wright, Mr. Chase clarified that that was for a separate parcel, the Poppa Jay's property. He stated that this has come forward this time with the proper information, with the full support of Planning and Zoning and with the full support of staff recommending approval. He requested that the Board approve the application.

Commissioner Horan asked if allowing people to get the value of what they purchased is a legitimate public purpose for the Board to serve and requested that the buffer issue be addressed.

Mr. Chase stated that there is a huge buffer and that no house can be seen from this property. He stated that they are adding an additional buffer which is not even required as it is now. He stated that they could go pull a permit tomorrow to build a building and would not have to put up any buffer. He indicated on staff's map the location of the houses.

Mr. Chase stated that the people who purchased, unless they purchased in the last several years, purchased with a building there operating with a commercial use. That is what they were promised and that is what they got. He stated that in contrast, Mr. Saxon and Mr. Clark purchased the property for commercial use; and except for eminent domain and the fiasco with code enforcement and the mix-up in communications between two government entities, they would be being stripped of their rights, stripped of about \$177,000. If you break it down to one right versus another right, Mr. Chase advised that you take the one that is least burdensome. He stated that there is no effect on these people by keeping a building on this property the way that it has been for 30 years compared with stripping somebody of their property rights for absolutely no apparent reason.

No one else spoke in support or in opposition.

Speaker Request Forms and a Written Comment Form were received and filed.

Chairman Carey described her subdivision, one of the oldest on Markham Woods Road, and explained how they had to come to the BCC to have the green space in their community vacated. She stated that the rules were different in the past.

Commissioner Dallari stated that he feels he has definitely received a lot of new information. He stated that after Ms. Guillet answered his questions with regard to open space, lot split and the non-confirming usage, he understands that the applicants can pull a permit today if they applied. He believes there is no reason not to grant the CN usage, that CN usage on SR 434 is appropriate.

Commissioner Henley stated that this has been before this Board on two occasions, and he feels that nothing has changed other than the fact that the lot is smaller and that there is a new owner. He stated that ownership has never been an issue before this Board, that the issue has always been land use. He said he heard testimony that you cannot use private property for open space yet that is what has happened in this PUD in order to meet the requirements.

Commissioner Henley stated that while someone could pull a permit today and build a building, based on the testimony that he has heard the only thing that could be built is a real estate office which is not what the owner intends to build.

Commissioner Dallari stated that open space does mean quite a bit. He noted that this is not a part of the open space of The Springs, is not an illegal lot split, and is not a non-confirming use.

Chairman Carey stated that the way things were done in the '70's and the way they are done today are different. Greenbelts were placed on private property and put in the legal descriptions; and, as she said before, the people in her subdivision had to come to the BCC and actually vacate those to get them cleared off the title. She believes that is probably the same scenario at The Springs since it all happened in the same time period.

Chairman Carey stated that she supported this the last time because this parcel is totally segregated from The

Springs. She added that the access to this parcel, as one of the speakers said, is not from The Springs, but from SR 434.

Commissioner Henley stated that it is the rules of the day that say you can't use private property for open space. It was set up years ago and they are applying the rules of today, that you can't use private property for open space.

Upon inquiry by Commissioner Van Der Weide in regard to how this item came back to the Board within 90 days, Mr. McMillan advised that the Board waived the one-year waiting requirement. He explained the 70.51 claim that the property owner filed. He stated that the property owner agreed to waive that whole process if the Board would waive the 12-month waiting period.

Discussion ensued with regard to the 70.51 process.

Commissioner Van Der Weide stated he is going to vote against this item and believes this is just legalese.

**Motion** by Commissioner Van Der Weide, seconded by Commissioner Henley, to deny the request for a Major Amendment; and deny approval of an ordinance to rezone from PUD to PUD; the revised Final Master Plan and Addendum #9 to the Developer's Commitment Agreement; and authorize the Chairman to execute the Denial Development Order, for a portion of Tract 19 consisting of approximately 1.19 acres, located on the north side of West SR 434, approximately 1/4 mile west of Markham Woods Road; as described in the proof of publication, Saxon and Clark.

Under discussion, Mr. McMillan further explained the 70.51 process.

Districts 3 and 4 voted AYE.

Commissioners Dallari, Horan and Carey voted NAY; whereupon, the **motion failed** for the lack of a majority vote.

**Motion** by Commissioner Horan, seconded by Commissioner Dallari, to approve the request for a Major Amendment; approve Ordinance 2011-13, as shown on page \_\_\_\_\_, to rezone from PUD

to PUD; approve the revised Final Master Plan and Addendum #9, as shown on page \_\_\_\_\_, to the Developer's Commitment Agreement, for a portion of Tract 19 consisting of approximately 1.19 acres located on the north side of West SR 434, approximately 1/4 mile west of Markham Woods Road; as described in the proof of publication, Saxon and Clark.

Districts 1, 2 and 5 voted AYE.

Commissioner Henley and Commissioner Van Der Weide voted NAY.

Information regarding The Springs PUD, Notice of Rights, Information why the application should be granted PD Amendment and June 8, 1976 Minutes were received and filed.

List of E-mails/telephone calls from District 3 and Letters of Support and Opposition were received and filed.

**BOARD OF ADJUSTMENT APPEAL/Nathaniel Zack**

Proof of publication, as shown on page \_\_\_\_\_, calling for a public hearing to consider a request to Appeal the Board of Adjustment's decision to deny an amendment to an existing special exception for a recycling center in the M-1 (Industrial) zoning district at 295 Lyman Road; located southeast of the intersection of County Road 427 and Lyman Road, Nathaniel Zack, received and filed.

Kathy Hammel, Planning and Development Division, addressed the Board to advise that Item #28 is being heard first because that establishes the use of the special exception of the property while the variance (Item #27) and the active/passive buffer requirement waiver (Item #24) would be accessory to establishing the use.

Ms. Hammel stated that this is an appeal of a denial of an amendment to a special exception for a recycling center that was established in 1993. This amendment would enlarge that use. She reviewed a revised Approval Development Order (copy received and filed), in which the applicant has addressed the