



3. Petitioner owns real property in Lake County, Florida, consisting of approximately 541 acres of land generally located south of State Road 50 at Emil Jahna Road (the "Property").

4. Petitioner's representative is Cecelia Bonifay, Esq., Akerman Senterfitt, Post Office Box 231, Orlando, Florida 32802, (407) 423-4000. The representative's address shall be the address for service purposes during the course of this proceeding.

#### NOTICE OF AGENCY ACTION

5. In accordance with Section 163.3184(9), Florida Statutes, the Department issued its "Notice of Intent" (the "Notice of Intent"), Department Docket No. 10-1ER-NOI-3501-(A)-(I), to find the amendment to the Lake County Comprehensive Plan (the "Plan"), adopted under Lake County Ordinance No. 2010-25 (the "Plan Amendment"), "in compliance," as that term is defined in Section 163.3184(1)(b), Florida Statutes.

6. Petitioner received notice of publication of the Notice of Intent in the July 3, 2010, edition of the *Orlando Sentinel – Lake Sentinel*. A copy of said Notice of Intent is attached as Exhibit "A."

#### PETITIONERS' STANDING

7. Petitioner is an "affected person" pursuant to Section 163.3184(1)(a), Florida Statutes, by virtue of owning the Property within unincorporated Lake County and having submitted oral and written comments to the County objecting to the Plan Amendment during the period of time beginning with the transmittal hearing and ending with the adoption hearing.

8. Petitioner's substantial interests are and will be adversely affected by adoption of the Plan Amendment because it amends the future land use designation of the Property from a combination of Urban and Rural to Regional Office. If approved, this change would conflict with Petitioner's planned use of the Property as a residential subdivision for which Petitioner

obtained zoning approval in March 2006 and for which preliminary plat approval is currently pending. The Property is approved for 894 age-restricted residential units under the current PUD (Planned Unit Development) zoning. See Exhibit "B" attached hereto. Unless Petitioner incurs substantial expense to vest the approved use from the Plan Amendment, those approvals will be lost and Petitioner will be forced to rezone the Property and start the site plan approval process from the beginning. Moreover, Petitioner stands to lose significant value in the Property due to the lack of demand for new office space in south Lake County.

9. Furthermore, Petitioner's substantial interests are and will be adversely affected by the adoption of the Plan Amendment because it is not supported by adequate data and analysis, is not compatible with the character of adjacent land uses, is internally inconsistent with the County's comprehensive plan, and it fails to adequately balance the property rights of the landowner.

#### MATERIAL FACTS IN DISPUTE

10. Whether the Plan Amendment is "in compliance" with Florida law, as that term is defined in Section 163.3184(1)(b), Florida Statute.

#### ULTIMATE AND SPECIFIC FACTS ALLEGED

##### Ultimate Allegation

11. The Plan Amendment violates Sections 163.3177(6)(a) and (8), Florida Statutes, and Rules 9J-5.005(2) and 9J-5.006(2), F.A.C., because it is not based on adequate data or analysis for reasons including, but not limited to, those set forth in Sections 12 – 13 below.

##### Specific Allegations

12. The Plan Amendment attempts to change the Property's future land use classification from a combination of Urban and Rural to Regional Office without adequate

supporting data and analysis, and without Petitioner's consent. Since the Lake County Comprehensive Plan was initially adopted over 19 years ago,<sup>1</sup> the Property has been designated a combination of Urban and Rural on the County's Future Land Use Map. The northern one-half of the Property is designated Urban which authorizes a variety of commercial and non-commercial uses, including general commercial, retail, office, industrial and residential up to a maximum density of 7 dwelling units per acre, which is consistent with the Property's urban characteristics. The Property is contiguous to the municipal limits of the City of Clermont, the largest municipality by population in Lake County. The Property is located within the Lake County – City of Clermont Joint Planning Area, a district created pursuant to Section 163.3171(1) and (3), Fla. Stat., for the purpose of planning the development of properties expected to be annexed into the City of Clermont. The Property is located within the City of Clermont utilities district and water and sewer are in close proximity to the site. The Property has direct access to State Road 50, a six-lane major arterial roadway which is part of the Florida Intrastate Highway System and Strategic Intermodal System, from Emil Jahna Road. In March 2006, Lake County approved the rezoning of the Property to PUD (Planned Unit Development) for the development of an age-restricted residential community consisting of 894 single-family and multifamily (townhome) units. Following zoning approval, the Property was under contract to a homebuilding company and engineering plans and environmental studies were submitted to the County in order to begin the preliminary plat approval process. Although plans to develop the site were put on hold due to the subsequent collapse of the Florida housing market, the Property remains well positioned for mid to high-density residential development in the near future. Despite the overwhelming amount of evidence demonstrating the Property's suitability

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<sup>1</sup> The existing Lake County Comprehensive Plan was initially adopted on July 9, 1991, pursuant to Ordinance 1991-12, according to the existing Lake County Comprehensive Plan, page 3.

for residential development, the Plan Amendment would prohibit this type of development from occurring. The data and analysis relied upon by the County to limit use of the Property to Regional Office is neither relevant nor appropriate because it fails to adequately consider existing technical studies and the best available existing data applicable to the Property, in violation of Rules 9J-5.005(2)(a) and (2)(c), F.A.C. Additionally, the Plan Amendment fails to recognize private property rights in violation of Rule 9J-5.005(8), F.A.C., because it ignores the nature and extent of development allowed on the Property by right under the existing PUD zoning. The Plan Amendment fails to analyze the availability of facilities and the suitability of the Property for future residential development, as well as the amount of land needed to accommodate the projected population, in violation of Rule 9J-5.006(2), F.A.C.

13. The Plan Amendment impermissibly causes the County's Future Land Use Map to be over-allocated with future office use. The Plan Amendment designates over 4,800 acres as Regional Office throughout the County,<sup>2</sup> with no marketing or demand studies that would support this designation. Rather than limit these lands to such a narrow use as office, the County should designate these lands as Regional Commercial to allow a greater variety of uses to better accommodate fluctuations in market demand. By merely guessing at the levels of future demand for office space in Lake County, the Plan Amendment is not based on "relevant and appropriate" data and analyses that is collected and applied in a "professionally acceptable manner" as required by Rules 9J-5.005(2) and 9J-5.006(2), F.A.C.

### **General Allegation**

14. The Plan Amendment is inconsistent with Rule 9J-5.005(6), F.A.C., because the goals, objectives and policies do not establish meaningful and predictable standards for the use and development of land, do not provide meaningful guidelines for the content of more detailed

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<sup>2</sup> Future Land Use Element, Data Inventory & Analysis, Planning Horizon 2030, Table 8 – Future Land Use Map profile.

land development and use regulations, and do not allow for implementation in a consistent manner for reasons including, but not limited to, those set forth in Sections 15-20 below.

**Specific Allegations**

15. Regarding the standards applicable to the Regional Office future land use category, Policy I-1.3.6 of the Plan Amendment states: “This category is intended to accommodate office development which exhibits a high level of site and building amenities to include extensive landscaping, plazas and pedestrian/employee-friendly gathering areas, central building entrances, enhanced building and site security features, and accessory uses included within the building footprint.” Based on this language, it is unclear whether the Plan Amendment would allow a small parcel of property (*i.e.*, less than one acre) to be developed with a stand-alone office building where hardly enough land area exists for parking and stormwater, much less extensive landscaping, a plaza for employee gatherings and other “high level,” but unspecified site amenities. Such vague and subjective standards violate Rule 9J-5.005(6), F.A.C., which requires the use of meaningful and predictable standards for the use and development of land.

16. Policy I-1.3.6 of the Plan Amendment states: “Only commercial uses that support this category [Regional Office] shall be permitted, such as restaurants, cafes, associated retail/wholesale, daycares or shops located within an office park or office building. It is the express intent of this provision to restrict highway-oriented commercial uses.” This language lacks predictable standards regarding whether or when commercial may be developed on the Property. For instance, may commercial be developed on the Property if it is not already improved with an office building but an office is planned for the property in the future? Further, the Plan Amendment lacks a definition for “office park,” so Petitioner is unable to determine

whether commercial is an allowed use on the Property if an office will be constructed near to, but not physically on the Property. By contrast, Rule 9J-5.005(6), F.A.C., requires the use of meaningful and predictable standards for the use and development of land.

17. Policy III-3.5.6 of the Plan Amendment states: "The County shall implement policies and Land Development Regulations to minimize the effects of recontouring the land surface, resource excavation and mining on ground and surface waters." The Property has been used for mining purposes in the past and is currently in the reclamation phase. Without more specifics, this policy does not establish meaningful and predictable standards to guide Petitioner's reclamation activities and the future development of the Property, nor does it provide meaningful guidelines for the content of more detailed land development and use regulations, in violation of Rule 9J-5.005(6), F.A.C.

18. Policy III-2.1.5 of the Plan Amendment states: "The County shall require the use of water conserving plumbing fixtures in all new development." The Plan Amendment does not define the term "water conserving plumbing fixtures," leading to the inconsistent application of this Policy and the lack of meaningful and predictable standards for the use and development of land in violation of Rule 9J-5.005(6), F.A.C.

19. Policy III-2.1.11 of the Plan Amendment states: "Lake County shall prohibit land uses which are known to pose a severe threat to the availability of groundwater resources or whose practices are known to pose a severe threat to the quality of groundwater." This Policy lacks meaningful and predictable standards as to what constitutes a land use that "poses a threat to the availability of groundwater resources or whose practices are known to pose a severe threat to the quality of groundwater" in violation of Rule 9J-5.005(6), F.A.C.

20. Policy III-2.1.25 of the Plan Amendment states: "All new private central wastewater systems ... shall be designed and built as *advanced wastewater treatment systems....*" (emphasis added). The Plan Amendment does not define the term "advanced wastewater treatment system," leading to the inconsistent application of this Policy and the lack of meaningful and predictable standards for the use and development of land in violation of Rule 9J-5.005(6), F.A.C.

### **General Allegation**

21. The Plan Amendment violates Rule 9J-5.005(5), F.A.C., because it is internally inconsistent for reasons including, but not limited to, those set forth in Section 22 below.

### **Specific Allegations**

22. Policy I-1.3.6 of the Plan Amendment is internally inconsistent. On one hand, this policy allows "[l]imited residential use in mixed use commercial buildings or as stand-alone multi-family units as part of a mixed-use development." However, the same policy limits the number of multi-family units to "no more than one (1) unit per 10,000 square feet of Gross Leasable Area of commercial space." Because the same policy also limits commercial space to nothing more than an accessory use within an office building or office park, it is difficult to imagine any commercial development exceeding 10,000 square feet as a practical matter. Since 10,000 square feet of commercial space is sufficient for only one multi-family unit, it is reasonable to assume that no multi-family units will be developed on property that is designated Regional Office, thus rendering the first part of Policy I-1.3.6 a nullity.

### **General Allegation**

23. The Plan Amendment violates the requirements of Section 163.3161(9), Fla. Stat., because it fails to protect private property rights and is inconsistent with the property rights goals

and policies of the State Comprehensive Plan in Section 187.201(15), Fla. Stat., for reasons including, but not limited to, those set forth in Sections 24 – 26 below.

**Specific Allegations**

24. The Plan Amendment fails to recognize private property rights in violation of Rule 9J-5.005(8), F.A.C., because it ignores the nature and extent of development allowed on the Property by right under the existing PUD zoning.<sup>3</sup>

25. Policy II-1.1.6 of the Plan Amendment contains development standards for stormwater management above and beyond that required by the applicable water management district. These standards create an additional layer of regulation that is unduly burdensome on private property rights.

26. The Plan Amendment represents the adoption of an entirely new comprehensive plan by the County with no implementing Land Development Regulations. Instead, the Plan Amendment relies upon the County's existing Land Development Regulations to fill the void until new regulations are in place. The Plan Amendment controls in the event of a conflict with the existing Land Development Regulations, per Policy I-7.13.7. However, in Petitioner's case, the existing Land Development Regulations are silent regarding the implementation of the Regional Office future land use category because that category did not exist prior to the Plan Amendment. Still, Policy I-7.13.7 states that the Plan Amendment shall govern any action taken in regard to an application for a development order. It is conceivable, therefore, that if the Plan Amendment is approved, the County will reject applications for development of the Property due to the lack of implementing regulations required by Policy I-1.3.6 to "ensure that office development is compatible with adjoining properties...[including] building style, design and

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<sup>3</sup> Although Policy I-7.1.2 of the Plan Amendment requires the County to enact a vested rights ordinance within the next twelve months to ensure the protection of private property rights, no such ordinance exists at this time. Thus, according to the Plan Amendment, Petitioner's property rights are in limbo until such time as the ordinance is enacted.

scale; exterior building materials; roof design" and so on. Therefore, the Plan Amendment poses the risk of a *de facto* moratorium on development in violation of Sections 163.3161(9) and 187.201(15), Florida Statutes, unless the effective date of the Plan Amendment is deferred until implementing regulations are in place.

### **General Allegation**

27. In transmitting and adopting the Plan Amendment, the County failed to provide proper assurances and procedures for ensuring and encouraging public participation in the planning process as required by Rule 9J-5.004, F.A.C., and Section 163.3177, Fla. Stat., for reasons including, but not limited to, those set forth in Section 28 below.

### **Specific Allegations**

28. The County violated Rule 9J-5.004, F.A.C., and Section 163.3177, Fla. Stat., by severely limiting Petitioner's opportunity for public comment at the transmittal hearing, while affording other property owners significantly more time. The County allotted three minutes of hearing time for each member of the public who spoke at the transmittal hearing. However, the County declined Petitioner's request to differentiate between those speakers who represented themselves and those speakers, including Petitioner's attorney, who represented multiple affected owners. Because Petitioner's case was one of several squeezed into a three minute presentation, the effect of the Lake County Board's directive was to limit Petitioner's hearing time to less than one minute. By comparison, those owners who represented themselves received three times as much hearing time. The County failed to give advance notice to Petitioner that its right to participate in the planning process would be materially affected by its decision to hire an attorney. Even if the County did provide such notice, such limitations on the Petitioner's rights would still be in violation of Rule 9J-5.004, F.A.C. and Section 163.3177, Florida Statutes.

**General Allegation**

29. Policy II-1.1.8 of the Plan Amendment attempts to fix level of service standards for potable water facilities not under the maintenance jurisdiction of the County in cases where the municipality's level-of-service is below 100 gallons per capita per day. This policy violates Section 163.3180, Fla. Stat., which states as follows:

"(3) Government entities that are not responsible for providing, financing, operating, or regulating public facilities needed to serve development may not establish binding level-of-service standards on government entities that do bear those responsibilities."

**General Allegation**

30. Policy II-1.1.9 of the Plan Amendment attempts to fix level of service standards for sanitary sewer facilities not under the maintenance jurisdiction of the County in cases where the municipality's level-of-service is below 100 gallons per capita per day. This policy violates Section 163.3180, Fla. Stat., which states as follows:

"(3) Government entities that are not responsible for providing, financing, operating, or regulating public facilities needed to serve development may not establish binding level-of-service standards on government entities that do bear those responsibilities."

**General Allegation**

31. The Plan Amendment is inconsistent with the concurrency requirements found in Section 163.3180, Florida Statutes. Section 163.3180(2)(c), Fla. Stat., requires needed transportation facilities to be in place or under actual construction within 3 years after the local government approves a building permit or its functional equivalent that results in traffic generation. However, under the "pay and go" option found in subsection (16), a developer is entitled to a building permit even though it otherwise fails to meet transportation concurrency, if it contributes its fair share of the cost of the needed improvement. Section 163.3180(16)(b) and

(f), Fla. Stat. The developer is entitled to utilize the "pay and go" option if the improvement is reflected in the *first 5 years* of the 5-year capital improvements element of the local government's financially feasible comprehensive plan. Id. Policy II-3.1.6(2) of the Plan Amendment conflicts with the "pay and go" section of the statute by allowing issuance of a building permit only if the necessary road improvements are scheduled within the *first 3 years* of the County's Five-Year Capital Improvements Plan. Such action violates Rule 9J-5.001(4), F.A.C., which requires the Plan Amendment to comply with Chapter 163, Florida Statutes.

#### INCONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

32. The Plan Amendment is inconsistent with several provisions of the State Comprehensive Plan, including Section 187.201(4)(b)3. and 4., Section 187.201(14), Section 187.201(15)(a) and (b)1., Section 187.201(21)(a) and (b)1., Section 187.201(24)(b)5., and Section 187.201(25)6., Florida Statutes.

#### STATUTES AND RULES ENTITLING PETITIONERS TO RELIEF

33. Petitioner is entitled to relief pursuant to Chapter 163, Part II, Fla. Stat., Rule 9J-5, F.A.C., and the State Comprehensive Plan.

34. Section 163.3184(1)(b), Fla. Stat., states that a comprehensive plan amendment is "in compliance" if it is consistent with Sections 163.3177, 163.3178, 163.3180, 163.3191, and 163.3245, Fla. Stat., the State Comprehensive Plan, the applicable strategic regional policy plan, and Rule Chapter 9J-5, F.A.C.

35. As alleged above, the Plan Amendment is inconsistent with Section 163.3177, Fla. Stat., Rule Chapter 9J-5, and the State Comprehensive Plan. Therefore, the Plan Amendment is not "in compliance."


#### RELIEF SOUGHT BY PETITIONERS

36. Petitioners seek the following relief:

(a) That this Petition be forwarded to the Division of Administrative Hearings to conduct a formal administrative hearing on this matter in the manner prescribed by law;

(b) That the Administrative Law Judge assigned to this matter issue a recommended order finding the Plan Amendment not "in compliance" for the reasons described above; and


(c) That the Administration Commission enter an order finding the Plan Amendment to be not "in compliance" and require the County to rescind the Plan Amendment or adopt remedial actions that would bring the Plan Amendment into compliance.

  
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CECELIA BONIFAY, ESQ.  
Florida Bar No. 0546992  
AKERMAN SENTERFITT  
P.O. Box 231  
Orlando, FL 32802  
(407) 423-4000  
Fax No: (407) 254-4230

Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing has been filed with the Agency Clerk, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399; and a copy was provided to Charles Gauthier, AICP, Director Community Planning, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399; and a copy was provided to Melanie Marsh, Acting County Attorney, Lake County, 315 West Main Street, Tavares, Florida 32778, this 13<sup>th</sup> day of August, 2010.

  
\_\_\_\_\_  
CECELIA BONIFAY

## Exhibit "A"

Published in the ORLANDO SENTINEL- LAKE SENTINEL on FRIDAY, JULY 23, 2010.

STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS  
OFFICE OF PLANNING AND ZONING  
LAKE COUNTY  
COMPREHENSIVE PLAN AMENDMENT  
IN COMPLIANCE  
BOOKING: 10-188-KM-350-(A)-(1)

The Department gives notice of its intent to find the Amendment to the Comprehensive Plan for Lake County, adopted by Ordinance No. 2010-25 on May 25, 2010, IN COMPLIANCE, pursuant to Sections 163.3184, 163.3187 and 163.3189, F.S., except for amendments 1, 2, 3, 4, 5, 6, 7, 9, 10, and 11, which were not properly adopted and are identified in the Table entitled "Future Land Use Map Changes (13 changes made after Transmittal) - Lake County - 2010 Comprehensive Plan" as submitted by the County on June 11, 2010. The Department did not make a compliance determination on Amendments 1, 2, 3, 4, 5, 6, 7, 9, 10 and 11 which are further identified as follows: Amendment No. 1 - 1500 acres, west of US 27, Fruitland Park and Lady Lake area, from Rural to Urban Low Density; Amendment No. 2 - 16.3 acres, CR 44, Eustis Rural area; CR 473 area, from Urban Expansion and Rural within a Neighborhood Activity Center, to Regional Commercial; Amendment No. 3 - 17.9 acres, CR 44 and Emerald Avenue, Leesburg Area, from Rural Village to Industrial; Amendment No. 4 - 291 acres, Lake Road, Lake Lincoln Lane and Balice Avenue, East Lake area, from Suburban and Urban Expansion to Urban Low Density; Amendment No. 5 - 10 acres at SR 44 and CR 437, Guffis area, from Rural, WRPA Receiving area within a Neighborhood Activity Center, to Rural, Rural Transition and WRPA Receiving area with a Rural Support Intersection Overlay; Amendment No. 6 - 40 acres on US 441 East of Mr. Uva, Florida 1 who Maack's Parcel, Urban Expansion to Regional Commercial; Amendment No. 7 - 85 acres on CR 437, Jones parcel, in Mt. Plymouth Swampland area from Urban Compact Node Non-Residential to Mt. Plymouth Swampland Node Street (51 acres) and Mt. Plymouth Swampland Neighborhood (34 acres); Amendment No. 9 - 350 acres west of Industrial Park in Cleveland area, from Suburban to Regional Office; Amendment No. 10 - 42 acres south of SR 50 East of Clermont, from Urban Expansion with Employment Center Overlay to Regional Office; and Amendment No. 11 - 61.5 acres north of SR 50 and CR 30, East of Clermont, from Urban Expansion to Urban Low Density.

The adopted Lake County Comprehensive Plan Amendment and the Department's Objections, Recommendations and Comments Report (if any) are available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at the Lake County Department of Growth Management, Division of Planning, 315 West Main Street, 5<sup>th</sup> Floor, Administration Building, Room 210 and the Clerk's Office, 315 West Main Street, Tavares, Florida 32778-7803.

Any affected person, as defined in Section 163.3184, F.S., has a right to petition for an administrative hearing to challenge the proposed agency determination from the Amendment to the Lake County Comprehensive Plan in Compliance, as defined in Subsection 163.3184(1), F.S. The petition must be filed within twenty-one (21) days after publication of this notice, and must include all of the information and contents described in Uniform Rule 28-106.201, F.A.C. The petition must be filed with the Agency Cases, Department of Community Affairs, 2555 Stansford Oak Boulevard, Tallahassee, Florida 32399-2100, and a copy mailed or delivered to the local government. Failure to timely file a petition shall constitute a waiver of any right to request an administrative proceeding as a petitioner under Sections 120.560 and 120.57, F.S. If a petition is filed, the purpose of the administrative hearing will be to present evidence and testimony and forward a recommended order to the Department. If no petition is filed, this Notice of Intent shall become final agency action.

If a petition is filed, other affected persons may petition for leave to intervene in the proceeding. A petition for intervention must be filed at least twenty (20) days before the final hearing and must include all of the information and contents described in Uniform Rule 28-106.205, F.A.C. A petition for leave to intervene shall be filed at the Division of Administrative Hearings, Department of Management Services, 1210 Apalachee Parkway, Tallahassee, Florida 32399-3068. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right that a person has to request a hearing under Sections 120.560 and 120.57, F.S., or to participate in the administrative hearing.

After an administrative hearing petition is timely filed, mediation is available pursuant to Subsection 163.3189(3)(a), F.S., to any affected person who is made a party to the proceeding by filing that request with the administrative law judge assigned by the Division of Administrative Hearings. The choice of mediation shall not affect a party's right to an administrative hearing.

Mike McDaniel, Chief  
Office of Comprehensive Planning  
Division of Community Planning  
Department of Community Affairs  
2555 Stansford Oak Boulevard  
Tallahassee, Florida 32399-2100

Exhibit "B"

PUD Zoning Ordinance  
(see attached)

**ORDINANCE #2006-30**  
**Tracking No.#110-05-PUD**  
**Nola Land Company, Inc.**  
**Sean Froelich, Park Square Enterprises, Inc.**  
**PH# 93-05-2**

CFN 2006081951  
Bk 03171 Pgs 2343 - 2352; (10pgs)  
DATE: 05/30/2006 09:14:11 AM  
JAMES C. WATKINS, CLERK OF COURT  
LAKE COUNTY  
RECORDING FEES 86.50

**AN ORDINANCE OF THE LAKE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE LAKE COUNTY ZONING MAPS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Lake County Zoning Board did on the 4<sup>th</sup> day of January, 2006, review petition PH# 93-05-2, a request for rezoning from A (Agriculture) to PUD (Planned Unit Development). The property is generally located in the Clermont area, approximately ¼ mile south of the intersection of State Road 50 and Emil Jahna Road. (Sec. 27, 34, and 35/ Twp. 22S/ Rge. 26E) (541 +/- Acres)

**LEGAL DESCRIPTION:** [EXHIBIT "A" - ATTACHED]

**AND**, after giving Notice of Hearing on petition for a change in the use of land, including a notice that said would be presented to the Board of County Commissioners of Lake County, Florida, on the 23<sup>rd</sup> day of March, and

2006 MAY 30 10:14  
FILED  
CLERK OF STATE  
TALLAHASSEE, FLORIDA

**WHEREAS**, the Board of County Commissioners reviewed said petition, the recommendations of the Lake County Zoning Board, and any comments, favorable or unfavorable, from the public and surrounding property owners at a Public Hearing duly advertised, and

**WHEREAS**, upon review, certain terms pertaining to the development of the above described property have been duly approved, and

**NOW THEREFORE, BE IT ORDAINED** by the Board of County Commissioners of Lake County, Florida, that the Land Development Regulations of Lake County, Florida, be altered and amended as they pertain to the above tract of land subject to the following terms:

Section 1. Terms: The terms and conditions of this Ordinance shall mean and include the total of the following land uses. The County Manager or designee shall amend the Zoning Map in accordance with this Ordinance.

*@Sandy- Board Support.*

**A. Land Uses:**

**1. Residential:**

**a. Number & Type of Residential Units:**

Uses of the property shall be limited to those shown on sheets 1 through 5 of the DWMA (Donald W. McIntosh Associates, Inc.) preliminary development plan, dated March 24, 2006. A total of 894 age-restricted residential units (692 single-family dwellings and 202 town homes) shall be permitted at a gross residential density of 2.16 units per acre. Prior to development, deeds and covenants shall be recorded to restrict permanent occupancy to individuals eighteen years of age or older, and the project shall comply with the Federal and State Fair Housing Acts. If, at a future date, the community wishes to eliminate its age-restricted status, an amendment of the PUD Ordinance shall be required.

**b. Phasing of Development:**

The project shall be developed in accordance with the following phasing table:

Phase I:	50-foot lots:	120
	70-foot lots:	100
	90-foot lots:	40
	Town homes:	84
Phase II:	50-foot lots:	120
	70-foot lots:	100
	Town homes:	118
Phase III:	50-foot lots:	87
	70-foot lots:	85
	90-foot lots:	40

**c. Setback Requirements:**

For the residential portion of the PUD, the following setbacks shall be in effect:

50-foot lots:

Front porch:	15 feet from the property line
Front garage:	20 feet from the property line

**ORDINANCE NO. #2006-30**

**(Tracking #110-05-PUD) (PH#93-05-2) (Nola Land Company, Inc./Sean Froelich, Park Square Enterprises, Inc.)**

Front building:	20 feet from the property line
Secondary front:	15 feet from the property line
Side:	5 feet from the property line
Rear:	25 feet from the property line (5 feet for pools, patios, decks, and ancillary structures)
Wetlands or open water:	50 feet from the ordinary high water line, mean high water line, or jurisdictional wetland line
Minimum building separation:	10 feet

**70-foot lots:**

Front porch:	15 feet from the property line
Front garage:	20 feet from the property line
Front building:	20 feet from the property line
Secondary front:	15 feet from the property line
Side:	5 feet from the property line
Rear:	25 feet from the property line (5 feet for pools, patios, decks, and ancillary structures)
Wetlands or open water:	50 feet from the ordinary high water line, mean high water line, or jurisdictional wetland line
Minimum building separation:	10 feet

**90-foot lots:**

Front porch:	15 feet from the property line
Front garage:	20 feet from the property line
Front building:	20 feet from the property line
Secondary front:	20 feet from the property line
Side:	10 feet from the property line
Rear:	25 feet from the property line (5 feet for pools, patios, decks, and ancillary structures)
Wetlands or open water:	50 feet from the ordinary high water line, mean high water line, or jurisdictional wetland line
Minimum building separation:	20 feet

**Town homes:**

Front porch:	15 feet from the property line
Front garage:	20 feet from the property line

**ORDINANCE NO. #2006-30**

(Tracking #110-05-PUD) (PH#93-05-2) (Nola Land Company, Inc./Sean Froelich, Park Square Enterprises, Inc.)

Front building:	25 feet from the property line
Secondary front:	15 feet from the property line
Side:	Not applicable
Rear:	20 feet from the property line (5 feet for pools, patios, decks, and ancillary structures)
Wetlands or open water:	50 feet from the ordinary high water line, mean high water line, or jurisdictional wetland line
Minimum building separation:	20 feet

**B. Site Grading:**

Grading for the project shall be done in accordance with the mass grading plan dated December 14, 2005 submitted to and approved by the Lake County Water Resources Management Division. This plan has been accepted in lieu of reclamation of the mining site.

**C. Public Facilities:**

**1. Water and Wastewater Facilities:**

The PUD shall be served by a central water and sewer system.

**2. Drainage/Stormwater Management:**

The applicant shall submit drainage calculations and a stormwater management plan when filing for plat approval.

**3. Fire Protection:**

The applicant shall comply with all County fire protection requirements.

**D. Open Space:**

A minimum of twenty-five (25) percent of the base site area utilized for residential purposes shall be provided as open space, as shown on the DWMA preliminary development plan, dated March 24, 2006.

**E. Landscaping:**

1. All landscaping shall comply with the landscaping requirements contained in Section 9.01.00 of the Lake County Land Development Regulations.

2. A Type B landscape buffer with a width of 15 feet shall be provided along the perimeter of the PUD, with the exception of those areas abutting wetlands or open water. The buffer shall be adequately maintained at all times.

**ORDINANCE NO. #2006-30**

**(Tracking #110-05-PUD) (PH#93-05-2) (Nola Land Company, Inc./Sean Froelich, Park Square Enterprises, Inc.)**

3. A minimum of six trees per acre of open space shall be required.
4. A 40-foot natural buffer shall be provided on a portion of Tract N-8, as depicted in DWMA Exhibit B, dated March 28, 2006.
5. A six-foot wall shall be provided along the northern boundary of Tract N-8, as depicted in DWMA Exhibit C, dated March 28, 2006.
6. A 50-foot landscaped buffer shall be provided along the boundary common to the Hills of Clermont subdivision.

**F. Environmental:**

**1. Wetlands:**

In accordance with Policy 1-2.1E of the Lake County Comprehensive Plan, wetlands within a project must be placed in a conservation easement that shall run in favor of, and be enforceable by, a homeowners association or the County, at its option. The conservation easement shall require that the wetlands be maintained in their natural and unaltered state. To the extent practicable, wetlands shall not be included as part of any platted lot, other than a lot platted as a common area, which shall be dedicated to the homeowners' association or the County for ownership and maintenance.

**2. Natural Buffers:**

In accordance with Section 6.15.04(A) of the Lake County Land Development Regulations, a 50-foot natural buffer shall be established upland of wetlands and between any development and shall be designated a "no-build" zone. This upland buffer and associated conservation areas and littoral zone shall be maintained in native vegetation. No pesticides or fertilizers may be used in the no-build zone, and all exotic and nuisance species shall be removed and replaced with native vegetation.

**3. Floodplain Protection:**

The project shall comply with Section 9.07.08(D), Site Plan and Subdivision Standards, of the Land Development Regulations, which states that the 100-year floodplain shall be used solely for the storage of floodwaters and for passive recreation and conservation facilities.

**4. Environmental Assessments:**

An updated environmental assessment addressing habitat and species shall be submitted to the County during the preliminary platting stage of each phase of the

project. As gopher tortoise burrows were observed on the subject parcel, the location of these burrows must be included in the environmental assessment. All applicable permits for any gopher tortoises and associated burrow commensal species found on the property must be received from the Florida Fish and Wildlife Conservation Commission prior to the initiation of development activity. In addition, as potential sand skink habitat is present on the project site, a formal sand skink survey must be included with the environmental study.

5. Conservation areas shall be created as depicted in DWMA Exhibit A, dated March 28, 2006.

G. Signage:

All signage shall comply with the applicable sign requirements contained in Chapter 11 of the Lake County Land Development Regulations.

H. Transportation Improvements:

1. The development shall comply with all applicable County and FDOT access management requirements.
2. The developer shall dedicate a 120-foot right-of-way for Hartle Road along the entire east boundary of the project. In addition to the 120-foot right-of-way, additional land necessary to accommodate permanent construction and slope easements (not to exceed 100 feet in width) shall be provided. These provisions shall be subject to the outcome of the PD&E study presently being conducted for the realignment of Hartle Road.
3. The developer shall dedicate a 100-foot right-of-way for Hook Street within the project boundary along the north property line, east of Emil Jahna Road. In addition to this 100-foot right-of-way, additional land necessary to accommodate permanent construction and slope easements (not to exceed 100 feet in width) shall be provided.
4. The Developer shall dedicate right-of-way west of Emil Jahna Road for the extension of Hook Street, from Emil Jahna Road to Hancock Road. This right-of-way shall be a 60-foot half along the north property line of the project site. The final alignment is not set and may be adjusted through further evaluation by Lake County Public Works. The developer shall coordinate with Lake County to provide slope and construction easements necessary to construct the Hook Street extension.
5. At the County's option, the developer shall construct Hook Street from its current terminus near the western boundary of the project site to its eastern connection with Hartle Road, +/- 1,880 feet east of the project site. A developer's agreement between the County and the developer shall be executed for the construction of Hook

Street and for the allocation of transportation impact fee credits associated with the construction.

6. The developer shall donate stormwater retention areas for Hartle Road and Hook Street within the limits of drainage along the route alignments.
7. A public hearing shall be required for the Island Blvd. right-of-way vacation.
8. The developer, at their expense, shall be required to improve Emil Jahna Road from its project entrance north to State Road 50 and shall provide traffic signal improvements at the intersection of Emil Jahna Road and State Road 50.

I. Development Review and Approval:

Prior to the issuance of any permits, the applicant shall be required to submit formal preliminary plats and/or site plans for review and approval by the Lake County Development Review Staff. The preliminary plat and/or site plans shall meet all submittal requirements and comply with all County codes and ordinances, as amended, pursuant to the notes shown on the DWMA preliminary development plan, dated March 24, 2006.

J. Future Development Orders:

Any requested development order must comply with the Lake County Land Development Regulations, as amended, and the Lake County Comprehensive Plan, as amended.

K. Future Amendments to Statutes, Code, Plans and/or Regulations:

The specific references in this Ordinance to the Florida Statutes, Florida Administrative Code, Lake County Comprehensive Plan, and Lake County Land Development Regulations shall include any future amendments to the Statutes, Code, Plan, and/or Regulations.

Section 2. Conditions as altered and amended which pertain to the above tract of land shall be as follows:

- A. After establishment of the facilities as provided herein, the aforementioned property shall only be used for the purposes named in this Ordinance. Any other proposed use must be specifically authorized by the Zoning Board and the Board of County Commissioners.
- B. No person, firm or corporation shall erect, construct, enlarge, alter, repair, remove, improve, move, convert, or demolish any building structure, or alter the land in any manner within the boundaries of the above described land, without first submitting the necessary plans in accordance with Chapter XIV of the Lake County Land Development Regulations (LDRs) and receiving approval from the County Manager or designee upon obtaining the permits required from other appropriate governmental agencies.

**ORDINANCE NO. #2006-30**

**(Tracking #110-05-PUD) (PH#93-05-2) (Nola Land Company, Inc./Sean Froelich, Park Square Enterprises, Inc.)**

- C. This Ordinance shall inure to the benefit of, and shall constitute a covenant running with the land and the terms, conditions, and provisions hereof, and shall be binding upon the present owner and any successor, and shall be subject to each and every condition herein set out.
  
- D. The transfer of ownership or lease of any or all of the property described in this Ordinance shall include in the transfer or lease agreement, a provision that the purchaser or lessee is made good and aware of the conditions pertaining to this Ordinance and agrees to be bound by these conditions. The purchaser or lessee may request a change from the existing plans and conditions by following procedures contained in Chapter XIV of the Lake County Land Development Regulations (LDRs), as amended.

ORDINANCE NO. #2006-30

(Tracking #110-05-PUD) (PH#93-05-2) (Nola Land Company, Inc./Sean Froelich, Park Square Enterprises, Inc.)

**Section 3. Effective Date. This Ordinance shall become effective as provided by law.**

ENACTED this 28<sup>th</sup> day of March, 2006.

FILED with the Secretary of State May 23, 2006.

EFFECTIVE May 23, 2006.

BOARD OF COUNTY COMMISSIONERS  
LAKE COUNTY, FLORIDA



WELTON G. CADWELL, VICE CHAIRMAN

ATTEST:



JAMES C. WATKINS, CLERK OF THE  
BOARD OF COUNTY COMMISSIONERS  
LAKE COUNTY, FLORIDA

APPROVED AS TO FORM AND LEGALITY



SANFORD A. MINKOFF, COUNTY ATTORNEY

**EXHIBIT "A" – LEGAL DESCRIPTION**

**ORDINANCE NO. #2006-30**

**PH#93-05-2**

**Tracking No. #110-05-PUD**

**Nolan Land Company, Inc.**

**Sean Froelich, Park Square Enterprises Inc.**

**ORDINANCE BY THE LAKE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE LAKE COUNTY ZONING MAPS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**LEGAL DESCRIPTION:** Govt Lot 1, LESS begin at NW cor of Govt Lot 1, run E 660 ft, S to N'ly r/w line of Hartle Rd & Pt A, return to POB, run S 660 ft, E 510 ft, S to N'ly r/w line of Hartle Rd, NE'ly along said road r/w to Point A, NW 1/4 of SW 1/4 of NW 1/4, begin 50.25 N of SE cor of NW 1/4, run W 1305 ft., S 8.3 ft, W to SW cor of NW 1/4, N to NW cor of S 1/2 of SW 1/4 of NW 1/4, E to NE cor of S 1/2 of SE 1/4 of NW 1/4, S to POB, LESS Hartle Rd 66 ft r/w, Sec 35 Twp. 22S Rge. 26E; E 3/4 of S 1/2 of Sec 27 Twp. 22S Rge. 26E; N 1/2 – LESS W 1660 ft of Sec 34 Twp. 22S Rge. 26E;