

IN AND BEFORE A SPECIAL MASTER
IN AND FOR LAKE COUNTY, FLORIDA

LAKE SUSAN LODGE TRUST,
Petitioners/Owners,

File No. SM-11-01

vs.

LAKE COUNTY, FLORIDA,
Respondent.

SPECIAL MASTER'S RECOMMENDATION

This matter was heard by the undersigned Special Master pursuant to the provisions of the Florida Land Use & Environmental Dispute Resolution Act (F.S. §70.51) and Lake County Code Sections 14.20, et. seq., according to which the Special Master issues the following findings, conclusions and recommendations:

1. Background.

A. Subject Property. The Lake Susan Lodge is a facility located on an approximately seven (7) acre parcel of property bordering the shores of Lake Susan and Lakeshore Drive south of Clermont in south Lake County (the "lodge property"). It was developed as a lodge in the 1940's and has been continuously operated since then in various forms as a fish camp with cottages, marina, restaurant and other mixed used facilities. The lodge property is located within the transitional land use classification in the Green Swamp Area of Critical State Concern. Although the property enjoys an R-3 zoning classification which would potentially allow up to three (3) units per acre, the transitional land use classification and

location within the Green Swamp Area of Critical State Concern significantly limit the uses of the facility. However, the property has been operating for many years as a legally non-conforming use pursuant to Lake County Conditional Use Permit 624-3. The conditional use permit, among other things, permits the construction and operation of the lodge and marina which consists of various mixed uses. The property appears to have deteriorated from its 1940's vision and now consists primarily of a restaurant, numerous boat slips and stalls, a boat ramp and several cottages, some of which are no longer in use. The property is located on Lake Susan and is surrounded on its other three sides with residential communities including Osprey Pointe, an upscale community located directly across Lakeshore Drive from the lodge.

It is an understatement to state the lodge as it currently exists would not be allowed to be constructed today. The lodge was constructed prior to current environmental protection ordinances and laws and, as a legally non-conforming use, is allowed to remain in nonconformity with regulations regarding storm water runoff, parking, landscaping and regulatory issues. The Petitioner seeks to develop the property in conjunction with a neighboring parcel owned by Wolfgang Dueren ("the Dueren property") as "Lake Susan Landing" a twenty-one (21) townhome unit, age restricted community. Although various densities have been proposed, the final proposal as stated from the developer is as follows:

- (a) Remove all (15 existing, 18 permitted) motel units.

- (b) Removal of permitted package/convenience store.
- (c) Eliminate nonconforming wetland setbacks.
- (d) Eliminate direct stormwater runoff into Outstanding Florida Water ("OFW").
- (e) Treat all stormwater on the lodge property and the Dueren property to Outstanding Florida Water standards.
- (f) Connect all development on the lodge property and the Dueren property to central sewer.
- (g) No removal of protected trees.
- (h) Upgrade to code requirements all nonconforming parking and landscaping.
- (i) Close nonconforming driveway entrance.
- (j) Close the permitted boat ramp.
- (k) Construct 18 townhome units on the lodge property.
- (l) construct 3 townhome units on the Dueren property.
- (m) All townhome units will be age-restricted, adult only.
- (n) Entirely landscaped in Florida-friendly, drought resistant landscaping, no turf grass.
- (o) No underground irrigation system.
- (p) Eliminate all paved areas within fifty feet of Lake Susan.

B. Procedural History. The Petitioner met with Lake County's Growth Management Department staff in 2001 to discuss renovation of the lodge property. Petitioner's proposed uses of the property were inconsistent with the existing zoning and comprehensive plan land use for the property, and staff issued a letter to document this fact. Staff verbally indicated that support for a rezoning or comprehensive plan amendment would be difficult or impossible due to the Green Swamp critical area designation. In part due to the unique nature of the property, the parties discussed the possibility of resolution through the mediated portion of the Special Master proceedings. Subsequent to these discussions and without filing any formal application, the Petitioner filed its request for relief. Although the County responded, among other things, that the Request for Relief was untimely and not eligible for Special Master

proceedings, the County largely acquiesced to continue with the Special Master proceeding. Because the property was in the Green Swamp Area of Critical Concern Area, the Florida Department of Community Affairs was added as a party and has participated in the proceedings. Three separate mediation conferences have taken place on December 14, 2001, June 11, 2003 and June 28, 2004 resulting ultimately in an impasse.

2. Legal Analysis and Conclusions of Law.

Florida Statute 70.51, the "Florida Land Use and Environmental Dispute Resolution Act" ("the Act"), exists to provide relief for "any owner who believes that a development order, either separately or in conjunction with other development orders, or an enforcement action of a governmental entity, is unreasonable or unfairly burdens the use of the owners property." F.S. §70.51(3). The Act's provisions are to be "liberally construed to affect fully its obvious purposes and intent...in resolving disputes." F.S. §70.51(29). It is therefore understandable in light of the unique challenges that the Lake Susan Lodge property brings with it to understand why the Special Master proceeding was tempting both to the County and to the Petitioner. At least initially, the parties in good faith were attempting to carry out the intent of the Act to resolve a dispute and for this they should be applauded.

Unfortunately, the undersigned's authority as a Special Master is limited by the Act. Specifically, the Act requires as a prerequisite to relief that a "development order...or an enforcement action of a

governmental entity, is unreasonable or unfairly burdens the use of the owner's real property". No enforcement action is at issue in this case. Therefore the request for relief must be in response to a development order. The Act specifically defines this term as follows:

"Any order, or notice of proposed state or regional governmental agency action, which is or will have the effect of granting, denying, or granting with conditions an application for a development permit, and includes the rezoning of a specific parcel. Actions by the state or a local government on comprehensive plan amendments are not development orders"

In this situation, no development order was issued. The only documented action was a letter from the County acknowledging that the proposed uses would require a comp plan amendment and a rezoning. Although it is tempting to find otherwise, this does not rise to the level of a "development order" and therefore the request for relief was legally, technically premature. Moreover, the Act specifically provides that "before initiating a special [master] proceeding to review a local development order or local enforcement action, the owner must exhaust all non-judicial local government administrative appeals if the appeals take no longer than 4 months." In this case, no application was filed much less were any appeals taken. It is believed, however, by the undersigned that the Special Master proceeding was originally encouraged by the County to the Petitioner as an effort to resolve the dispute so it is difficult to "punish" the Petitioner for pursuing relief.

The Act provides that "if an acceptable solution is not reached by the parties after the special [master's] attempt at mediation, the special [master] shall consider the facts and circumstances set forth in the request for relief and any responses and any other information produced at the hearing in order to determine whether the action by the governmental entity or entities is unreasonable or unfairly burdens the real property." F.S. §70.51(17)(b). "If the special [master] finds the development order at issue, or the development order or enforcement action in combination with the actions or regulations of other governmental entities, is not unreasonable or does not unfairly burden the use of the owner's property, the special [master] must recommend the development order or enforcement action remain undisturbed and the proceeding shall end, subject to the owner's retention of all other available remedies."

In this case, quite simply, the undersigned cannot find that the development order or enforcement action were unreasonable or unfairly burdensome because there was no development order or enforcement action. Therefore, subject to the recommendations below, it is concluded that the Special Master proceedings shall end and the owner is free to proceed all other available remedies, including, but not limited to, proceeding a comprehensive plan amendment and rezoning as recommended below.

3. Recommendation.

It is evident that the current situation is in no one's best interest. The Petitioner is frustrated because the waterfront

property is not being used in anyway approaching its highest and best use. The Department of Community Affairs cringes at this classic example of development in "the good old days" before environmental regulations involving stormwater runoff, water retention, wetland setbacks, impervious surface standards and the like were enacted. Lake County sees the need for a more environmentally friendly site as well as a property that is more in keeping with the surrounding neighborhood and positively adds to the community, not to mention the tax base.

The Act provides that:

"A special [master's] recommendation under this section constitutes data in support of, and a support document for, a comprehensive plan or comprehensive plan amendment, but is not, in and of itself, dispositive of a determination of compliance with chapter 163. Any comprehensive plan amendment necessary to carry out the approved recommendation of a special [master] under this section is exempt from the twice-a-year limit on plan amendments and may be adopted by the local government amendments in s. 163.3184(16)(d)."

Additionally, although the Lake County Code states that "the special master's recommendation shall be advisory only and not binding on the owner or the County", [L.C. Code §14.20.23(A)], it also provides that "the special master's recommendation constitutes data which shall be considered with respect to any pertinent amendment to the comprehensive plan". (L.C. Code §14.20.23(B)).

The Petitioner's proposal is summarized as sixteen (16) enumerated items set forth above (beginning on page 2). Of those sixteen items, all parties unanimously endorse at least thirteen of

the sixteen items. Only items k, l and m, which essentially propose to construct 21 age restricted adult only townhome units on the lodge property and Dueren properties, are controversial. The County and DCA are not against some units being constructed but it is the density that needs to be resolved.

Were this matter to move forward, a comp plan amendment and rezoning would need to be pursued. In doing so, it would be recommended that proposal items a-j and n-p be enacted and that the restaurant and docking/marina facility be limited in a trade off for proposed residential units. If all environmental proposals are implemented, a residential density similar to the existing cottage facilities (or exceeding the existing facility if the other non-residential areas are limited) should be appropriate. In doing so, as many aspects of the historic nature of the lodge property, an example of yesteryear in Florida, should be preserved. It is believed that a mixed use land use classification in the nature of a planned unit development with stringent environmental conditions to meet any concerns of the DCA and the Green Swamp Area of Critical State Concern should be developed. Comments from neighboring property owners need to be given significant weight in considering the comprehensive plan amendment. The DCA is encouraged to help with any approvals or state authorizations necessary because of the Green Swamp designation for the lodge property. The undersigned is confident that Lake County's planning staff as well as the Planning and Zoning Commission and the

County Commission in conjunction with the DCA and the applicant can accomplish this task.

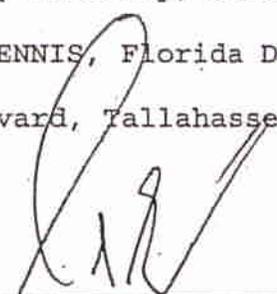
Respectfully submitted,



Scott A. Gerken, Special Master
Florida Bar No. 0896632
Stone & Gerken, P.A.
4850 N. Highway 19A
Mount Dora, FL 32757
Telephone: (352) 357-0330
Facsimile: (352) 357-2474

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to JIMMY D. CRAWFORD, Esquire, GrayRobinson, P.A., 1635 East State Road 50, Suite 300, Clermont, FL 34711; SANFORD A. MINKOFF, Esquire, County Attorney, Post Office Box 7800, Tavares, FL 32778; and TIMOTHY E. DENNIS, Florida Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, FL 32399-7018, this 17th day of December, 2004.



Scott A. Gerken