

**SEMINOLE COUNTY GOVERNMENT
LAND PLANNING AGENCY / PLANNING AND ZONING COMMISSION
AGENDA MEMORANDUM**

SUBJECT: The Tradition at Alafaya rezone from C-2 (Retail Commercial District) to PUD (Planned Unit Development District), Kenneth W. Wright, applicant.

DEPARTMENT: Planning & Development **DIVISION:** Planning

AUTHORIZED BY: Matthew West **CONTACT:** Matthew West **EXT.** 7353

Agenda Date 04/02/03 **Regular** ☐ **Work Session** ☐ **Briefing** ☐
Special Hearing – 6:00 ☐ **Public Hearing – 7:00** ☒

MOTION/RECOMMENDATION:

1. Recommend approval of the requested rezoning from C-2 to PUD for approximately 16.5 acres of land located on the south side of West Carrigan Avenue, the north side of Econ River Place, and the west side of Alafaya Trail, based on staff findings and subject to conditions contained in the attached development order. Kenneth W. Wright, applicant.
2. Recommend denial of the requested rezoning from C-2 to PUD for approximately 16.5 acres of land located on the south side of West Carrigan Avenue, the north side of Econ River Place, and the west side of Alafaya Trail. Kenneth W. Wright, applicant.
3. Continue item to a date and time certain.

District – 1, Commissioner Maloy

Matthew West, Planning Manager

BACKGROUND:

The applicant, Kenneth W. Wright, is requesting to rezone approximately 16.5 acres from C-2 to PUD, to create a mixed use development that will allow multi-family development of up to 20 dwelling units per net buildable acre as well as commercial/retail uses. The site is located on the west side of Alafaya Trail, adjacent to Econ River Place and West Carrigan Avenue. The existing zoning designation (C-2) and the existing future land use designation (Commercial) would allow for general retail/commercial uses as well as up to 10 percent of the developable land being utilized for multifamily development.

Reviewed by:	<u>RWC</u>
Co Atty:	_____
DFS:	_____
OTHER:	_____
DCM:	_____
CM:	_____
File No.	<u>Z2003-006</u>

In March, 2000, the Planning and Zoning Commission heard a similar request for this property and recommended denial unanimously citing incompatibility with the adjacent single family neighborhood. The P&Z stated that the PUD master plan submitted in 2000 did not provide enough detail. The Board of County Commissioners acted on the P&Z's recommendation on April 11, 2000, and denied the rezoning request to PUD. At both meetings staff recommended approval of the rezoning request.

The property owner sued the County, and on February 5, 2001, the 18th Judicial Circuit for Seminole County found that the Board's decision to deny the request "was arbitrary and was not supported by competent substantial evidence and must be quashed." The decision has been remanded to the County for further consideration. The Circuit Court's decision was upheld by the District Court of Appeals as well. A copy of the ruling is attached.

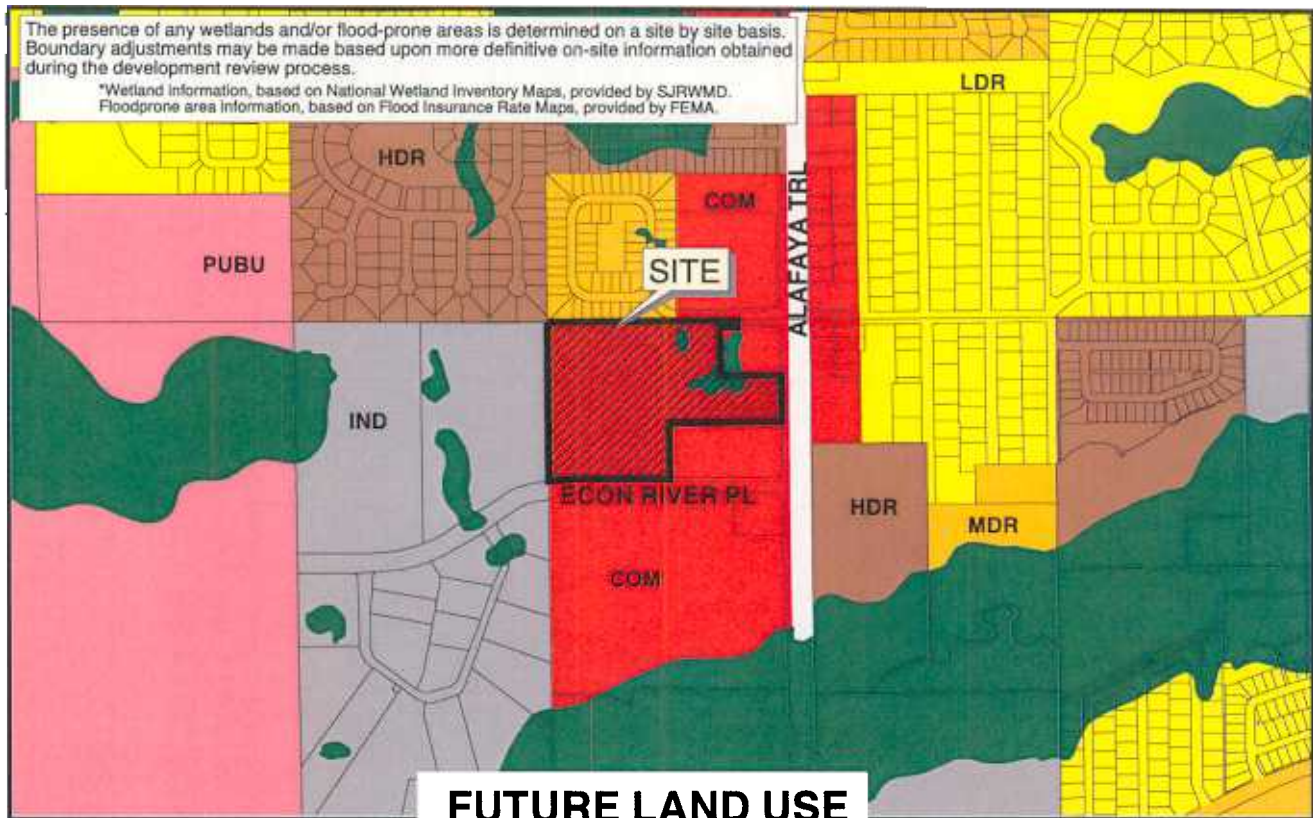
The application before the Planning and Zoning Commission is the property owner's attempt at having the County reconsider the application for PUD zoning. There are some difference between the 2000 application and the 2003 application which are detailed in the staff report.

STAFF RECOMMENDATION:

Staff recommends approval of the requested rezoning from C-2 to PUD for approximately 16.5 acres of land located on the south side of West Carrigan Avenue, the north side of Econ River Place, and the west side of Alafaya Trail, based on staff findings and subject to conditions contained in the attached development order. Kenneth W. Wright, applicant.

The presence of any wetlands and/or flood-prone areas is determined on a site by site basis. Boundary adjustments may be made based upon more definitive on-site information obtained during the development review process.

*Wetland information, based on National Wetland Inventory Maps, provided by SJRWMD.
Floodprone area information, based on Flood Insurance Rate Maps, provided by FEMA.



Site
 Municipality
 COM
 LDR
 IND
 MDR
 HDR
 PUBU
 CONS

Applicant: Kenneth W. Wright, Esq. Shutts & Brown LLP

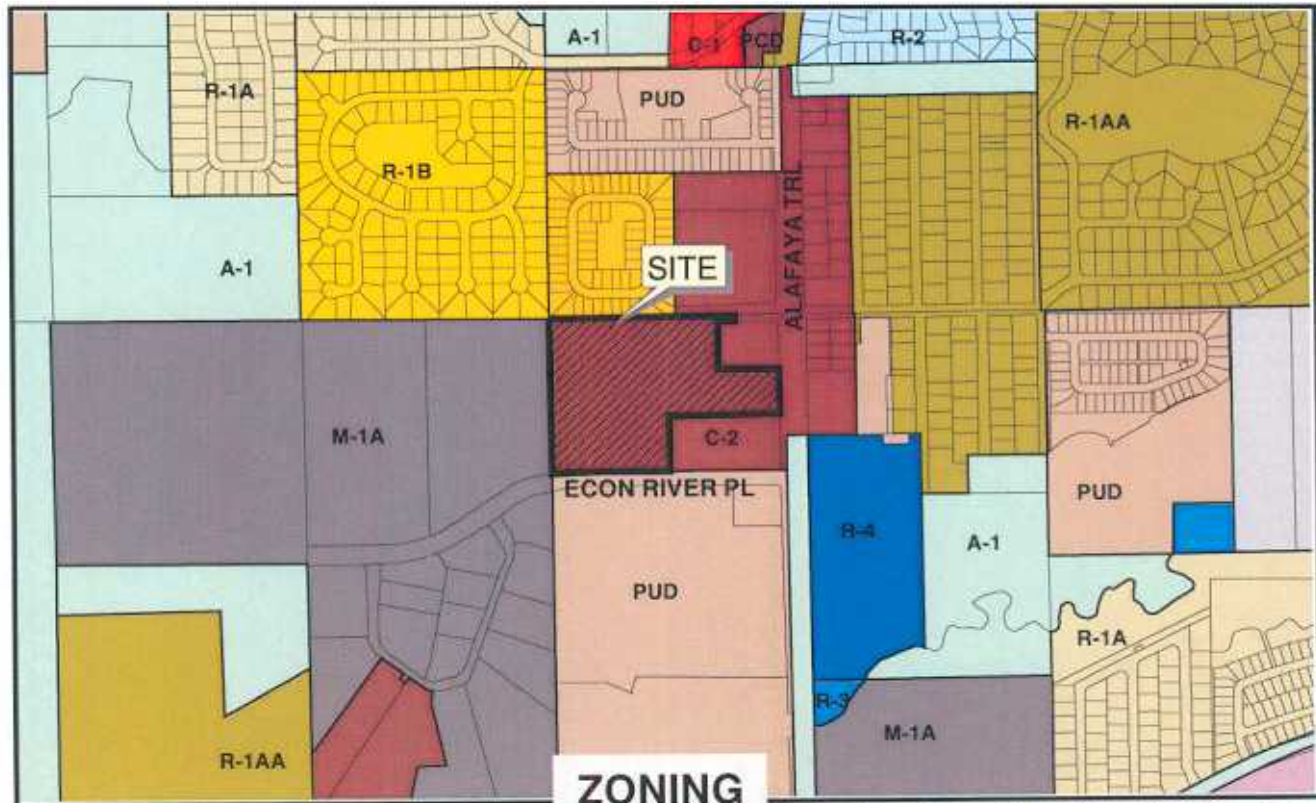
Physical STR: 34-21-31-300-0220-0000

Gross Acres: 16.563 BCC District: 1

Existing Use: Vacant Commercial

Special Notes: _____

	Amend/ Rezone#	From	To
FLU	--	--	--
Zoning	Z2003-006	C-2	PUD



A-1
 C-1
 C-2
 M-1A
 PCD
 PUD
 R-1A
 R-1AA
 R-1B
 R-2
 R-3
 R-4



Rezone No. Z2003-006

From: C-2 To: PUD

 Subject Property

 Parcelbase

N



February 1999 Color Aerials

THE TRADITION AT ALAFAYA PUD

APPLICANT:	Shutts& Bowen Llp / Kenneth W Wright, Esq			
PROPERTY OWNER:	David E Tr & Tulp Louis Axel P Tr & Wagner Robert A Tr Etal,			
REQUEST:	Rezone from C-2 (Retail Commercial District) to PUD (Planned Unit Development District)			
HEARING DATES(S):	P&Z:	04/02/03	BCC:	05/13/03
PARCEL ID NO.:	34-21-31-300-0220-0000			
PROJECT LOCATION:	West Side Alafaya Trail, South of Carrigan Avenue, North of Econ River Place			
FUTURE LAND USE:	C-2			
FILE NUMBER:	Z2003-006 / 03-20500002			
COMMISSION DISTRICT:	District 1- Commissioner Maloy			

OVERVIEW

Zoning Request:

Rezone approximately 16.5 acres from C-2 to PUD, to create a mixed use development that will allow multi-family development of up to 20 dwelling units per net buildable acre as well as commercial/retail uses.

Existing Land Uses: The existing zoning designations and land uses are as follows:

DIRECTION	EXISTING ZONING	FUTURE LAND USE
North -	R-1B (single family) & PCD (Planned Commercial Development)	MDR (medium density residential) and Commercial
South -	PUD (Brossier Apartments)	Commercial
East -	C-2 (Retail Commercial)	Commercial
West -	M-1A (very light industrial)	Industrial

For more detailed information regarding zoning and land use, please refer to the attached map.

SITE ANALYSIS

Facilities and Services:

1. Adequate facilities and services must be available concurrent with the impacts of development. If required by the concurrency review, additional facilities and services will be identified.

2.

Compliance with Environmental Regulations:

There are no jurisdictional wetlands on the site. Gopher tortoise burrows were observed on the site. A listed species survey, a gopher tortoise management plan and copies of any FFWCC permits are required prior to final site plan approval. Also, the development must comply with the requirements of the Econlockhatchee River Protection Overlay Standards Ordinance.

Compatibility with Surrounding Development:

Currently, the area has a Commercial Land Use Designation. The proposed PUD zoning is compatible with the Land Use Designation land use designation. Based upon the conditions contained within the attached development order that address setbacks, buffering and landscaping, the proposed development is compatible with surrounding uses.

ADDITIONAL INFORMATION

The table below provides a brief comparison of the PUD plan denied in April, 2000, with the PUD plan under consideration currently:

	2000 PUD plan	2003 PUD plan
Acres	23.2	16.5*
# of parcels	3	2
North buffer	75 feet	50 feet
Bldg. Height	40 ft.	35 ft. +10% for architectural features.

*The site has been reduced in acreage due Florida Department of Transportation taking 4 acres for a retention pond to accommodate the widening of Alafaya Trail and the northeast corner of the original site being sold to Hess

The applicant is requesting to construct a six foot tall, steel frame, stucco wall along the north property line abutting the existing single family lots. Staff does not recommend this, but instead, recommends constructing a six foot tall masonry or brick wall.

Also, it should be noted that since the adoption of Ordinance 2000-13 by the Board of County Commissioners, the lands with industrial or commercial land use or zoning adjacent to the proposed PUD will not be required to provide active/passive buffering.

Finally, the applicant is requesting that alcoholic beverage establishments be permitted throughout the project. Staff recommends that this use be prohibited within the project, except for beer and wine sales that are an incidental use.

STAFF RECOMMENDATION

Staff recommends approval of the requested rezoning from C-2 to PUD for approximately 16.5 acres of land located on the south side of West Carrigan Avenue, the north side of Econ River Place, and the west side of Alafaya Trail, based on staff findings and subject to conditions contained in the attached development order. Kenneth W. Wright, applicant. The attached ordinance contains the following conditions:

1. Permitted uses for lot 1 shall be those permitted and conditional uses listed under the C-2 zoning category, except that drive-in theaters, flea markets, paint and body shops, hospitals, nursing homes, outdoor advertising, communication towers, and alcoholic beverage establishments (unless incidental sales) which shall be prohibited.
2. Permitted uses for lot 2 shall be those permitted and conditional uses listed under the C-2 zoning category, except that drive-in theaters, flea markets, paint and body shops, hospitals, nursing homes, outdoor advertising, communication towers and alcoholic beverage establishments (unless incidental sales) which shall be prohibited, and those permitted and conditional uses listed under the R-4 zoning category, except boarding houses, communication towers, hospitals and nursing homes which shall be prohibited. Also, apartments shall be rented by the unit and not by the bedroom. No three bedroom/three bathroom or four bedroom/four bathroom units shall be permitted.
3. The buffer adjacent to the existing single family lots on the north side of the site shall be a minimum 50 feet in width, with a six foot masonry wall, and 8 canopy trees per 100 feet. Existing trees may satisfy some of the planting requirements of this condition. Existing trees within the buffer must be saved to the greatest extent possible.

4. The maximum building height shall not exceed 35 feet with a 10% allowance for architectural features.
5. At the final master plan stage, the applicant shall provide details of recreational and open space amenities to satisfy the open space requirements.
6. The residential density of the project shall not exceed 20 dwelling units per net buildable acre.
7. Maximum height of parking lot lights shall be 16 feet. Light fixtures shall have cut-off fixtures that direct light downward. Details of lighting shall be submitted with the final master plan. The minimum setback of a parking lot light source from any existing single family residential lot shall be 50 feet.
8. Dumpster/refuse areas shall be a minimum of 150 feet from any platted single family residential lot.
9. The developer shall provide a pedestrian circulation system giving access to all portions of the development as well as connecting to existing sidewalks outside the development.
10. The developer will comply with the Crime Prevention through Environmental Design (CPTED) concepts during final master plan review as recommended by the Seminole County Sheriff's Office.
11. Minimum building setback of 150 feet from any existing single family residential lot

FILE # Z2003-006

DEVELOPMENT ORDER #03-20500002

**SEMINOLE COUNTY DEVELOPMENT
ORDER**

On May 13, 2003, Seminole County issued this Development Order relating to and touching and concerning the following described property:

Legal description attached as Exhibit A.

(The aforescribed legal description has been provided to Seminole County by the owner of the aforescribed property.)

FINDINGS OF FACT

Property Owner: DAVID E AXEL, TR & LOUIS TULP

Project Name: TRADITION AT ALAFAYA, THE

Requested Development Approval: Rezoning from C-2 (Retail Commercial District) zoning classification to PUD (Planned Unit Development District) zoning classification

The Development Approval sought is consistent with the Seminole County Comprehensive Plan and will be developed consistent with and in compliance to applicable land development regulations and all other applicable regulations and ordinances.

The owner of the property has expressly agreed to be bound by and subject to the development conditions and commitments stated below and has covenanted and agreed to have such conditions and commitments run with, follow and perpetually burden the aforescribed property.

Prepared by: MATTHEW E WEST
1101 East First Street
Sanford, Florida 32771

Order

NOW, THEREFORE, IT IS ORDERED AND AGREED THAT:

- (1) The aforementioned application for development approval is **GRANTED**.
- (2) All development shall fully comply with all of the codes and ordinances in effect in Seminole County at the time of issuance of permits including all impact fee ordinances.
- (3) The conditions upon this development approval and the commitments made as to this development approval, all of which have been accepted by and agreed to by the owner of the property are as follows:
 1. Permitted uses for lot 1 shall be those permitted and conditional uses listed under the C-2 zoning category, except that drive-in theaters, flea markets, paint and body shops, hospitals, nursing homes, outdoor advertising, communication towers, and alcoholic beverage establishments (unless incidental sales) which shall be prohibited.
 2. Permitted uses for lot 2 shall be those permitted and conditional uses listed under the C-2 zoning category, except that drive-in theaters, flea markets, paint and body shops, hospitals, nursing homes, outdoor advertising, communication towers and alcoholic beverage establishments (unless incidental sales) which shall be prohibited, and those permitted and conditional uses listed under the R-4 zoning category, except boarding houses, communication towers, hospitals and nursing homes which shall be prohibited. Also, apartments shall be rented by the unit and not by the bedroom. No three bedroom/three bathroom or four bedroom/four bathroom units shall be permitted.
 3. The buffer adjacent to the existing single family lots on the north side of the site shall be a minimum 50 feet in width, with a six foot masonry wall, and 8 canopy trees per 100 feet. Existing trees may satisfy some of the planting requirements of this condition. Existing trees within the buffer must be saved to the greatest extent possible.
 4. The maximum building height shall not exceed 35 feet with a 10% allowance for architectural features.
 5. At the final master plan stage, the applicant shall provide details of recreational and open space amenities to satisfy the open space requirements.

6. The residential density of the project shall not exceed 20 dwelling units per net buildable acre.
7. Maximum height of parking lot lights shall be 16 feet. Light fixtures shall have cut-off fixtures that direct light downward. Details of lighting shall be submitted with the final master plan. The minimum setback of a parking lot light source from any existing single family residential lot shall be 50 feet.
8. Dumpster/refuse areas shall be a minimum of 150 feet from any platted single family residential lot.
9. The developer shall provide a pedestrian circulation system giving access to all portions of the development as well as connecting to existing sidewalks outside the development.
10. The developer will comply with the Crime Prevention through Environmental Design (CPTED) concepts during final master plan review as recommended by the Seminole County Sheriff's Office.
11. Minimum building setback of 150 feet from any existing single family residential lot.

This Development Order touches and concerns the aforescribed property and the conditions, commitments and provisions of this Development Order shall perpetually burden, run with and follow the said property and be a servitude upon and binding upon said property unless released in whole or part by action of Seminole County by virtue of a document of equal dignity herewith. The owner of the said property has expressly covenanted and agreed to this provision and all other terms and provisions of this Development Order.

(5) The terms and provisions of this Order are not severable and in the event any portion of this Order shall be found to be invalid or illegal then the entire order shall be null and void.

Done and Ordered on the date first written above.

By: _____
Daryl G. McLain, Chairman
Board of County Commissioners

NOTE: THE PROPER SIGNATORIES WILL BE LISTED ON THE DEVELOPMENT ORDER TO BE SIGNED BY THE CHAIRMAN AND WILL BE INCLUDED IN THE STAFF REPORT FOR THE BOARD OF COUNTY COMMISSIONERS

OWNER'S CONSENT AND COVENANT

COMES NOW, the owner, DAVID E TR & TULP LOUIS AXEL P TR & WAGNER ROBERT A TR ETAL, on behalf of itself and its heirs, successors, assigns or transferees of any nature whatsoever and consents to, agrees with and covenants to perform and fully abide by the provisions, terms, conditions and commitments set forth in this Development Order.

«Name»,
Property Owner

Witness

STATE OF FLORIDA)

COUNTY OF SEMINOLE)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Insert Name who is personally known to me or who has produced as identification and who did take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this day of _____, 20__.

Notary Public, in and for the County and State
Aforementioned

My Commission Expires:

Exhibit A

Legal Description

TRADITION AT ALAFAYA

DESCRIPTION:

The Northwest 1/4 of Section 34, Township 21 South, Range 31 East, Seminole County, Florida, lying North of Econ River Place (formerly Iron Bridge Road), and lying West of State Road 520 (Alafaya Trail).

Less and except the following described parcels of land:

Lot 1, CARRIGAN-HESS, according to the plat thereof, as recorded in Plat Book 59, Page 16, Public Records of Seminole County, Florida.

That portion of said land conveyed to Seminole County, a political subdivision of the State of Florida recorded April 13, 1999, in Official Records Book 3628, Page 920.

That portion of said land conveyed to Seminole County, a political subdivision of the State of Florida recorded April 13, 1999, in Official Records Book 3628, Page 925.

That portion of said land taken by the State of Florida Department of Transportation by Stipulated Order of Taking and Final Judgment recorded October 3, 2001, in Official Records Book 4185, Page 298.

Containing 16.563 acres more or less and being subject to any rights-of-way, restrictions and easements of record.

AN ORDINANCE AMENDING, PURSUANT TO THE LAND DEVELOPMENT CODE OF SEMINOLE COUNTY, THE ZONING CLASSIFICATIONS ASSIGNED TO CERTAIN PROPERTY LOCATED IN SEMINOLE COUNTY (LENGTHY LEGAL DESCRIPTION ATTACHED AS EXHIBIT); ASSIGNING CERTAIN PROPERTY CURRENTLY ASSIGNED THE C-2 (RETAIL COMMERCIAL DISTRICT) ZONING CLASSIFICATION THE PUD (PLANNED UNIT DEVELOPMENT DISTRICT) ZONING CLASSIFICATION; PROVIDING FOR LEGISLATIVE FINDINGS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SEMINOLE COUNTY, FLORIDA:

Section 1. LEGISLATIVE FINDINGS.

The Board of County Commissioners hereby adopts and incorporates into this Ordinance as legislative findings the contents of the documents titled The Tradition at Alafaya PUD dated March 25, 2003.

The Board hereby determines that the economic impact statement referred to by the Seminole County Home Rule Charter is unnecessary and waived as to this Ordinance.

Section 2. REZONINGS. The zoning classification assigned to the following described property is changed from C-2 (Retail Commercial District) to PUD (Planned Unit Development District):

SEE ATTACHED EXHIBIT A

Section 3. CODIFICATION. It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall not be codified.

Section 4. SEVERABILITY. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, it is the intent of the Board of County Commissioners that the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

Section 5. EFFECTIVE DATE. A certified copy of this Ordinance shall be provided to the Florida Department of State by the Clerk of the Board of County Commissioners in accordance with Section 125.66, Florida Statutes, and this Ordinance shall be effective on the recording date of the Development Order # **03-20500002** in the Official Land Records of Seminole County.

ENACTED this ____ day of _____, 20__

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

By: _____
Daryl G. McLain
Chairman

Exhibit A

Legal Description

TRADITION AT ALAFAYA

DESCRIPTION:

The Northwest 1/4 of Section 34, Township 21 South, Range 31 East, Seminole County, Florida, lying North of Econ River Place (formerly Iron Bridge Road), and lying West of State Road 520 (Alafaya Trail).

Less and except the following described parcels of land:

Lot 1, CARRIGAN-HESS, according to the plat thereof, as recorded in Plat Book 59, Page 16, Public Records of Seminole County, Florida.

That portion of said land conveyed to Seminole County, a political subdivision of the State of Florida recorded April 13, 1999, in Official Records Book 3628, Page 920.

That portion of said land conveyed to Seminole County, a political subdivision of the State of Florida recorded April 13, 1999, in Official Records Book 3628, Page 925.

That portion of said land taken by the State of Florida Department of Transportation by Stipulated Order of Taking and Final Judgment recorded October 3, 2001, in Official Records Book 4185, Page 298.

Containing 16.563 acres more or less and being subject to any rights-of-way, restrictions and easements of record.

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA

APPELLATE DIVISION

WEAT LAND PARTNERS II,
A florida general partnership,

Case No.: 00-33
L.T. Case No.: 99-1176-CA-16

Petitioner,

vs.

SEMINOLE COUNTY, a political
subdivision of the State of Florida,

Respondent.

Decision filed February 5, 2001

Miranda F. Fitzgerald, Esquire
for Petitioner

✓ Stephen P. Lee, Esquire
for Respondent

*entered
Feb 21
date*

In this petition for writ of certiorari, Weat Land Partners II (Weat) is seeking review of a 2/1 decision of the Seminole County Board of County Commissioners (BCC) denying Weat's request to rezone its property from C-2 to PUD. Weat's property is located approximately one mile from The University of Central Florida (U.C.F.). It abuts the Remington Village subdivision to the north. Further north but still close by are the Remington Park and Stillwater subdivisions. The property comprising Remington Village had been rezoned a number of years ago from C-2 to medium density single family residential. At the public hearing before the BCC, a number of residents and representatives from all three subdivisions spoke in opposition to the rezoning request.

Weat's property consists of three parcels, referred to at the hearing as parcels A, B, and C. Parcel A consists of 14.45 net buildable acres and is adjacent to Remington Village. Parcels B and C have 1.6 and 3.15 net buildable acres, respectively. Weat's PUD

proposal was to have a mixture of retail commercial (C-2, restaurants and convenience stores) and residential (apartments) on its property. Weat's proposal indicated that Weat desired to break down the uses amongst the parcels in any of the following manners:

- 1) All three commercial.
- 2) A, R-4 (high density residential- including apartments), B, commercial, and C, R-4
- 3) A, R-4, B, commercial, and C, commercial

However, it is apparent from the hearing transcript that the property likely would be developed according to the second or third option, and that an apartment complex consisting of up to 352 units would be constructed on the property. The neighbors were opposed to this primarily because they felt that the target market for the complex would be U.C.F. students, with an attendant increase in noise, crime, traffic and irresponsible drivers.

A nearby landowner, Brossier, Inc., had recently obtained a rezoning of its property from C-2 to PUD to develop it as a combination of retail commercial/ apartment complex in a manner substantially similar to the development proposed by Weat. To avoid opposition by the three subdivisions, Brossier met with representatives of the subdivisions and made a number of concessions to allay their concerns about potential problems caused by student residents. The concessions were designed to reduce the number of students residing at the complex and address problems caused by students who did live there, and included the following conditions:

- 1) None of the leases would be cosigned.
- 2) A Seminole County deputy sheriff would be allowed to live in one of the units rent free.
- 3) None of the leases would be for less than twelve months.

Weat had also met with representatives of the three subdivisions, and agreed to all of the same concessions given by Brossier, except for the above three. With respect to the above three concessions Weat:

Agreed to limit the number of cosigned leases to 15% of the units, done on an as available basis rather than concentrating them in one spot. Weat stated that it wanted the 15% flexibility to accommodate domestic situations, ie. a separating or divorcing spouse seeks an apartment but does not have the necessary credit on his/her own to obtain one.

- 2) Agreed to limit the number of seven month leases to 20% of the units. Weat stated that it wanted this 20% flexibility to accommodate corporate relocations and house hunters.
- 3) Rejected the concession of having a deputy sheriff residing at the complex for even 50% of the regular rental.

As mentioned, Weat did agree to a number of the concessions made by Brossier, including not allowing subleasing, not having any four bedroom apartments or three bedroom three bath apartments, and renting by the unit rather than by the room. Additionally, the complex would be gated, it would be set back 75 feet from the Remington Village subdivision and separated from it by a brick wall and planting, and no balcony apartments would overlook the Remington Village homes.

The neighbors refused to withdraw their opposition to the rezoning unless Weat agreed to the identical concessions given by Brossier.

Weat submitted its proposed preliminary master plan for the rezoning to Planning and Zoning (P&Z) for approval. This proposed plan had little detail regarding the rezoning of the parcels because Weat did not yet have a developer for the project. However, as the P&Z staff noted, little detail for these preliminary plans is required by the Land Development Code (LDC), and Weat's plan met these requirements. The staff held a public hearing at which the neighbors voiced their opposition to the rezoning.

In its report to the P&Z Commission, the staff stated that, even if Weat did not give the three disputed concessions given by Brossier, the plan met all requirements, including compatibility with the surrounding areas. The staff recommended approval of the rezoning. The Commission, however, unanimously recommended denial of the rezoning on the grounds that rezoning was incompatible with the surrounding area, and the proposed preliminary master plan lacked sufficient detail. Weat appealed to the BCC.

At the public hearing before the BCC, P&Z staff once again recommended approval of Weat's plan even without the additional three concessions. Weat's counsel, Ms. Fitzgerald, was qualified and testified as an expert witness in the field of land use law. A traffic engineering professional, Mr. Dervish, also was qualified and testified as an expert on behalf of Weat. Ms. Fitzgerald testified as to the concessions Weat had made. She also testified that the developer for the Remington Village subdivision had sought and obtained down-zoning of that property from C-2 to medium density residential, but that the approved Remington Village development plan had not included the buffers that should have been placed between this rezoned lower intensity use and the abutting C-2 property. She testified that much of the adjacency problems being raised by the neighbors opposed to Weat's plan were created by the improper approval of the development plan for Remington Village.

Several provisions of the LDC and the Seminole County Comprehensive Plan (CP) were discussed which support approval of Weat's proposed PUD. The CP contains Table 2.1 which sets forth compatible transitional uses with respect to existing adjacent zoning designations. The table has two categories- uses which are per se compatible and those which are compatible transitional uses if conditions are imposed. Weat's proposal was a per se compatible transitional use. Furthermore, the policy section of the CP at 2.52 provides that to prevent urban sprawl the county **shall** encourage commercial property to

be developed as PUD, mixed use residential /commercial, including apartments (emphasis added). Also, the housing element introduction to the CP provides that, also to discourage urban sprawl, the CP recommends promoting medium to high density residential development along highly developed roadways. Ms. Fitzgerald testified that Weat's property fronts just such a roadway, Alafaya Trail, and that Alafaya Trail has been designated by the Department of Transportation to be further widened in the near future.

The neighbors' preference for the development was that it remain entirely commercial, including office space. The neighbors contended that keeping the parcels commercial, or requiring Weat to give the identical concessions given by Brossier, would result in:

- 1) Less traffic congestion from the development.
- 2) Less noise from student rented apartments.
- 3) Less crime generated from student rented apartments.

TRAFFIC CONGESTION

The neighbors offered only lay opinion testimony in support of their argument that the proposed rezoning would create excessive traffic congestion in the area. Because lay opinion testimony without factual support does not constitute competent substantial evidence, Weat was not required to put on any rebuttal evidence. However, the neighbors' lay opinions were, in fact, refuted by the testimony of Weat's expert, Mr. Dervish, who stated that developing the property as proposed by Weat would result in significantly less traffic in the area, even during peak traffic periods.

NOISE AND CRIME

A number of the neighbors opposing the rezoning referred to traffic, crime and noise problems experienced in proximity to "student housing" developments near U.C.F.

such as Knight's Crossing and Northgate Lakes. However, evidence in the record reveals that such traditional apartment student housing involves renting by the room and subletting.

The Seminole County LDC does not have a definition for student housing. However, it does have a definition for "rooming apartments" which appears to encompass student housing. It provides that rooming apartments are rented, in whole or in part, by the room and not as a single unit, and that complexes that rent apartments with each room having its own bathroom facilities, and which is located within one (1) mile from a college or university shall be presumed to be a rooming apartment complex.

None of the neighbors testified that the identified problem complexes were similar to that proposed by Weat, with its prohibitions on 4/4, 4/3, and 3/3 rentals, renting by the bedroom, subleasing, and its restrictions limiting cosigning and seven month leases. Weat did not dispute that students would be able to rent apartments at its proposed complex. But the record reflects that Weat had taken steps to ensure that the complex would not have the high concentration of student tenants (and its associated problems) like that present at complexes such as Knight's Crossing. Thus, the neighbor's testimony did not establish that Weat's plan could result in the excessive crime, traffic and noise problems feared by the neighbors as a result of their experiences with complexes such as Knight's Crossing and Northgate.

DEPRESSED PROPERTY VALUES

One neighbor testified that Weat's proposed development would depress the property values in the subdivisions. However, the only concrete factual support which she gave for that statement was that the value of her home had been depressed for a lengthy period of time due to a complex which had been built on SR 434 (Alafaya). She did not identify whether that complex was similar to Weat's or was a student housing project like

Knight's Crossing. Furthermore, Weat's counsel testified as an expert that well maintained and managed complexes do not depress the property values in nearby subdivisions, and gave several examples.

BCC's reasons for denying the rezoning are not clear, but the denial appears to be based on the fact that Weat would not agree to all the concessions given by Brossier, and because the proposed development was close to single family homes

A landowner seeking rezoning of property has the initial burden of proving that the landowner has complied with all procedural requirements of the zoning ordinance and that rezoning is consistent with the comprehensive plan. The burden then shifts to the County to prove that maintaining the existing zoning accomplishes a legitimate public purpose. Board of County Commissioners of Brevard County v. Snyder, 627 So.2d 469 (Fla. 1993). Weat met both parts of its initial burden in this case. It proved that its proposal was consistent with the CP- it was per se compatible with the adjoining uses and furthered the CP policy of encouraging PUD zoning and promoting medium to high density zoning along highly developed roads. Furthermore, although Weat's plan was sparse on detail, P&Z staff testified that no more detail than Weat provided was required by the LDC. Therefore, Weat proved that it had complied with the procedural requirements of the zoning ordinance. The burden thus shifted to the County to prove that maintaining the existing zoning would accomplish a legitimate public purpose such as the promotion of public health, safety or welfare.

In reviewing a rezoning decision this court is confined to consideration of the record of the BCC hearing. The court must determine whether BCC afforded Weat procedural due process, complied with the essential requirements of law, and whether the decision of the BCC is supported by competent substantial evidence. Degroot v. Sheffield, 95 So. 2d 912 (Fla. 1957); ABG Real Estate Development Company v. St.

Johns County, 608 So.2d 59 (Fla. 5th DCA 1992) rev. den. 613 So2d 8 (Fla. 1993). As is often the case in these petitions, the third prong appears to be primarily at issue although the second prong is also at issue.

In determining whether competent substantial evidence supports a rezoning decision, this court may not reweigh the evidence, and must affirm if a reasonable person after considering the competent evidence in the record, could reach the same result. Lee County v. Sunbelt Equities II, L. P. 619 So.2d 996 (Fla. 2nd DCA 1993); Department of Natural Resources v. Sailfish Club of Florida, Inc. 473 So.2d 261 (Fla. 1st DCA 1985). However, generalized lay opinion testimony regarding noise, traffic etc., which is not substantiated by factual testimony and evidence, does not constitute competent evidence. Metropolitan Dade County v. Blumenthal, 675 So. 2d 598 (Fla. 3rd DCA 1995).

The testimony of the neighbors did not constitute competent substantial evidence which would support denial of the rezoning, because it was mostly generalized lay opinion, and the factual testimony was not tied to the neighbors' experiences with a complex such as that proposed by Weat. Rather, the neighbor's factual testimony appeared to relate entirely or almost entirely to problems experienced as a result of student housing projects like Knight's Crossing. Therefore, the County did not meet its burden of proving that denial of the rezoning request advanced a legitimate public purpose, and the burden never shifted back to Weat to rebut the County's evidence. However, even though the burden never shifted back to Weat, the testimony of P&Z staff and Weat's experts constituted competent substantial evidence in favor of approval of Weat's proposal.

Seminole County argues that PUD zoning is different from other types of zoning in that it necessarily involves negotiation of conditions of approval between the landowner, the governing body and neighboring landowners. Hence, it contends that

BCC was justified in denying rezoning because Weat would not agree to the three additional concessions given by Brossier. The procedure for obtaining PUD zoning does differ significantly from obtaining traditional rezoning. PUD zoning typically involves a large tract of land. It affords a developer more flexible use of property because a mixture of zoning classifications can be placed on the property. For example, the C-2 designation of Weat's property only permitted Weat to put 10% of the property to residential use. With PUD zoning, Weat would be able to put portions of the property to a much higher density residential use. Because PUD zoning permits a mixture of land uses not permitted on adjoining land which is not zoned PUD, a landowner seeking PUD zoning must agree to conditions which will mitigate the impact on adjoining lands caused by the mixed uses on the PUD zoned land. City of New Smyrna Beach v. Andover Development Corp., 672 So.2d 618 (Fla. 5th DCA 1996). Thus, approval of a PUD is similar to approval of a special exception, special use, or a variance. Bender, Zoning and Land Use Controls, Section 32.03(2).

In Seminole County, the landowner seeking PUD rezoning must submit a preliminary master plan to P&Z for approval. This preliminary plan typically is not detailed, because after it is approved, the owner must submit a detailed final master plan. P&Z can impose conditions on approval of the preliminary plan to mitigate adverse effects of PUD zoning. Once the preliminary master plan is approved, a site-specific zoning ordinance is drafted for the PUD and is enacted after a public hearing. The developer's final master plan cannot deviate from the requirements of that ordinance without obtaining amendment of the ordinance after another public hearing. The developer then has a five year period of time to submit its final master plan to P&Z for approval. P&Z must approve that master plan if it complies with the ordinance implementing the preliminary master plan, and all other provisions of the LDC.

Reference Seminole County LDC at Sections 30.444, 30.445, 30.449, 30.450, and 30.451. Had Weat decided to develop its property consistent with the existing C-2 zoning, these steps would have been unnecessary. Weat would have only been required to submit a site plan for approval, and P&Z would have been required to approve it without imposition of further conditions so long as it complied with the LDC.

Although P&Z and the BCC can impose conditions on approval of a preliminary master plan for a PUD, the conditions cannot be arbitrary. That is, the conditions must be reasonably designed to promote the public health, safety or welfare. It is a departure from the essential requirements of law to impose conditions which do not further one or more of these goals. Proof that the conditions do so is the County's burden of proof, and that the County did not meet it. It was arbitrary to deny approval simply because Weat did not agree to all conditions given by Brossier, where there was no proof that requiring those conditions would promote the public welfare. Likewise, although lack of compatibility with the surrounding area (the proximity of the development to U.C.F. and residences) was also given as a reason for denial, this was not proved, and in fact the proposal was per se compatible with the surrounding area under the CP.

The decision to deny rezoning was arbitrary and was not supported by competent substantial evidence and must be quashed. However, Seminole County correctly argues that, if the decision is quashed, this court cannot remand with directions to approve the rezoning. Rather, this court must remand for further proceedings consistent with the opinion. Seminole County Bd. of County Commissioners v. Eden Park Village, Inc., 699 So.2d 334 (Fla. 5th DCA 1997) rev. den. 707 So.2d 1126 (Fla. 1998); St. Johns County v. Smith, 25 Fla. L. Weekly D1887 (Fla. 5th DCA, Aug. 11th, 2000).

JANUARY 31, 2003

REVISIONS:
FEBRUARY 25, 2003
MARCH 26, 2003

PRELIMINARY MASTER PLAN AND REZONING

FOR



PREPARED BY:

SHEET INDEX:

- 1- Topography, Boundary Survey
- 2- Preliminary Master Plan
- 3- Architectural Elevations

LANDSCAPE ARCHITECT:

Dix.Nance, Inc.
150 W. Jessup Ave.
Longwood, FL 32750
(407) 667-1777

CIVIL ENGINEER:

Donald W. McIntosh & Associates
300 Garfield Ave., Suite 300
Winter Park, FL 32789
(407) 644-4068

APPLICANT:

Kenneth W. Wright, Esq.
Shutts & Bowen, LLP.
300 South Orange, Suite 1000
Orlando, FL 32802
(407) 423-3200

RECEIVED

MAR 26 2003

AND TOPOGRAPHIC SURVEY

