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MEMORANDUM

TO: Mayor Teresa Jacobs  
and  
County Commissioners

FROM: Jeffrey J. Newton, County Attorney *JJN*

DATE: January 22, 2015

RE: Final Judgment in First of Two Orange County School Board Lawsuits

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Attached is a copy of Circuit Court Judge Alice Blackwell's Final Judgment after trial in the lawsuit brought by the Orange County School Board against Orange County under Section 163.3215, Florida Statutes. (Please recall that this is one of two lawsuits filed by OCSB. The other case — the certiorari proceeding — remains pending with the Circuit Court. See corrected December 23, 2014 memorandum sent to each of you.)

Section 163.3215, Florida Statutes, requires that OCSB establish that the Board's November 5, 2013 decision denying its special exception application for a West Orange relief high school materially altered the use or density or intensity of use on a particular piece of property which is not consistent with the County's comprehensive plan. OCSB alleged in Count I of its four-count Complaint that the Board's decision violated Section 163.3215. The County maintained, from start to finish, that the Board's decision did no such thing. Judge Blackwell's decision is devoid of any discussion or analysis of this threshold issue under Section 163.3215.

Nevertheless, Judge Blackwell's Final Judgment granted "part" of Count I in favor of OCSB and against the County. Essentially, her partial finding for OCSB indicates that it is the County's responsibility to allow a high school to be constructed on OCSB's property if OCSB's application meets all the criteria for a special exception. This is nothing new. The County's position has always been that if OCSB submits an application that meets the special exception criteria set forth in the Orange County Code, then the County would have to grant the special exception application.

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Furthermore, in this litigation, OCSB sought a court order directing the County to grant the special exception that OCSB requested. However, Judge Blackwell notes that the Court cannot mandate that the County grant the special exception application as proposed by OCSB in 2013 because the Court cannot dictate the terms and conditions that the County may impose in granting a special exception.

Lastly, Judge Blackwell summarily rejected Counts II, III and IV of OCSB's lawsuit, finding in favor of the County on each of those other counts.

In summary, OCSB is essentially where it was when it commenced this litigation in late 2013.

As always, if you have any questions, please contact me.

Attachment

Copy: Ajit Lalchandani, County Administrator  
William C. Turner, Assistant County Attorney

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,  
IN AND FOR ORANGE COUNTY, FLORIDA

CASE NUMBER: 2013-CA-014749-O

DIV 32

THE SCHOOL BOARD OF  
ORANGE COUNTY FLORIDA

Plaintiff(s),

vs.

ORANGE COUNTY FLORIDA

Defendant(s).

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**JUDGMENT FOLLOWING TRIAL**

This case is in four counts but all counts seek the same effective relief - that is to allow Plaintiff to construct a high school as it proposes that school on property located in an area that is designated as the West Windermere Rural Settlement ("WWRS").

The stipulated facts to which the parties to this action agreed show that the WWRS was created in 1991, in connection with a change to the Future Land Use Map of approximately 6,000 acres. Since 1996, Orange County has approved five new public high schools, including some which were located in or adjacent to WWRS. Further, in 1998 Orange County approved a special exception adjacent to the WWRS residential, allowing the construction of a private school, Windermere Prep, on 39 acres. This facility, which serves 1500 students and faculty, has 250,000 square feet of school buildings, some of which exceed the adjacent residential 35' height restriction, and includes baseball, softball and football fields. To the south of the proposed site for this school, there is a recently approved commercial and office Planned Development known as the Chancellor Development, within the WWRS adjacent to residential.

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The Orange County Public School 10 Year Capital Outlay Plan for Additional Schools that Orange County repeatedly adopted and incorporated by reference into the Capital Improvement Element Policy 1.3.14 of its 2008 – 2013 Comprehensive Plans specifically included a planned new public high school designated as “27-H-W-4-Beck Property/535 North Fiquette” (the School Site”) to open between 2015 and 2017. This site is the property that is at issue in this case. The School Board paid \$7,177,200.00 to acquire the School Site, which was partially acquired in 2004, with additional property added in 2006, to provide a 66 acre high school site to address the needs of future residential development in West Orange County.

Section 1013.33, Fla.Stat., requires as follows:

- (1) It is the policy of this state to **require the coordination of planning between [school] boards and local governing bodies to ensure that plans for the construction and opening of public educational facilities are facilitated and coordinated in time and place with plans for residential development, concurrently with other necessary services.** Such planning shall include the integration of the educational facilities plan and application policies and procedures of a board with the local comprehensive plan and land development regulations of local governments.

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- (4) The location of educational facilities shall be consistent with the comprehensive plan of the appropriate local governing body developed under part II of Chapter 163 and consistent with the plan’s implementing land development regulations.

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- (7) A local governing body may not deny the site applicant based on the adequacy of the site plan as it related solely to the needs of the school. **If the site is consistent with the comprehensive plan’s land use policies and categories in which public schools are identified as allowable uses, the local government may not deny the application but it may impose reasonable development standards and conditions in accordance with s. 1013.51(1) and consider the site plan and its adequacy as it relates to environmental concerns, health, safety and welfare, and effects on adjacent property.** Standards and conditions may not be imposed with conflict with those established in this chapter or the Florida Building Code, unless mutually agreed and consistent with the interlocal agreement required by s. 163.3177. [emphasis added].

To comply with Section 1013.33, Fla. Stat., the Board of County Commissioners on behalf of Defendant and Plaintiff jointly enacted the Public School Siting Regulation found in Orange County Code section 38-1751, et. seq. (2013), which states in part:

Section 38.1751 – Zoning Categories in which schools are allowed.

As indicated in sections 38-77 and 38-79(139, 140, 141) public school facilities may be located as follows:

- (1) Public schools shall be permitted by right or by special exception in the following zoning categories, subject to the site and development standards set forth in sections 38-1753 to 38-1755

<u>School</u>	<u>Location</u>	<u>By Right</u>	<u>By Special Exception</u>
High	Rural Settlement	P-D	R-1,R-1A, R-1AA, R-IAAA R-2, RCE, RCE-2, R-CE-5 RT, RT-1, R-TS, U-V, RLD, Cluster, P-O, C-1, C-2, C-3 I-1A,I-1-5, I-2/I-3, I-4

Comprehensive Plan Public Schools Policy 5.2.2 and Future Land Use Policy 8.7.6 provide:

...Public High Schools ... **shall be allowed** as a special exception in the following land use categories located in the Rural Settlement Areas: 1/1, 1/2, 1/5, Low Density Residential, Low-Medium Density Residential, Office, Commercial, Industrial, and Institutional. In addition to the locations identified above, public high schools and ninth-grade centers developed in conjunction with high schools **shall be allowed** as a permitted use in all future land use categories if identified in a Planned Development Land Use Plan approved by the Board of County Commissioners. [emphasis added]

In the years preceding and again in 2013, the Development Review Committee stated that the School Site was consistent with Orange County’s controlling Public School Siting Regulation and various elements of Orange County’s Comprehensive Plan.

In April 2013, Plaintiff filed its application for a special exception under Section 38-78. The proposed high school would be three stories tall, would be approximately 350,000 square feet and was designed for 2,776 students, teachers and staff. The application included athletic facilities such as a baseball field, softball field, and a lighted football field and track. On September 6, 2013, the Board of Zoning Adjustment held a public hearing on Plaintiff's application and recommended by a 4 – 2 vote that it be approved.

Thereafter, several parties appealed the decision of the Board of Zoning Adjustment and, on November 5, 2013, the Board of County Commissioners held a public hearing on Plaintiff's request for a special exception for a public high school in the WWRS. Following the public hearing, the Board of County Commissioners voted 6 – 1 to deny Plaintiff's special exception application. This lawsuit followed.

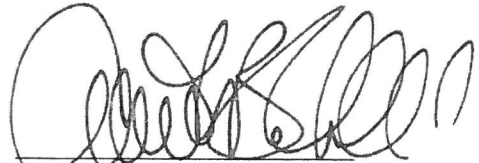
In Count I of this action, Plaintiff requested that the court enter declaratory relief, declaring that the school site as designed by the Plaintiff is consistent with the Comprehensive Plan and adopting the findings of Orange County's Board of Zoning Adjustment. The court cannot grant the requested relief in total. But, in part, declaratory judgment should be entered in order to clarify the duties and responsibilities of the Defendant in connection with Plaintiff's application for special exception. Orange County's Comprehensive Plan, as well as its codes, enacted pursuant to state law, mandate that Plaintiff be allowed a special exception for this property for the purposes of a school. The terms and conditions upon which that special exception is granted is a function of Defendant, however, and cannot be dictated by the court under these circumstances. In sum, Plaintiff did not offer to modify its request for special exception to be acceptable to the Defendant, and Defendant has not negotiated or otherwise indicated what would need to occur for this property to be acceptable for the special exception. The pending action was, in essence, premature since there has been no evidence of discussion or

negotiation between the parties after the Board of County Commissioners denied the initial application for special exception.

THEREFORE, it is ordered and adjudged as follows:

1. The court finds that Plaintiff met its burden of proof and finds in favor of Plaintiff in part on Count I. Orange County's Public School Siting Regulations were jointly enacted pursuant to Florida Statutes and the Orange County Comprehensive Plan and are the most specific and mandatory regulation that Defendant has obligated itself to follow, controlling the criteria and location of public schools within Orange County. Defendant, contrary to its own regulation in this regard, failed to adequately consider and negotiate the requirements for approval of the school site. Further, Defendant failed to provide any advance notice to the Plaintiff that it would not follow the Public School Siting Regulations and, therefore, Defendant may not ignore the requirements of the Orange County Public School Siting Regulation and Comprehensive Plan in considering the application of the Plaintiff for a special exception to construct a high school on the Plaintiff's property at issue in this case.
2. The court finds that Plaintiff failed to meet its burden of proof as to Count II and finds in favor of Defendant on this count.
3. The court finds that Plaintiff failed to meet its burden of proof as to Count III and finds in favor of Defendant on this count.
4. The court finds that Plaintiff failed to meet its burden of proof as to Count IV and finds in favor of Defendant on this count.

DONE AND ORDERED at Orlando, Orange County, Florida on this 20<sup>th</sup> day of January, 2015.



Alice L Blackwell  
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was filed with the Clerk of the Court this 20<sup>th</sup> day of Jan., 2015 by using the Florida Courts E-Filing Portal System. Accordingly, a copy of the foregoing is being served on this day to all attorney(s)/interested parties identified on the ePortal Electronic Service List, via transmission of Notices of Electronic Filing generated by the ePortal System.

Jennifer Hough, Judicial Assistant to Judge Alice L Blackwell