



Board of County Commissioners

2401 SE Monterey Road
Stuart, Florida 34996

Agenda Item Summary

File ID: 18-0524

DPQJ-1

Meeting Date: 7/10/2018

PLACEMENT: Departmental - Quasi-Judicial

TITLE:

SECTION 10.8.D, LDR HEARING REGARDING RESOLUTION NUMBER 16-9.51 REVISED MASTER/FINAL SITE PLAN APPROVAL FOR LITTLE CLUB CONDOMINIUM WTCF

EXECUTIVE SUMMARY:

On September 20, 2016, the Board of County Commissioners (BOCC) approved a development order for Little Club Condominium, Inc.'s (Little Club) proposed Wireless Telecommunications Facility (WTCF). On March 27, 2018, pursuant to Section 10.8.D, Land Development Regulations, the Board conducted a hearing determining that there was misrepresentation by Little Club's agent, Dynamic Towers, Inc. (DTI), that occurred during the September 20, 2016 quasi-judicial hearing to consider the Little Club WTCF application that ultimately resulted in the approval of the Little Club development order. This is a "rehearing to consider the development order."

DEPARTMENT: County Attorney

PREPARED BY: **Name:** Ruth A. Holmes
Title: Senior Assistant County Attorney

REQUESTED BY: Sarah W. Woods, County Attorney

PRESET:

PROCEDURES: Quasi-Judicial

BACKGROUND/RELATED STRATEGIC GOAL:

History

In 2016, two development applications for WTCF were submitted, analyzed in the development review process, and ultimately approved by the BOCC. The two proposed WTCF locations happened to be less than 3,000 feet from one another and in sections of the county designated residential. The first of the two WTCF approved applications was submitted by RG Towers, LLC (RG) and Kenai Properties, LLC (Kenai) (Hereinafter, referred to as the Kenai WTCF). The second approved WTCF was submitted by DTI as agent for the Little Club WTCF application.

During the Little Club WTCF application process and during the hearings in front of the BOCC, Kevin Aycock, DTI's agent and president, provided documents and testimony, under oath, as to the height, width and depth (scale) of the proposed Little Club WTCF. In addition, during the hearing, Mr. Aycock

answered a question posed by Commissioner Fielding, which when asked the same question in a later deposition, Mr. Aycock answered differently.

On September 20, 2016, the BOCC approved the Little Club WTCF application through Resolution Number 16-9.51.

Pursuant to Section 10.8.D, Land Development Regulations, Martin County Code (LDR), the BOCC was asked to determine whether there was sufficient evidence that the Little Club WTCF application “was considered wherein there was misrepresentation” resulting in the approval of development order/Resolution Number 16-9.51.

LDR Provision 10.8.D. and Misrepresentation

Article 10, Section 10.8.D, LDR states:

Misrepresentation. If there is evidence that an application for a development order was considered wherein there was misrepresentation, fraud, deceit, a deliberate error or omission, or a material omission that should have been disclosed by the applicant, the county shall initiate a rehearing to reconsider the development order. The county shall re-approve, approve with new conditions, or deny the development order at the rehearing based upon the standards in this article...

The March 27, 2018 Hearing, the First of Two Section 10.8.D Hearings

On March 27, 2018, the BOCC conducted a quasi-judicial hearing of this matter wherein the County was represented by counsel; Little Club, its agent DTI, and North Passage Home Owner's Association (North Passage) were represented by counsel; and intervenors, RG Towers, Inc. and Kenai Properties, LLC were also represented by counsel. All parties were provided notice and an opportunity to present evidence, cross examine other parties' witnesses, and provide a summation of their respective cases. The issue for the March 27, 2018 hearing was whether there was misrepresentation during the application process resulting in the September 20, 2016 approval of the Little Club development order.

After the close of the evidence and summations, on a 4-1 vote, the BOCC determined that Resolution No. 16-9.51 was approved based on misrepresentations by Kevin Aycock, president of DTI, the agent for Little Club. The finding of misrepresentation was based on: 1) the photo-simulation as represented by Mr. Aycock during the development review process and as presented in County Exhibit 5A1; 2) oral representations made by Mr. Aycock to Commissioner Fielding during the BOCC hearing for the consideration of Resolution 16-9.51 on September 20, 2016 regarding the status of DTI's contract with service providers for the WTCF; and 3) the accuracy of DTI's written representations to County staff as to whether the services for the Little Club WTCF at issue could be co-located on the approved but unbuilt Kenai WTCF, a requirement of Division 18, of the Land Development Regulations.

The June 19, 2018 Hearing, the Second of Two Section 10.8.D Hearings

On June 13, 2018, counsel for the County was informed that DTI had retained a new attorney for the second 10.8.D Hearing. DTI, through its new attorney, formally requested a continuance of the June 19, 2018 hearing date. Little Club, through its attorney, joined in the request for a continuance. Based on the requests, the County rescheduled the hearing to July 10, 2018.

Misrepresentation has already been determined. The July 10, 2018 will, therefore, only involve a

determination of whether Resolution No. 16-9.51 should be re-approved, approved with conditions or denied, pursuant to Section 10.8.D, LDRs. Documents or testimony re-arguing whether there was or was not misrepresentation is irrelevant. Similarly, documents or testimony concerning new propagation studies, new reports, new photo-simulations, or new plans that would alter the information submitted in support of the September 26, 2018 approval of Resolution No. 16-9.51 are beyond the scope of the reconsideration hearing.

Application and Related Documents

The Little Club WTCF application and related documents relevant to the staff and BOCC's action on the application are public records that have been available for inspection and copying prior to the hearings and will be available for review and use by the BOCC and the parties during the hearing. These documents are considered part of the "record" of the proceedings before the BOCC without further action the BOCC or the parties. The documents at issue and made available for this hearing are as follows:

County Exhibits

1. March 27, 2018 Agenda Item with attachments.
2. Photo simulations from the March 27, 2018 hearing. (5A1, 5A2, 5B1, 5B2, 11A1, and 11A2)
3. Measurements of the height of the DTI simulated WTCF overlaid onto 5A1 and a depiction of a WTCF at 120 feet to scale.
4. Transcripts of the March 27, 2018, Section 10.8.D, LDR hearing.

ISSUES:

The issue before the BOCC at this hearing is:

Whether Resolution No.: 16-9.51 should be re-approved, approved with new conditions or denied.

LEGAL SUFFICIENCY REVIEW:

Because this request involves the application of a policy to a specific application and site, it is a quasi-judicial decision. Quasi-judicial proceedings must be conducted with more formality than a legislative proceeding. In quasi-judicial proceedings, parties are entitled - as a matter of due process - to cross-examine witnesses, present evidence, demand that witnesses testify under oath, and demand a decision that is based on a correct application of the law and competent substantial evidence in the record.

RECOMMENDED ACTION:

RECOMMENDATION

Conduct the hearing as a quasi-judicial proceeding, providing procedural and substantive due process to the parties; decide whether to "re-approve, approve with new conditions, or deny the [Little Club] development order..."

ALTERNATIVE RECOMMENDATIONS

Continue the hearing, if necessary, to a date certain.

FISCAL IMPACT:**RECOMMENDATION**

Little Club, DTI and the intervenors, RG Towers and Kenai Properties, may choose to exercise their rights to challenge the BOCC's ultimate action in this matter. If either party chooses to challenge the BOCC's decision, there will be a cost to defend the action. That cost will most likely be contained in-house as the County Attorney's Office will defend the BOCC's decision on this matter.

ALTERNATIVE RECOMMENDATIONS

n/a

DOCUMENT(S) REQUIRING ACTION:

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| <input type="checkbox"/> Budget Transfer / Amendment | <input type="checkbox"/> Chair Letter | <input type="checkbox"/> Contract / Agreement |
| <input type="checkbox"/> Grant / Application | <input type="checkbox"/> Notice | <input type="checkbox"/> Ordinance |
| <input type="checkbox"/> Other: | <input type="checkbox"/> Resolution | |