

**IN THE CIRCUIT COURT FOR THE FIRST JUDICIAL CIRCUIT,
IN AND FOR WALTON COUNTY, FLORIDA**

JUDAH IMHOF, RICHARD BULLARD,)
BEACH TO BAY CONNECTION, INC., a)
Florida non-profit corporation, and SOUTH)
WALTON COMMUNITY COUNCIL, INC., a)
Florida non-profit corporation,)

Plaintiffs,)

vs.)

CASE NO.: 18-CA-000012

WALTON COUNTY, FLORIDA, a political)
subdivision of the State of Florida, **ASHWOOD**)
HOLDINGS FLORIDA, LLC, a Florida limited)
liability company,)

Defendants.)

AMENDED COMPLAINT

COMES NOW Plaintiffs, JUDAH IMHOF, RICHARD BULLARD, BEACH TO BAY CONNECTION, INC., and SOUTH WALTON COMMUNITY COUNCIL, INC., and sue the Defendants, WALTON COUNTY, FLORIDA, and ASHWOOD HOLDINGS FLORIDA, LLC, and allege:

PARTIES

1. Plaintiff JUDAH IMHOF is a resident of Walton County and owner of property located in the Flamingo Village subdivision at 83 Albatross Court, Santa Rosa Beach, Florida 32459 (Parcel ID. 32-2S-20-33280-00B-0130), which is less than 300 feet from the proposed Crystal Lake PUD development project. Mr. Imhof is a member of South Walton Community Council, Inc.

2. Plaintiff RICHARD BULLARD is a resident of Walton County and owner of property located in the Flamingo Village subdivision at 268 White Heron Drive, Santa Rosa Beach, Florida 32459 (Parcel ID. 32-2S-20-33280-00C-0130), which is less than 1,000 feet from the proposed Crystal Lake PUD development project. Mr. Bullard is a member of South Walton Community Council, Inc.

3. Plaintiff BEACH TO BAY CONNECTION, INC. (hereinafter “Beach to Bay”) is a not-for-profit Florida corporation with its principal place of business in Walton County, Florida. Beach to Bay was formed in 1996 to ensure the protection, preservation, and enhancement of the state parks, state forest, conservation lands, wildlife habitat, and waters of South Walton County.

4. Plaintiff SOUTH WALTON COMMUNITY COUNCIL, INC. (hereinafter “SWCC”), is a not-for-profit Florida corporation with its principal place of business in Walton County, Florida. SWCC was incorporated in 1995 to foster, protect, and enhance the character and welfare of the neighborhoods and communities in the area located south of Choctawhatchee Bay and north of the Gulf of Mexico that is identified and known generally as South Walton County. SWCC’s primary focus is on promoting the quality of new development in South Walton in a manner that is compatible with the character of the existing neighborhoods and communities in South Walton, and to monitor such development to ensure its consistency with Walton County’s Comprehensive Plan and Land Development Code, and compliance with applicable state and federal laws. The membership of SWCC includes residents and property owners in South Walton County, including Plaintiffs Imhof and Bullard.

5. Defendant WALTON COUNTY, FLORIDA (hereinafter “County”), is a political subdivision of the State of Florida. Through its Board of County Commissioners, the County is responsible for implementing the requirements of the Local Government Comprehensive Planning

and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes, including the statutory requirement to adopt a local comprehensive plan and to ensure that all development orders approved thereafter by the County are consistent with the County's adopted comprehensive plan and land development code.

6. Defendant ASHWOOD HOLDINGS FLORIDA, LLC (hereinafter "Developer"), is a Florida limited liability company. The Developer is the applicant for major development approval of the proposed mixed-use Cypress Lake Planned Unit Development (hereinafter "Cypress Lake PUD"). On the date the Board rendered its approval of the Developer's application for major development approval for the Cypress Lake PUD, December 13, 2017, the Developer was not the owner of the subject property, but was a potential purchaser of the site.

THE CYPRESS LAKE PUD PROJECT

Background

7. The Cypress Lake PUD development site contains 22.36 acres, made up of 21.52 acres of uplands and 0.84 acres of joint Army Corp of Engineers and Department of Environmental Protection jurisdictional wetlands.

8. The parcel is located adjacent to CR30A, a County designated Scenic Corridor, and abuts the eastern and southern boundaries of Topsail Hill Preserve State Park (hereinafter "Topsail Hill"), which has been identified as critical habitat by the United States Fish and Wildlife Service, and as a strategic habitat conservation area by the Florida Fish and Wildlife Conservation Commission. Topsail Hill is designated CONSERVATION on the County's Future Land Use Map.

9. The Cypress Lake parcel is located within an area designated NEIGHBORHOOD INFILL (hereinafter "NI") on the County's Future Land Use Map. NI projects may be developed with a mix of residential and non-residential uses, including neighborhood-scale commercial. The

non-residential component of any NI mixed-use project is a conditional use that must be compatible with adjacent and surrounding development and must show it is in harmony with the uses, scale, character, density, and intensity of the surrounding development being infilled.

10. On or about June 28, 2017, the Developer filed its written application for major development order approval for the mixed-use Cypress Lake project.

11. On October 4, 2017, the County's Technical Review Committee reviewed the Cypress Lake application and recommended conditional approval subject to certain issues being addressed and changes being incorporated into the proposed plan.

12. On November 9, 2017, the County Planning Commission held a quasi-judicial public hearing on the Cypress Lake application and recommended Board approval of the project.

13. On December 12, 2017, the Board of County Commissioners held a quasi-judicial public hearing on the proposed project and voted to approve the Cypress Lake project as a PUD. The Board's Final Order approving the Cypress Lake PUD was rendered on December 13, 2017.

14. As approved, the project will contain 141 residential units (85 single-family, 40 duplex townhouses, and 16 condominiums), and 53,000 square feet of commercial uses (restaurant, offices, and retail), which will be located in four four-story mixed-use buildings. The 16 condominium units will be located in the commercial buildings.

COUNT I

(THE CYPRESS LAKE PUD DEVELOPMENT ORDER IS INCONSISTENT WITH WALTON COUNTY'S COMPREHENSIVE PLAN)

15. Count I is brought by Plaintiffs against Defendants for declaratory and injunctive relief.

16. Paragraphs 1- 14 are realleged and incorporated by reference as if set out in full herein.

JURISDICTION AND VENUE

17. Plaintiffs bring this action against the County and Developer pursuant to §163.3215(3), Fla. Stat., which authorizes declaratory, injunctive, and other relief. Venue of this action lies in Walton County because the challenged actions occurred within Walton County.

NATURE OF ACTION

18. Count I challenges the validity of the actions taken by the County in approving the application for major development order approval for the Cypress Lake PUD mixed-use project on the grounds that those actions were inconsistent with the County's Comprehensive Plan. The challenged actions are the methods and methodologies the County utilized in processing, reviewing, approving, and rendering the Cypress Lake PUD Final Order, which authorized development that is inconsistent with the County's Comprehensive Plan. Count I seeks invalidation of the Cypress Lake PUD Final Order, and a temporary and permanent injunction against the issuance of any further development orders, permits, or approvals by the County for the Cypress Lake PUD project and against the construction of the project.

STANDING

19. Plaintiffs Imhof and Bullard are aggrieved or adversely affected parties as defined in §163.3215(2), Fla. Stat., in that they will suffer adverse impacts to interests furthered and protected by the Walton County Comprehensive Plan and Land Development Code. Plaintiffs' interests that are otherwise protected or furthered by the County's Comprehensive Plan and LDC will be adversely impacted by the approval of the Cypress Lake PUD, as approved. These interests include, but are not limited to, interests related to compatibility, densities and intensities of development, including the methodologies for calculating densities and intensities in a mixed-use NI project, traffic, noise, safety, buffering, and the preservation of the County Road 30A Scenic Corridor.

20. Plaintiff Beach to Bay advocates in support of environmental and growth management issues to state agencies, legislative officials, Walton County planning staff, and the Walton County Board of County Commissioners regarding the conservation and best use of the environmentally sensitive lands and waters of South Walton. Through its directors, the organization monitors proposed land use changes, land use amendments, and development project proposals in South Walton to ensure that the actions taken by the County on such matters adhere to the standards for the protection of South Walton's environmentally sensitive resources consistent with the mandates of the County's Comprehensive Plan, Land Development Code, and other state and federal laws. Topsail Hill Preserve State Park, which abuts the east and north sides of the Cypress Lake PUD project, is one of Florida's most environmentally biodiverse and sensitive ecosystem areas. The director of Beach to Bay, Celeste Cobena, has served on every plan review committee responsible for overseeing and implementing Topsail Hill Preserve State Park's 10-year management plan. The failure of the Cypress Lake PUD project to provide the

minimum buffering requirements adjacent to Topsail Hill, and the density and intensity of development approved for the project, will adversely impact the special and particular interest Beach to Bay has in the continued management and preservation of Topsail Hill.

21. Plaintiff SWCC, acting on behalf of its members, including Plaintiffs Imhof and Bullard, has participated extensively on growth management, land use, regulatory, and environmental issues adversely impacting existing neighborhoods throughout South Walton. The calculation of the density and intensity of development the County approved for the mixed-use Cypress Lake PUD project is inconsistent with specific Comprehensive Plan policies and the methodology mandated for making such calculations, as more fully addressed below. If the methodology utilized by the Developer for the Cypress Lake PUD is not invalidated by this Court, it will be utilized for future mixed-use projects, which will generate the same or similar incompatibilities and adverse impacts for existing neighborhoods throughout Walton County, where members of SWCC live, work, and own property.

22. As a result of the close proximity of Plaintiffs Imhof and Bullard's residences and properties to the Cypress Lake PUD development site, and as a result of the historical organizational purposes and specific focus of Plaintiffs Beach to Bay and SWCC, each Plaintiff will suffer special damages different in kind and degree from the community as a whole.

**THE LOCAL GOVERNMENT COMPREHENSIVE
PLANNING AND LAND DEVELOPMENT REGULATION ACT**

23. Chapter 163, Part II, Florida Statutes, the Local Comprehensive Planning and Land Development Regulation Act (hereinafter the "Local Comprehensive Planning Act"), requires each local government in Florida adopt a local comprehensive plan that contains mandatory elements and implementing objectives and policies that address important issues such as land use, traffic

circulation, conservation, coastal zone management, and the adequacy of facilities and infrastructure.

24. After a local government has adopted its comprehensive plan, the Local Comprehensive Planning Act requires that all actions taken by the local government in regard to development orders must thereafter be consistent with the adopted local comprehensive plan. Section 163.3194(1)(a), Fla. Stat.

25. Section 163.3194(3), Fla. Stat., defines "consistency" as follows:

(a) A development or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspect of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.

(b) A development approved or undertaken by a local government shall be consistent with the comprehensive plan if the land uses, densities or intensities, capacity or size, timing, or other aspects of the development are compatible with or further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.

26. The Local Comprehensive Planning Act provides for citizen enforcement of the consistency requirement. Section 163.3215(3), Fla. Stat., provides that "any aggrieved or adversely affected party" may bring a civil action for declaratory, injunctive or other relief against a local government to "challenge any decision of such local government granting or denying an application for, or to prevent such local government from taking any action on, a development order... which materially alters the use or density or intensity of use" on a piece of property in a manner that is not consistent with the adopted local comprehensive plan.

27. In accordance with §163.3215(3), Fla. Stat., any aggrieved or adversely affected party may file a complaint for a de novo action for declaratory, injunctive, or other relief within 30 days following the “rendition of a development order or other written decision.” The Cypress Lake PUD Final Order, which approved the Cypress Lake PUD application for a major development order, was rendered on December 13, 2017.

**INCONSISTENCIES OF THE CYPRESS LAKE PUD
DEVELOPMENT ORDER WITH
WALTON COUNTY’S COMPREHENSIVE PLAN**

28. The Final Order approving the application to develop the Cypress Lake PUD is a "development order" as defined by Section 163.3164(15), Fla. Stat., of the Local Government Comprehensive Planning Act. It authorizes the Cypress Lake PUD project to materially alter the use and the density and intensity of use on the parcel where the project is to be constructed.

29. The Cypress Lake PUD Final Order approved development that is inconsistent with the minimum standards adopted in the County’s Comprehensive Plan in the following respects:

The Density and Intensity of the Mix of Uses Approved for the Cypress Lake PUD is Inconsistent with the Density and Intensity Allowed for a Neighborhood Infill Mixed-Use Project.

(A) The Cypress Lake PUD is inconsistent with FLUE Objective L-1.17 and Policy L-1.17.1 (A)-(E), which require, among other things, that a project proposed as a PUD promote innovative planned development that is compatible with the character, densities and intensities, and environmental conditions of the surrounding area; and that the densities and intensities for each proposed use not exceed the total allowable densities and intensities of uses allowed by the project’s underlying NI land use category designation. The Cypress Lake PUD does not promote innovative planning, is not compatible with the densities and intensities of

existing development and environmental conditions in the surrounding areas, and exceeds the maximum density and intensity standards allowed for a mixed-use project on NI designated land.

(B) The methodology for calculating the range of densities and intensities of development allowed for any mixed-use project is established by Objective L-1.5 and FLUE Policies L-1.5.1 (A) and (B), which state, in pertinent part, the following:

Objective L-1.5: Notwithstanding the Future Land Use Categories and the density and intensities of use authorized [therein], specific standards for implementing and controlling allowable land use and design activities are adopted below.

Policy L-1.5.1(A) Residential density...is the relationship between the total number of dwelling units on an area **being developed as residential and the gross land area in the residential development**, excluding water bodies, rivers, lakes and other water courses, unless privately owned. **Intensity of development is the relationship between the total land area being developed as commercial, or other non-residential use, and the total floor area of the commercial or non-residential use building.** (emphasis added)

Policy L-1.5.1 (B): For projects proposed on parcels designated for mixed-use development, excluding TND developments, the density and FAR shall be determined on the basis of the specific residential or nonresidential use proposed for each lot or sub-area of the mixed-use parcel. **Intensity may not be transferred from a lot or sub-area of the parcel proposed for residential use to a portion of the site designated for commercial or non-residential uses, and density may not be transferred from the lot or sub-area of the parcel proposed for a commercial or other non-residential use to the area proposed for residential use.** In a mixed-use building, the residential and non-residential uses shall be included in the density and intensity calculation proportionate to their respective uses and shall not exceed 100% total of the combined uses. (emphasis added)

Objective L-1.5 and its implementing policies specifically mandate the methodologies to be utilized in calculating density and intensities for all of the County's Future Land Use Categories, except TND. Policy L-1.5.1(A) establishes the calculation methodology for computing density for a residential project and for computing intensity (FAR) for a commercial project. Policy L-1.5.1(B), establishes the calculation methodology for computing density and intensity of uses for

a mixed-use project, which is based on the underlying acreage of the subareas of the project where the residential and non-residential uses are located.

(C) The Cypress Lake PUD is **not** a residential development or a commercial project subject to the FLUE Policy L-1.5.1(A) methodology. It is a **mixed-use** project that is subject to the methodology for calculating the density and intensity in accordance with FLUE Policy L-1.5.1(B). With the exception of TND projects, any mixed-use project proposed on a parcel that is located within a land use category that allows mixed-use development, such as the NI land use category that is the subject of this proceeding, is required to calculate the density and intensity of the proposed mix of uses based on the specific residential or nonresidential use proposed for each lot or subarea of the mixed-use parcel. FLUE Policy L-1.5.1(B) further prohibits the transfer of intensity from a lot or subarea of the parcel proposed for residential use to a portion of the site proposed for commercial or non-residential uses, and prohibits the transfer of density from a lot or subarea of the parcel proposed for a commercial development, to a portion of the lot or subarea of the parcel proposed for residential development.

(D) The calculation of density for the Cypress Lake PUD is inconsistent with FLUE Policies L-1.5.1(A) and (B) because it is based on 100% of the 22.36 acre site being residential to compute density, and 100% of the site being commercial to compute intensity, rather than a combination or mix of subareas of residential and non-residential uses. This misapplication of the methodology resulted in a stated density of 6.3 dwelling units per acre based on 100% of the site being residential [$22.36 \text{ acres} / 141 \text{ units} = 6.3 \text{ du/acre}$], which significantly understates the actual residential density that was approved. FLUE Policy L-1.5.1(B) requires that the calculation of residential density for a mixed-use project be based on the sub-area acreage of the site actually reserved for the residential component of the mixed-use project.

(E) Similarly, the Developer's stated 0.05 Floor Area Ratio (FAR) intensity calculation for the 53,000 square feet of commercial development proposed is inconsistent with FLUE Policy L-1.5.1(B) because it is based on 100% of the site, 974,001 square feet (22.36 acres), being commercial [$53,000/974,001 = 0.05$ FAR, rather than the actual acreage of the subarea of commercial proposed for the Cypress Lake PUD mixed-use project.

(F) The County approved the Cypress Lake PUD for a mix of 125 single-family and duplex townhouse units on 105 residential lots, with an additional 16 residential condominium units located in four commercial buildings that contain 53,000 square feet of office, restaurant, and retail uses. The site plan for the mixed-use PUD does not specify the total subarea acreage reserved for residential uses, but page 2C of the data summary provides the layout for the 105 lots proposed, which includes the square footage and acreage for each lot. Collectively, the 105 lots total 9.63 acres.

(G) Page 2C of the Cypress Lake PUD site data summary also provides that in addition to the residential and commercial mix of uses proposed, 3.63 acres of the site will be dedicated for recreational uses, and 5.93 acres of the site will be dedicated for open space. The subareas where these uses are to be located are not identified or delineated on the site plan, however.

(H) The Cypress Lake PUD site plan does not provide an acreage total for the subarea reserved for the four commercial buildings, the 16 condominium units, and the attendant 334 parking spaces dedicated to serve this commercial subarea. However, based on the acreages that are directly or indirectly provided for the 105 residential lots (a minimum of 9.63 acres), open space (a maximum of 5.93 acres), and recreational space (a maximum of 3.63 acres), it can reasonably be determined that the maximum acreage that could be dedicated for the subarea of

commercial uses is the remaining 3.17 acres of the 22.36 acre site. A 3.17 acre site contains 138,104 square feet. Based on the 53,000 square feet of commercial office, retail, and restaurant uses approved by the County, the calculation of the intensity of commercial development for the Cypress Lake PUD is a 0.38 FAR, which is more than seven times the 0.05 FAR intensity calculation the Developer specified on its site plan.

(I) The site plan data on page 2C of the Cypress Lake PUD states that the residential density of the approved project is 6.31 units per acres. Based on the minimum of 9.63 acres provided for the 105 residential lots, the density for the 125 residential units approved for the 105 lots is 12.98 units per acre, which exceeds the maximum 8 dwelling units per acre density allowed for any project located in the NI land use category.

(J) The Developer's miscalculation of the density and intensity of the development proposed for the Cypress Lake PUD project, and the County's approval thereof, raises significant questions as to the efficacy of the Developer's compatibility analysis, and the conclusion that the project is compatible with the low-density residential developments and abutting conservation areas in the surrounding areas. The density and intensity approved for the Cypress Lake PUD is, accordingly, inconsistent with FLUE Policies L-1.3.3(C), L-1.3.3(E)2 and 3, and L-1.5.1.(B).

**The Cypress Lake PUD Failed to Provide
the Required CR 30A Scenic Corridor Setback.**

30. FLUE Policy L-1.11.1 established CR 30A as a Scenic Corridor to "preserve the character of the area, protect natural features, promote enhancement of vistas, and preserve the visual access along both sides of the roadway." To this end, FLUE Policy L-1.11.1(A) mandates a 20' Scenic Corridor setback from Walton County's CR30A right-of-way for all developments, except the Village Mixed Use, Traditional Neighborhood Development, and Developments of

Regional Impact mixed use centers depicted on the County's Future Land Use Map. Existing native vegetation located in the Scenic Corridor setback is required to be maintained.

31. LDC Section 13.02.00 mirrors and implements the 20' Scenic Corridor setback requirement of the Comprehensive Policy. Notwithstanding the mandate of FLUE Policy L-1.11.1, the County approved a PUD deviation from LDC Section 13.02.00 to allow the Developer to locate approximately 80 parking spaces and turn lanes within the 20' Scenic Corridor setback. This authorization, which overrides the Comprehensive Plan's Scenic Corridor setback requirement, is inconsistent with FLUE Policy L-1.11.1(A).

32. Once a comprehensive plan is adopted, all development order actions taken by the local government thereafter are legally required to be consistent with the policies in the adopted plan. Section 163.3194(1)(a), Fla. Stat. If there is an inconsistency between a comprehensive plan policy and a land development code regulation, the comprehensive plan controls. Section 163.3194(1)(b), Fla. Stat. Even assuming the status of the Cypress Lake project as a PUD, which Plaintiffs dispute, the County had no legal authority to grant a deviation based on LDC Section 13.02.00 when granting the deviation created a conflict with the Scenic Corridor setback mandated by FLUE Policy L-1.11.1(A). The Developer's failure to provide the 20' Scenic Corridor setback, and the County's allowing an LDC-based deviation for parking therefrom, is invalid as it violates FLUE Policy L-1.11.1(A), the Walton County Comprehensive Plan, and Section 163.3194(1)(a), Fla. Stat.

**The Cypress Lake PUD Failed to Provide the Required
Compatibility Buffers for Adjacent Properties and Residential Sidewalks.**

33. FLUE Policy L-1.10.2(D) requires a minimum buffer of 25' between development and environmentally sensitive areas to ensure the compatibility of proposed development projects with existing adjacent land uses. Topsail Hill Preserve State Park abuts the north and west side of the Cypress Lake PUD project; it is recognized as an area of significant habitat by both the state of Florida and the federal government, and is designated as Conservation land on the County's Future Land Use Map. By its own terms, FLUE Policy L-1.10.2(D) authorizes the County to increase the 25' buffer if needed to ensure the compatibility of a project with adjacent environmentally sensitive areas. However, there is no authority under FLUE Policy L-1.10.2(D) or the County's Comprehensive Plan to decrease the buffer from the 25' that is mandated. The County approved a buffer of 10' for the entire perimeter of the Cypress Lake PUD project site, including the perimeter area abutting Topsail Hill. This 10' buffer is inconsistent with the intent and purpose of FLUE Policy L-1.10.2(D).

34. The existing residential developments east and south of the Cypress Lake development site consist of low-density single-family residences. FLUE Policy L-1.10.3(B)2 mandates a 20' landscaped buffer between a mixed-use project, such as the Cypress Lake PUD, and any other land use. The County's approval of the Cypress Lake PUD with a 10' buffer on its south and east perimeters adjacent to the existing single family residences is inconsistent with FLUE Policy L-1.10.3(B)2.

35. FLUE L-1.3.3(E)3.v., mandates that new projects proposed on NI designated property located within the CR 30A Scenic Corridor have sidewalks on both sides of residential streets. The Cypress Lake PUD project, which is located on a Neighborhood Infill parcel located in the CR 30A Scenic Corridor, has failed to provide sidewalks on its residential streets. It is, therefore, inconsistent with the FLUE L-1.3.3(E)3.v. sidewalk mandate.

36. For the reasons stated above, Plaintiffs will suffer adverse and irreparable harm from the development of the Cypress Lake PUD.

37. Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs request the Court to grant the following relief:

A. Grant Plaintiffs a trial de novo in accordance with Section 163.3215(1) and (3), Fla. Stat., to determine the consistency of the County's challenged actions with the Walton County Comprehensive Plan;

B. Alternatively, if this Court should hold that Plaintiffs are not entitled to a trial de novo, treat Count I as a complaint for writ of certiorari and permit Plaintiffs to file the record and an initial brief within 60 days of the Court's order on this issue;

C. Determine that the Board's Final Order rendered on December 13, 2017, which granted approval of the Developer's application for a major development order for the Cypress Lake PUD is inconsistent with Walton County's Comprehensive Plan and is, therefore, invalid;

D. Enjoin the County from issuing any further development orders, approvals or permits for the Cypress Lake PUD project based upon the Board's December 13, 2017, Final Order;

E. Grant a temporary injunction enjoining the Developer from proceeding with any and all construction and development activities on the Cypress Lake PUD mixed-use development project;

F. Grant a permanent injunction which permanently enjoins the Developer from constructing the Cypress Lake PUD project based upon the Board's December 13, 2017, Final Order; and

G. Grant such other relief as the Court deems appropriate.

COUNT II

(THE CYPRESS LAKE PUD WAS APPROVED IN VIOLATION OF THE ADVERTISING, NOTICE, REVIEW, AND APPROVAL REQUIREMENTS AND STANDARDS FOR A PLANNED UNIT DEVELOPMENT PROJECT)

38. Count II is an action by the Plaintiffs against the County and the Developer for declaratory and injunctive relief. This action seeks enforcement of Walton County's Land Development Code (hereinafter "LDC") which the County violated in granting PUD approval for the Cypress Lake PUD project.

39. Paragraphs 1- 14, 19-27, and 37 are realleged and incorporated by reference as if set out in full herein.

A. The Approval of the Cypress Lake PUD is Inconsistent with Plaintiffs' Procedures for Securing Conceptual and Detailed Review and Approval of a Planned Unit Development and Violated Plaintiffs' Procedural Due Process Rights

40. The County failed to advertise, process, and review the Developer's application for PUD approval in accordance with the County's LDC requirements.

41. LDC Sections 2.06.02.A and 2.06.02.B establish a specific four-step process for the submittal, review, and approval of a proposed PUD project which Defendants' failed to follow:

a. An applicant seeking PUD approval must first submit a CONCEPTUAL PUD plan application for County staff review;

b. If the conceptual PUD plan application is deemed complete, it must then be reviewed by the Planning Commission at a duly noticed legislative public hearing. Subsequent to the Planning Commission hearing, the Board of County Commissioners is then required to conduct a duly noticed legislative public hearing to approve, deny, or approve with conditions the proposed conceptual PUD plan (emphasis added);

c. Following conceptual PUD plan approval by the Board, the applicant is then required to submit a DETAILED PUD plan to the County that is consistent with the underlying conceptual PUD plan, that incorporates the conditions imposed by the Board in its approval of the conceptual PUD plan, and that addresses the additional LDC requirements and standards for a DETAILED PUD plan. County

staff is then required to review the detailed PUD plan in accordance with the requirements contained in Chapter 10 of the LDC for reviewing major development projects;

d. After the detailed PUD plan is approved, the applicant then has one year to obtain a development order from the County to commence construction of the PUD project.

42. The Developer's June 28, 2017, written application for major development approval for the Cypress Lake project was submitted on the County's requisite form titled "Major/Minor Development Order Application." On the face of the form, an applicant is required to check "the appropriate application box" that classifies the type of project being submitted and the nature and scope of the County's review. The Developer checked the box that categorized the Cypress Lake submittal as a "Major Development Order Application," which initiated the review procedures for the project in accordance with LDC Section 11.01.02. The form also included a check box that allowed the applicant to alternatively submit the application as a "major development order application for approval of a conceptual PUD Master Plan." The Developer did **NOT** check the box that would have classified the Cypress Lake submittal as an application for conceptual PUD approval. **An application for conceptual PUD would have initiated the processing and review procedures for conceptual PUD approval pursuant to LDC Section 2.06.02, not as a major development processed under LDC Section 11.01.02, as Cypress Lake was.**

43. On or about October 24, 2017, the Developer mailed written notices to the property owners within 300 feet of the proposed 22.36 acre development site, including Plaintiff Imhof, to inform the property owners of the November 9, 2017, Planning Commission public hearing at which the "Major Development" known as "Cypress Lake" would be reviewed for a recommendation to the Board of County Commissioners. The letter did not identify the project as a PUD, notify the property owners that the Developer was seeking Planning Commission review

of a conceptual PUD, or inform the public that the Developer would be requesting deviations from the minimum LDC development standards otherwise applying to all projects seeking major development order approval, except PUDs, which are reviewed pursuant to LDC Section 2.06.02 to afford greater flexibility for integrating diverse uses and structures.

44. On or about the same date, the Developer posted a sign on the Cypress Lake development site to inform the general public of the upcoming November 9, 2017, Planning Commission public hearing. The posted sign identified the proposed project as “Cypress Lake,” not as “Cypress Lake PUD.”

45. On October 26, 2017, the County published its legal notice in the DeFuniak Herald Beach Breeze advertising the agenda for the November 9, 2017, Planning Commission public hearing. The Cypress Lake application for major development approval was listed among the quasi-judicial agenda items to be heard, but the notice did not identify the project for review as a PUD, inform the public that the Developer would be seeking conceptual PUD plan review, or identify the Cypress Lake project with the other legislative agenda items to be heard by the Planning Commission, as required by LDC Sections 10.03.01, 10.03.03 (A) and 10.03.05 (A).

46. On November 9, 2017, the Planning Commission held a quasi-judicial public hearing on the Cypress Lake application. As part of the hearing, the Developer presented evidence and sworn testimony in support of its application. The County’s Planning Department also presented its Staff Report and testimony in support of the project’s approval. The Staff Report purported to have analyzed the proposed project for consistency with the County’s Comprehensive Plan and LDC regulations and recommended the Cypress Lake project for major development order approval. However, the Staff Report did not identify the Cypress Lake project as a conceptual PUD, or recommend approval of the project as a conceptual PUD. Neither did the

Planning Commission Staff Report identify, analyze, or review proposed deviations from the County's LDC development standards.

47. Following the presentation of evidence by the Developer and the County, the Planning Commission invited the public to provide oral and/or written comments to the Commission. Following public comments for and against the project, the Developer and County were then allowed to testify in rebuttal to the issues raised by the public, but the public was not given an opportunity to respond to the rebuttal testimony in surrebuttal. At the conclusion of the hearing, the Planning Commission recommended approval of the project as a major development project, not as a conceptual PUD. The Planning Commission also recommended approval of deviations the Developer sought from the County's LDC standards, even though such deviations were not submitted as part of the application for major development order approval, were not addressed in the Staff Report, and were not given to the public for inspection and review before the hearing. The Planning Commission also failed to conduct its review in a legislative decision-making proceeding. The Commission's recommendation for approval was given in violation of the procedural requirements of LDC Sections 10.03.01, 10.03.02, 10.03.03 and 10.03.05.

48. On or about December 1, 2017, the Developer posted a new notice on the Cypress Lakes property informing the public that the Board of County Commissioners would hold a public hearing on December 12, 2017, at which time the "Cypress Lakes PUD" would be considered for approval. This was the first public notice that identified Cypress Lake as a PUD.

49. On December 12, 2017, the Board held a quasi-judicial public hearing on the Cypress Lake PUD application. Following the presentation of evidence by the Developer and the County, the Board invited the public to provide oral and/or written comments. The Developer and County were again allowed to testify in rebuttal to the issues raised by members of the public, but

the public was not provided an opportunity for surrebuttal. At the conclusion of the hearing, the Board approved the project as a major development project, not as a conceptual PUD plan. By granting Cypress Lake PUD status in its Final Order even though the project was not submitted, processed, or reviewed as a conceptual PUD, and by approving deviations to the County's minimum LDC standards, the Board violated the procedural and substantive requirements of LDC Section 2.06.02A. By failing to conduct its review and make its decision in a legislative decision-making proceeding, the Board also violated the procedural requirements of LDC Sections 10.03.01, 10.03.02, 10.03.03 and 10.03.05.

50. As a result of the Developer's and County's failures to advertise, process, and review the Cypress Lake PUD as a conceptual PUD in accordance with the requirements of LDC Sections 2.06.02, 10.03.01, 10.03.03 (A) and 10.03.05 (A), the Final Order approving the Cypress Lake PUD is invalid as the approval was granted in violation of the County's LDCs, and in violation of fundamental principles for due process.

B. The Cypress Lake PUD Fails to Meet the Minimum PUD and Development Standards for a Mixed-Use PUD

51. LDC Section 2.06.01(B) recognizes only two types of PUDs: Residential and Mixed Use. The Developer has represented that the Cypress Lake PUD is a Mixed Use PUD. The standards for a Mixed Use PUD are provided in LDC Section 2.06.01(B)2, which states that the mix of uses is to be predominantly non-residential, with a maximum mix of 20 percent residential, and a minimum mix of 20 percent open space. The Cypress Lake PUD is approximately 43 percent residential, 26 percent open space, 16 percent recreation, and 14 percent commercial. The Final Order approving the Cypress Lake PUD is invalid because it was approved in violation of the Mixed Use PUD standards adopted in LDC Section 2.06.01.B.2.

WHEREFORE, Plaintiffs request the Court grant the following relief:

A. Declare that the Board's Final Order is invalid because it was approved in violation of the advertising, notice, processing, and review requirements for a conceptual PUD;

B. Alternatively, if this Court should hold that Plaintiffs are not entitled to a trial de novo, treat Count II as a complaint for writ of certiorari and permit Plaintiffs to file the record and an initial brief within 60 days of the Court's order on this issue;

C. Declare that the Board did not afford Plaintiffs their procedural due process rights by granting the project PUD status without subjecting the project to PUD review, by failing to review the project in a legislative decision-making proceeding, by rendering a Final Order approving the project as a PUD, notwithstanding the public's stated and written objections at the Board hearing that the project was not properly advertised as a PUD or reviewed as a PUD, and in denying the public the opportunity for surrebuttal to the rebuttal the Board afforded the County and Developer after the public comments in opposition to the project were presented;

D. Declare that the Board's Final Order is invalid because it approved a Mixed Use PUD that failed to meet the required mix of use LDC standards;

E. Grant a temporary injunction enjoining the Developer from proceeding with any and all construction and development activities on the Cypress Lake PUD project and site;

F. Grant a permanent injunction which permanently enjoins the Developer from construction of the Cypress Lake PUD project as approved in the Final Order;

G. Remand this matter to the County with instructions that the Developer's application for development approval must be resubmitted, reviewed and processed in accordance with all requirements of the LDC for a PUD project, including the requirements for consistency with the County's Comprehensive Plan and LDC; and

H. Grant such other relief as the Court deems appropriate.

Respectfully submitted this 22nd day of January, 2018.

/s/ Kenneth D. Goldberg
Kenneth D. Goldberg, Esq.
Florida Bar No. 435236
5114 China Berry Lane
Tallahassee, Florida 32311
Telephone: 850/567-6225
Email: kgoldberg7@aol.com

AND

/s/ Jennifer A. Sullivan
Jennifer A. Sullivan, Esq.
Florida Bar No. 0661864
Primary Email: jen@guildaylaw.com
Guilday, Simpson, West, Hatch, Lowe
& Roane, P.A.
36468 Emerald Coast Parkway
Old Town Centre, Suite 2101
Destin, Florida 32541
Phone: (800) 226-7091
Fax: (850) 222-2593
Secondary Email: jskipper@guildaylaw.com
Secondary Email: katie@guildaylaw.com

Attorney for Plaintiffs