

ORDER OF BOARD OF COUNTY COMMISSIONERS  
OF ST. JOHNS COUNTY, FLORIDA

Re: ABG Real Estate Development Co., of Fla, Inc.  
v. St. Johns County, Case No. 92-336CA,  
Seventh Judicial Circuit, St. Johns County

ORDER DISAPPROVING SETTLEMENT PROPOSAL  
FOR SAWGRASS VILLAGE

On October 10, 1991, an application was filed requesting a minor modification to the final development plan for Sawgrass Village Planned Unit Development (Resolution No. 86-75) to allow construction of a fast food restaurant with a drive-in window in an area previously designated for parking. The application was denied on November 7, 1991 by the St. Johns Planning and Zoning Agency. On appeal to the Board of County Commissioners on January 28, 1992, the application was again denied.

ABG Real Estate Development Company of Florida, Inc., (ABG) then took the matter to the Circuit Court in St. Johns County, seeking a writ of certiorari. On April 24, 1992, the Circuit Court entered an order denying the petition for writ of certiorari. ABG appealed to the Fifth District Court of Appeals, which quashed the Circuit Court's order and granted ABG's petition for writ of certiorari. (See Opinion of Fifth District Court of Appeals filed September 25, 1992, Case No. 92-1297.) A motion for rehearing filed by the County was denied November 13, 1992.

ABG and County staff met in an attempt to address traffic safety concerns discussed at the January 28, 1992 Board meeting. On November 30, 1992, ABG submitted a settlement proposal to the Board, scheduled for consideration at a public hearing on December 8, 1992. See attached Exhibit A. Notices of the public hearing were mailed to all landowners within 300 feet of the proposed site and were published in the Ponte Vedra Recorder and the St. Augustine Record.

On December 8, 1992, the Board considered the settlement proposal. Because the Board finds that the concerns, including traffic safety, considered at the January 28, 1992 public hearing have not been adequately addressed in the settlement proposal, the Board will disapprove the settlement proposal.

ACCORDINGLY, the Board hereby disapproves the settlement proposal attached hereto as Exhibit A.

Date of Board action: December 8, 1992

BOARD OF COUNTY COMMISSIONERS  
OF ST. JOHNS COUNTY, FLORIDA

By: Laura Balwage  
Its Chairman

ATTEST: CARL "BUD" MARKEL, CLERK

By: Laura Bartlett  
Clerk

CC: Baron Bartlett, Esq. (For Opposing Landowners)  
Terry Moore, Esq. (For ABG)

(4.1394) Mary Kohnke summarized their request by stating this development is not consistent with the concurrency section and the traffic circulation element of the comprehensive plan.

(4.1546) Motion by Floyd, seconded by Brinkhoff, carried 7/0, to allow the developer and the PZA to review the project, and to return to the Board of County Commissioners on January 26, 1993, at 1:30 p.m. to give a complete review of the issue.

(12/08/92 - 8 - 4.1706)

4:00 P.M. - PUBLIC HEARING - Consideration of Settlement Proposal from ABG Real Estate Development Company.

Proof of publication of notice of public hearing regarding the Settlement Proposal from ABG was received, having been published in The St. Augustine Record on November 18, 1992, and in the Ponte Vedra Recorder on November 20, 1992, were ordered filed.

(12/08/92 - 8 - 4.1707)

Jerry Napier, Planning Director, stated that ABG Real Estate Development Company had submitted a settlement proposal to the Board in an attempt to resolve the litigation regarding location of a fast food restaurant in Sawgrass Village at Ponte Vedra; advised that the legal department had prepared two draft orders for the Board's consideration after the hearing. Draft A, would approve the settlement offer, Draft B, would reject the proposal; announced that Terry Moore, was present, representing ABG and Baron Bartlett, was present representing opposing landowners.

(12/08/92 - 8 - 4.1781)

Terry Moore, attorney, representing ABG gave a general overview of the Settlement Proposal; made reference to the packet given to the Commissioners which includes the proposal, and two maps that show specific site plan to the location of the proposed fast food restaurant with the drive-in facility. Stated that he wanted the record to reflect that they were not at the meeting as an applicant for any minor site plan modification, but they were here to be available to give information to the County at the County's request, in connection with the County's consideration of a settlement offer of the existing litigation going on with respect to the application that was before the Board in February; aired that it was his understanding that this meeting was a non-evidentiary hearing. This hearing is for the purpose of a settlement proposal, and a settlement conference. Linda Hurst, Assistant County Attorney affirmed that anything that is heard today will not affect the litigation in Court.

(12/08/92 - 8 - 4.2069)

Ronnie Fonthan, 142 Bermuda Court, Ponte Vedra Beach, spoke in opposition to the Settlement Proposal from ABG.

(4.2219) Ward Koutnik, Ward Koutnik and Associates, Traffic Engineering and Consulting Firm, spoke on Traffic and Safety problems related to McDonald at Sawgrass.

(4.2749) Curt Hoffman, 121 Nandina Circle, reported that he had 944 cards in favor of taking it to the higher court, and two against it.

(12/08/92 - 8 - 4.2982)

Baron Bartlett, 127 North Roscoe Boulevard, Palm Valley, attorney representing Sawgrass Players Club Property Owners Association addressed some of Mr. Moore's comments; briefly reviewed evidence presented at the Public Hearing on January 28, 1992. Asked the County Commissioners to reject the offer of a settlement proposal, and take it to the Supreme Court; stated that he would volunteer at no charge, to give the County all the help and assistance he and his firm could.

(4.3363) William Hurd, Vicar's Landing, spoke in opposition.

(4.3428) Victor Martinelli, Ponte Vedra Beach, commented on the subject, and urged the County to reject the Settlement Proposal.

(4.3518) Terry Moore, attorney for AGB read to the Board what the Fifth District Court of Appeal said when reviewing the record before the Board, and reviewing the Circuit Court record.

(5.0185)

Linda Hurst commented on the discussions between staff and Mr. Terry Moore, attorney for AGB, concerning the Settlement Proposal, and stated the Proposal was approved by Staff, because staff felt it fairly addressed the traffic issues which were

raised in the January 28, 1992 hearing; advised the Board that she had prepared two drafts of Orders. Draft 'A' approving the Settlement Proposal; if the Board approve Draft 'B' which rejects the Settlement Proposal, the Board should also consider whether the County should appeal the recent Fifth District Court of Appeal's opinion quashing the Circuit Court final judgment in the Board's favor; alleged that if the Board decide to appeal, the appeal would be to the Florida Supreme Court, under its power of discretionary review. The Court's power of discretionary review mean that the Court is not obligated to accept the appeal. The notice of appeal must be filed by December 14, 1992, and it would be followed within ten days by a brief on jurisdiction, the brief would be due by December 24, 1992. Hurst further stated that If the Courts accepts jurisdiction, a brief on the merits would be due within 20 days of the rendition of its order accepting jurisdiction. Aired that the appeal would be based mainly on procedural issues, and if the Supreme Court agreed with the County, and the appeal were successful, we would still have to rely on the evidence presented to the Board on January 28, 1992. Declared that this would be a difficult appeal, and there would be no guarantee of success. Discussion followed. **Motion by Brinkhoff, seconded by Ward, carried 7/0, to approve Draft 'B', Order disapproving settlement proposal for Sawgrass Village. Motion amended by Floyd, to include that Mr. Bartlett has offered his services to the County, failed for lack of a second.**

(5.0778)

**Motion by Brinkhoff, seconded by Jordan, carried 7/0, to refer this issue to the Florida Supreme Court.**

(12/08/92 - 9 - 5.0796)

Consent Agenda item #3A. - Bid Award: 93-04 Rental and Servicing of Portable Toilets for Annual and Seasonal requirements. Roberts aired that he could not understand this bid, since it look like the higher bidder was awarded the contract. Meiszer stated that the recommendation was for the low bid. Campbell stated the numbers on the bid tabulation sheet were reversed. **Motion by Roberts, seconded by Brinkhoff, carried 7/0, to approve consent agenda item 3A, Bid #93-04.**

(12/08/92 - 9 - 5.0891)

Consent Agenda item #6 - Approval to County Attorney's Office to hire an appraisal firm to serve as the County's expert witness in lawsuit called Hummel v. St. Johns County. Brinkhoff abstained for voting on this item, due to conflict of interest. Roberts questioned the cost of approximate \$3500.00 to hire an appraisal firm. Discussion followed. **Motion by Jordan, seconded by Floyd, carried 6/0, to authorize the County Attorney's office to hire an appraisal firm.**

(12/08/92 - 9 - 5.0983)

Consent Agenda Item #8 - Set a public hearing date to consider an ordinance amending Ordinances 73-1, 73-4, 73-5, 74-3, and 77-6 as previously amended, that would reduce the membership of the St. Johns County Planning and Zoning Agency from 9 to 7 members; increases the terms of the members from 3 to 4 years; prohibits any member from serving more than 2 consecutive terms; and provides an effective date. Recommended date: January 26, 1993 at 2:00 p.m. **Motion by Floyd, seconded by Brinkhoff, carried 7/0, to set a public hearing date for Draft 2 of the Ordinance for January 26, 1992, at 2:00 p.m.**

(12/08/92 - 9 - 5.1014)

Consent Agenda Item #13 - Resolution authorizing sole purchase of used water truck by the solid waste department. **Motion by Ward, seconded by Brinkhoff, carried 7/0, to approve the resolution authorizing the purchase of a used truck for \$50,000.00.**

(12/08/92 - 9 - 5.1040)

19. Commissioners Reports.

Maguire asked direction from the Board concerning St. Augustine Beach wanting to finish up the renourishment project; stated the Commission directed that he organize that committee and work on it; aired that this committee should be under the Standing Committee chaired by Floyd. Floyd stated that Maguire had invested effort and time and asked Maguire to continue. It was the consensus of the Board for Maguire to attend the Conference on Beach Preservation.

(12/08/92 - 10 - 5.1116)

Maguire briefed the Board on the National Association of Counties Conference in Washington, D.C.; formally requested the Board authorize travel for any and all commissioners to attend the Washington, NACO meeting. Discussion ensued