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AMENDED PETITION FOR DECLARATORY STATEMENT BEFORE THE
STATE OF FLORIDA BUILDING COMMISSION

May 30, 2008

Ms. Paula Ford
Florida Building Commission
2555 Shumard Oak Blvd.
Tallahassee, Florida 32399-2100

DCA08-DEC-142
FILING AND ACKNOWLEDGEMENT
FILED, on this date, with the designated
Clerk, receipt of which is hereby
acknowledged.

Paula P. Ford
Paula P. Ford
Commission Clerk
Date

Petitioner:

Jerry Sparks, AIA, CBO, Building Official
Director, Hillsborough County Building Services Division
Planning and Growth Management Department
5701 E. Hillsborough Ave., Suite 1140
Tampa, Florida 33610-5428
Phone: 813.276.8334
Fax: 813.307.4442
E-Mail: sparksj@hillsboroughcounty.org

Representative:

Sheri A. Murphy, Assistant County Attorney
Office of the County Attorney
601 E. Kennedy Blvd., Floor 27
Tampa, Florida 33601-1110
Phone: 813.272.5670
Fax: 813.272.5846
E-Mail: murphys@hillsboroughcounty.org

RE: FBC, Section 110.2 – Withholding the Issuance of a Final Certificate of
Occupancy

601 E. Kennedy Boulevard, 27th Floor
Post Office Box 1110 · Tampa, Florida 33601
(813) 272-5670
Fax: (813) 272-5231
An Affirmative Action/Equal Opportunity Employer

Dear Ms. Ford and Commission,

My client, Jerry Sparks, the Hillsborough County Building Official, is seeking a Declaratory Statement regarding the interpretation of Florida Building Code 2004, ("FBC") Section 110.2, titled - Certificate of Occupancy Issued.

The matter for your consideration pertains to a multitude of construction projects throughout Hillsborough County and the authority of a building department to withhold the issuance of a Certificate of Occupancy upon final completion of vertical construction. In particular, as it relates to residential subdivisions, that are required by our jurisdiction to construct off-site and on-site improvement facilities, in accordance with approved plans and conditions, to meet land development standards.

Off-site improvement facilities are defined by our local land regulations to include such things as: roads, bridges, drainage, water, wastewater, and parks and recreation plans and specifications. On-site improvements may include site specific issues such as: sidewalks, lot grading, sod, trees, and/or the non-payment of fees.

To illustrate the above, I draw your attention to a development project by the name of Winter Park. It is a residential subdivision in Hillsborough County, Florida to be constructed that consists of 242 individual building lots. The developer is required, through provisions incorporated into their construction plans and made a condition of approval for a certificate of occupancy, to construct off-site and on-site improvement facilities for each planned phase of construction. Conditions noted on their plans call for roadway, storm water, water, and natural resources improvements to satisfy these obligations as required by our land development regulations.

However, in what has become an increasing problem in our jurisdiction is the situation, where the developer fails to build these improvements according to the required conditions, and the building department is then asked to withhold issuance of the Certificate of Occupancy. This request is often made after the building structure has been completed and has passed all required inspections.

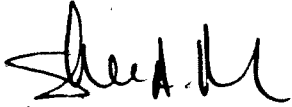
A strict interpretation of FBC Section 110.2, would suggest that, notwithstanding building code violations, a municipality cannot withhold the issuance of a Certificate of Occupancy due to any other ordinance violations or laws; since the FBC expressly focuses on the integrity of structures and facilities with regard to their structural design and alteration. However, site plans issues are specifically addressed in Section 106.3 as a minimum requirement for the plan review process; and, unlike Section 110.2, its provisions seem to imply that a building department has greater latitude in this area.

It states that plan review documents shall be examined to determine compliance with requirements of the FBC and all *pertinent laws or ordinances*.

Locally, our government has been mandated by Florida Statute ("F.S."), Section 163.3202 to adopt land regulations that are consistent with adopted comprehensive plans to govern the development and subdivision of its land. Per, BOAF informal interpretation #3709, F.S. Section 163.3211 states that if the provisions of F.S. Chapter 163 conflict with any statutes (as an example, F.S. Chapter 553), the provisions of F.S. Chapter 163 shall prevail regarding the development of land. Lastly, our land development regulations contain language within their provisions that administratively restrict the issuance of a Certificate of Occupancy for failure to satisfy conditions relating to the construction of improvement facilities.

Considering the fact that the term Certificate of Occupancy is derived from the FBC and a building department is bound by its obligations, our department seeks clarification regarding the application of Sections 110.2 and 106.3. Therefore, we respectfully request the Florida Building Commission to issue a Declaratory Statement determining; first, whether Sections 110.2 and 106.3 in conjunction with F.S. Chapter 163 allow a local government to restrict the issuance of Certificate of Occupancy to enforce compliance of off-site improvements conditions, and second, whether it can also be withheld to enforce compliance of on-site improvements conditions, all to meet adopted land development regulations.

Sincerely,



Sheri A. Murphy
Assistant County Attorney

SAM:al

HILLSBOROUGH COUNTY
 PLANNING & GROWTH MANAGEMENT DEPARTMENT
 SUBDIVISION REVIEW

CONSTRUCTION

SUBDIVISION Winter Park Subdivision FOLIO # 51299.0000
 SUBMITTED 7/27/04 DISTRIBUTED 7/29/04 DUE 8/12/04
 OWNER/AGENT & PHONE Jennifer Deem 887-3130 fax: 887-3140
 DRC DATE 8/19/04 SECTION/TOWNSHIP/RANGE 35/30/19

	APPROVED		GRAND OAK
XX	APPROVED WITH CONDITIONS		
	RESUBMITTAL REQUIRED		
	DENIED		

CONDITIONS/COMMENTS

1. Construct all off-site improvements as shown on the submitted Construction Plans,
2. Submit signal design plans for US 41 @ Symmes Rd prior to issuance of building permits for development within Phase I of Winter Park,
3. Have 100% signal design plans approved by Hillsborough County prior to preliminary plan approval of Phase II of Winter Park.
4. Have signal installed prior to issuance of building permits for Phase II of Winter Park.

REVIEWED BY: Jonathan B. Paul, AICP DATE: 08/10/04
 NOTE: PLEASE RETURN/FAX (307-4443) TO PROJECT REVIEW & PROCESSING 19TH FLOOR, BY THE DUE DATE ABOVE!

	NATURAL RESOURCES	272-5600	FIRE	744-5541
	TRANSPORTATION	272-5600	FDOT	975-6263
x	CONCURRENCY	272-5600	COUNTY SURVEYING DIVISION	307-4783
	EPC	272-7104	SCHOOL BOARD	272-4080
	HARTLINE (Linda Walker)	223-6831 xt.2212		

HILLSBOROUGH COUNTY
 PLANNING & GROWTH MANAGEMENT DEPARTMENT
 SITE / SUBDIVISION DEVELOPMENT REVIEW

PRELIMINARY

PROJECT NAME Brookwood Development FOLIO # 74705.0000 & 74706.0000

SUBMITTED 11/15/04 DISTRIBUTED 11/16/04 DUE 12/9/04

OWNER/AGENT & PHONE Trevor Gregory 931-8900 fax: 931-5848

DRC DATE 12/16/04 SECTION/TOWNSHIP/RANGE 11/30/20

	APPROVED		GRAND OAK
XX	APPROVED WITH CONDITIONS		
	RESUBMITTAL REQUIRED		
	DENIED		

CONDITIONS/COMMENTS

PARAGRAPH #1
 BLOOMINGDALE
 KINGS TO BELL SHOALS
 47 PEAK DIRECTIONAL TRIPS
 BR

WILL REQUIRE A RIGHT TURN LANE AT ACCESS 185' TOTAL LENGTH AND A NORTH BOUND RIGHT TURN LANE ON JOHN MOORE RD. FOR NORTH TO EAST TURN THIS WILL BE 225' INCLUDING 50' TAPER. (SEE ATTACHED)

REVIEWED BY: JOE GILLILAND DATE 11/23/04

NOTE: PLEASE RETURN/FAX (307-4443) TO PROJECT REVIEW & PROCESSING 19th Floor, BY THE DUE DATE ABOVE!

	NATURAL RESOURCES	272-5600		FIRE	744-5541
	TRANSPORTATION	272-5600		FDOT	975-6263
	STORMWATER	272-5600		PUBLIC WORKS - Design (Scott Cottrell)	272-5912
	UTILITIES	272-5600		PUBLIC WORKS - Traf Svcs (Mike McCarthy)	272-5912
	ZONING	272-5600		PARKS	975-2160
x	CONCURRENCY (TRAFFIC)	272-5600		STS & ADDRESSES	744-5862
	EPC	272-7104		HARTLINE (Linda Walker)	223-6831 xt.2212

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UFORM59.DSC

SECTION 110 CERTIFICATE OF OCCUPANCY

110.1 Use and occupancy.

No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the building official has issued a certificate of occupancy therefor as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction.

110.2 Certificate issued.

After the building official inspects the building or structure and finds no violations of the provisions of this code or other laws that are enforced by the department of building safety, the building official shall issue a certificate of occupancy that contains the following:

1. The building permit number.
2. The address of the structure.
3. The name and address of the owner.
4. A description of that portion of the structure for which the certificate is issued.
5. A statement that the described portion of the structure has been inspected for compliance with the requirements of this code for the occupancy and division of occupancy and the use for which the proposed occupancy is classified.
6. The name of the building official.
7. The edition of the code under which the permit was issued.
8. The use and occupancy, in accordance with the provisions of Chapter 3.
9. The type of construction as defined in Chapter 6.
10. The design occupant load.
11. If an automatic sprinkler system is provided, whether the sprinkler system is required.
12. Any special stipulations and conditions of the building permit.

110.3 Temporary occupancy.

The building official is authorized to issue a temporary certificate of occupancy before the completion of the entire work covered by the permit, provided that such portion or portions shall be occupied safely. The building official shall set a time period during which the temporary certificate of occupancy is valid.

110.4 Revocation.

The building official is authorized to, in writing, suspend or revoke a certificate of occupancy or completion issued under the provisions of this code wherever the certificate is issued in error, or on the basis of incorrect information supplied, or where it is determined that the building or structure or portion thereof is in violation of any ordinance or regulation or any of the provisions

106.1.3
Reserved.

106.2
Reserved.

106.3 Examination of documents.

The building official shall examine or cause to be examined the accompanying construction documents and shall ascertain by such examinations whether the construction indicated and described is in accordance with the requirements of this code and other pertinent laws or ordinances.

Exceptions:

1. Building plans approved pursuant to Section 553.77(5), *Florida Statutes*, and state-approved manufactured buildings are exempt from local codes enforcing agency plan reviews except for provisions of the code relating to erection, assembly or construction at the site. Erection, assembly and construction at the site are subject to local permitting and inspections.
2. Industrial construction on sites where design, construction and fire safety are supervised by appropriate design and inspection professionals and which contain adequate in-house fire departments and rescue squads is exempt, subject to local government option, from review of plans and inspections, providing owners certify that applicable codes and standards have been met and supply appropriate approved drawings to local building and fire-safety inspectors.

106.3.1 Approval of construction documents.

When the building official issues a permit, the construction documents shall be approved, in writing or by stamp, as "Reviewed for Code Compliance." One set of construction documents so reviewed shall be retained by the building official. The other set shall be returned to the applicant, shall be kept at the site of work and shall be open to inspection by the building official or a duly authorized representative.

106.3.2 Previous approvals.

This code shall not require changes in the construction documents, construction or designated occupancy of a structure for which a lawful permit has been heretofore issued or otherwise lawfully authorized, and the construction of which has been pursued in good faith within 180 days after the effective date of this code and has not been abandoned.

106.3.3 Reserved

106.3.4 Reserved

106.3.4.1 Reserved

106.3.4.2 Reserved.

106.3.4.3

7. Model Homes

Up to five (5) model homes may be permitted per subdivision, upon approval of the subdivision construction plans and final plat by the Administrator and the issuance of a Single-family Natural Resources Permit per 4.01.00 for each unit. In addition to the information required in 4.01.00, the application submittal for the Natural Resources Permit shall include the information listed in Section 6.11.00, Model Dwelling Units and Preconstruction Sales Offices. Certificates of Occupancy shall not be released until the Improvement Facilities for public use are completed and accepted by the Board or until Improvement Facilities for private ownership and maintenance are substantially completed as determined by the Administrator.

D. Notification of Street Connectivity

1. An applicant shall provide public notification in accordance with the requirements listed below for any proposed development that, because of cross-connectivity requirements, must provide for either direct or secondary vehicular access on an existing local street that is primarily residential in character.

a. By proof of mailing of the proposed development to owners of any residential property, as reflected on the current year's tax roll, that abuts the local street being accessed up to a distance of 500 feet from the exterior boundary of the development. The notice shall be mailed no later than five (5) days after the development has been submitted for processing.

b. Simultaneously with the notice referenced above, notice shall be provided by proof of mailing to all duly registered neighborhood organizations located within one (1) mile of the boundary of the proposed development.

c. By posting of a sign on the property being developed at the approximate proposed location of the connection with the existing street no later than five (5) days after the development has been submitted for processing. The size and information shown on the sign must be consistent with a template to be provided by the Department of Planning and Growth Management.

2. Developments that meet the above cross-connectivity notification criteria that have already been subject to a zoning or zoning modification public hearing whereby the issue of access either was or could have been addressed, shall not be subject to the above additional notification requirement.

(Ord. No. 97-18, § 2, 12-18-97; Ord. No. 01-26, § 2, 9-12-01; Ord. No. 06-18, § 2, 8-1-06)

Sec. 10.01.06. Site Development Plan Review Procedures

A. Overview

There are three basic steps to the Site Development Plan Review process. They are:

1. Review of Preliminary Site Development Plan.

2. Review of Site Development Construction Plans.