

**BOARD OF COUNTY COMMISSIONERS  
POLK COUNTY, FLORIDA**

**Applicant:** Carter Engineering

**Property Owner:** Paul Schulz

**Case Number:** CU 16-12

**Project Number:** DMS 58603 (Outback Oasis)

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**ORDER DENYING CU 16-12 WITH PREJUDICE**

THIS MATTER came before the Polk County Board of County Commissioners (“Board”) on August 16, 2016 at a public hearing held in accordance with the Polk County Land Development Code (“LDC”) and the Polk County Comprehensive Plan (“Comp Plan”), pursuant to the application for a conditional use (“CU”) for Case No. CU 16-12 (the “Application”). The Board fully incorporates herein the entire record for the public hearing of CU 16-12. The Board having been fully advised in the premises, makes the following findings of fact and rulings for this, its written order for CU 16-12, in accordance with §125.022, Florida Statutes:

1. The Applicant, Carter Engineering (“Applicant”), submitted an application on behalf of the property owner, Paul Schulz, (“Property Owner”) for a CU to allow a High Intensity Recreation facility allowing events of 250 or more people and retails sales or concessions and souvenirs on a 8.45 acre site (“Subject Property”). The Subject Property is located on the west side of Country Club Road South, near the Winter Haven city limits, in Section 24, Township 28, and Range 26. The Subject Property and the surrounding properties have a future land use designation of Residential Low-1 (RL-1) within the Urban Growth Area (UGA).

2. The Application proposes a High Intensity Recreation facility to allow the Property Owner to host wedding ceremonies and receptions, group gatherings, fundraisers, and other events on the Subject Property along with vendor/retail sales such as gift shops to sell souvenirs. LDC section 303 requires all High Intensity Recreation facilities to comply with the following standards:

1. All outdoor lighting shall be directional and shall not directly radiate onto adjacent properties.
2. All structures and associated activities located in or adjacent to residential districts shall be limited to operation from 7:00 a.m. to 10:00 p.m.
3. All access points shall have at a minimum 50 feet of road frontage on a paved public road.

4. Buildings or structures used for or in connection with any such use shall be located at a minimum of fifty feet from adjoining property which is in a residential district.
5. Off street parking or loading spaces shall be located at a minimum of fifty feet from adjoining property which is in a residential district.
6. Any proposal for a recreational facility in a location that will render a legal use nonconforming shall require a Level 3 Review.
7. Food and retail sales shall be limited to concessions during events. Continual food or retail sales or services provided at High Intensity Recreation Facilities shall require a Level 4 Review. During the Review the Board shall determine that the activity meets the following criteria:
  - a. The activity is clearly subordinate and incidental to the primary recreational use; and,
  - b. The activity is directly related to the performance of the recreational activity.
8. Alcohol sales shall be limited to One, Two or Three Day Permits (ODP or SODP), no more than three (3) times per year per location (at the time of adoption, this license was referenced to Section 561.422 F.S).
9. RV Camping shall be limited to 10% of the facility and restricted to stays of 30 days or less.
10. The required number of parking spaces shall be determined by DRC during Level 2 Review using the following information provided by the applicant:
  - a. Average daily attendance,
  - b. Maximum peak event attendance; and,
  - c. Off-site parking alternatives.

3. The Application requires a level 4 review before the Board pursuant to LDC section 303. The purpose of a level 4 review is to evaluate whether the requested development meets minimum development standards in the LDC, other county development regulations, and to provide a compatibility review. *See* LDC § 907A. Additionally, the Board must consider the following factors set forth in section 907A:

1. The compatibility of non-residential uses near or adjacent to residential land uses or vacant land designated as residential;
2. The compatibility of proposed residential uses in proximity to existing residential densities of a significantly different density;
3. Where there are specific characteristics of the proposal which may result in potential adverse off-site impacts. Site characteristics such as a dumpster, driveway, drive-through window, or buffer will be reviewed to determine compatibility and possible mitigation of impacts not deemed compatible;
4. The effects of noise, vibration, air pollution, glare and odor may adversely impact the use of adjacent properties shall be reviewed and, where appropriate, conditions for mitigation imposed;

5. Whether the requested development meets minimum development standards as stated in this Code, and other County development regulations; and to provide for compatibility; and
6. The development plan and impacts are outlined in an Impact Assessment Statement which mitigates any impacts of the project and is prepared pursuant to Section 910.

4. The Application is in addition to the Low Intensity Recreation use already approved by the County's Development Review Committee in October 2015. Expanding the Low Intensity use to High Intensity allows the Property Owner to hold larger and longer events. Low Intensity events are limited to 250 attendees and must end by 8 p.m.; however, High Intensity events have no maximum attendance cap and may last until 10 pm.<sup>1</sup> Additionally, with High Intensity approval, the Property Owner can use public address systems and loud speakers on the Subject Property, which are prohibited for Low Intensity events. Finally, High Intensity approval enables the Property Owner to have continual food or retail sales or services and RV camping, which are not allowed with a Low Intensity facility.

5. Except for the Subject Property, the development along Country Club Road is residential and has been since the adoption of the Polk County Comprehensive Plan in 1991.<sup>2</sup> The road itself is a winding, tree-lined, two-lane road. Development along Country Club varies between denser residential subdivisions, estate-sized residential parcels, and/or open pasture for cattle and horse grazing. Hamilton Pointe, located less than a mile from the Subject Site, is one of the first residential subdivisions on Country Club Road. It was developed in 1990 and consists of 107 homes. Other neighborhoods include Hampton Cove, Hamilton West, Gates at Lake Region, Crossroads at Lake Region, and Country Club Estates. In total, there are more than 600 homes located along Country Club Road that are within a mile of the Subject Property.

6. On July 6, 2016, the Planning Commission held an advertised public hearing for CU 16-12. Ms. Brigitte D'Orval, of the Polk County Land Development Division, presented a slide show depicting the facility, surrounding area, and relevant land development policies. Ms. D'Orval testified that the Development Review Committee (DRC) recommended approval of the application. The Planning Commission also heard from the Applicants, Mr. David Carter, P.E., and Mr. Blaine Carter, who testified regarding the Application's compatibility with surrounding residential uses, and the measures taken by the Property Owner to mitigate noise and traffic impacts. Adjacent residents testified in opposition to the CU. The residents were primarily concerned with the intrusion, expansion, and incompatibility of a commercial use in a residential neighborhood. Many of the residents opposing the CU have lived in the neighborhood since the early 1990s and specifically choose this area of the County for its quiet, rural atmosphere. Mr. and Mrs. Whisler, whose home is less than 100 feet from the Subject Property, testified that amplified music from prior events could be heard from within their home and was disturbing to

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<sup>1</sup> Prior to the Board hearing, the Property Owner agreed to limit his request to eight (8) events per year with a maximum of 500 people, and to cease amplified sound at 9:30 p.m. on Friday and Saturday nights and 9 p.m. on every other night.

<sup>2</sup> The Country Club of Winter Haven, formerly known as Lake Region Country Club, is one of the only non-residential uses on Country Club Road. However, it has also been in existence since the early 1960s and prior to the County's adoption of the Comprehensive Plan.

them and their son. The Applicant testified that the Property Owner has since taken steps to mitigate the sound impacts, including building a sound wall and providing his own speaker system. The Planning Commission recommended approval to the Board with a vote of 5-2.

7. On August 16, 2016, the Board held an advertised public hearing for CU 16-12. Again, Ms. Brigitte D'Orval, of the Polk County Land Development Division, presented a slide show depicting the facility, surrounding area, and relevant land development policies. Ms. D'Orval testified that the Development Review Committee (DRC) recommended approval of the application. The Applicant presented testimony from the following witnesses, which the Board accepted as expert witnesses in their respective fields of expertise: Mr. David Carter, P.E., and Mr. Blaine Carter, experts in the field of civil engineering; Mr. R. Sans Lassister, P.E., an expert in the field of traffic engineering; and Ms. Susan McDonough, an expert in the field of environmental and sound engineering. Mr. Blaine Carter presented a slideshow depicting the Subject Property, site plan, and surrounding uses. Mr. Blaine Carter further testified regarding the Application's compatibility with the surrounding residential uses. Mr. Lassister testified regarding the traffic impacts, and, in his opinion, Country Club Road has adequate capacity for the proposed Recreation High Intensity use. Finally, Ms. Susan McDonough testified regarding the noise impacts generated by Subject Property, and she opined that the actions taken by the Property Owner, including the addition of the sound wall, will mitigate the noise to acceptable levels for the neighboring residents.

8. The opposition was represented by Mr. John Wood, Jr., Esquire and Ms. Jennifer Fulks, Esquire. Ms. Fulks presented a slideshow illustrating the residential character of the properties near and surrounding the Subject Property. The neighboring residents again testified regarding the intrusion, expansion, and incompatibility of a commercial use in an established residential area. Many residents testified that they specifically chose to build their dream homes on Country Club Road because of the peace and quietness of the area. The opposition also presented the testimony of Mr. Michael Joachim, AICP, who was accepted by the Board as an expert in the field of land planning. Mr. Joachim opined that the Application does not meet the LDC's definition of compatibility given that the intensive non-residential use is more commercial in nature and thus not compatible with the existing low-density residential development. Further, he opined that the proposed CU conditions are not adequate to mitigate the application's incompatibility and will be difficult or unfeasible to enforce. At the end of the public hearing, the Board voted 4-0 to deny CU 16-12.<sup>3</sup>

9. One of the eight guiding "Basic Principles" of the Comprehensive Plan states that residential neighborhoods are collectively recognized as an important asset to be protected. *See* Division 1.200 BASIC PRINCIPLES. The policy also states that Polk County recognizes its responsibility to protect the health, safety, and welfare of its citizens while providing a high quality-of-life for all of its residents by promoting an orderly, efficient, economically sound, harmonious, safe, and healthful living environment. *Id.* In this case, preventing further commercialization of a well-established residential neighborhood promotes the "Basic Principles" found in the Comp Plan.

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<sup>3</sup> Commissioner Dantzler recused himself from the proceedings due to a conflict of interest.

10. The Comp Plan and LDC define Compatibility as follows: "A condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition." Here, the Board finds that the proposed use set forth in the Application to further intensify a commercial, non-residential use is not compatible with the well-established residential neighborhood along Country Club Road, and sound and traffic impacts to the neighborhood cannot be adequately mitigated or buffered. Furthermore, approving the Application would open the door to more intense future commercial activity in this quiet, residential neighborhood. Therefore, the Application is inconsistent with the Comprehensive Plan and LDC policies, including without limitation, the following: Policy 1.200 BASIC PRINCIPLES; Policy 2.102-A2: COMPATIBILITY; Policy 2.012-A10: LOCATION CRITERIA (specifically, subsection a.); and LDC section 907. Furthermore, no evidence was presented regarding the factors listed in subsections 7.a.-b. under the High Intensity Recreation category of LDC section 303; the Applicant has the burden of producing competent substantial evidence to support the Application in that regard.

11. Per LDC section 933, after a petition for an action for a property has been denied by final decision of the Board, a re-application for requests without material changes, on the same property shall not be heard by the Board for a period of one year after the final decision.

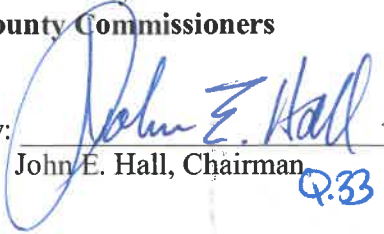
It is therefore ORDERED AND ADJUDGED as follows:

For the reasons set forth above, and in accordance with the Polk County Comprehensive Plan and the Polk County Land Development Code, the Board hereby denies CU 16-12 with prejudice. Therefore, pursuant to LDC section 933, a request for a conditional use permit may not be heard by the Board for a period of one year from the date of this order.

DONE AND ORDERED in Bartow, Polk County, Florida, in regular session this 6th day of September, 2016, by the Polk County Board of County Commissioners.

Polk County Board of  
County Commissioners

ATTEST: Stacy M. Butterfield, Clerk  
and Auditor to the Board

By:   
John E. Hall, Chairman

By:   
Deputy Clerk



cc: Paul Schulz, Property Owner  
Carter Engineering, Applicant's Engineer  
John Wood, Jr. & Jennifer Fulks, Opposition's Counsel  
Land Development Division Official File  
Erin Valle, Clerk of Court (under separate cover)