

17777 Old Cutler Road, LLC. v. Village of Palmetto Bay, Case No. 2022-00012-AP-01, 2023 WL 2499575
(Fla. 11th Cir. Ct. 2023)

Miami Dade County Court Holds that Village was Equitably Estopped from Adding Conditions to an Approved Resolution Allowing a Transfer of Development Rights

In 2016, Petitioner 17777 Old Cutler Road, LLC (“Petitioner”) obtained an approval from the Village of Palmetto Bay (“Village”) to transfer the development rights from environmentally sensitive lands (“Donation Site”) to another one of Petitioner’s properties (“Development Site”) in order to construct a 480-unit development. In 2017, relying on the 2016 approval, Petitioner applied for a site plan application to the Village of Palmetto Bay Council (“Village Council”). The Village Council denied the site plan application, alleging that Petitioner failed to fulfill the conditions of the 2016 approval, even though these conditions were not actually conditions in the 2016 approval.

Despite staff recommendation of approval of the site plan application, the Village Council denied the site plan application for the following reasons: (1) the transfer of the development rights was incomplete because the Petitioner failed to obtain a rezoning or comprehensive plan amendment on the Donation Site; and (2) the Village had not yet agreed to accept title to the Donation Site.

With respect to the first basis for denial, the Village Council relied upon an erroneous interpretation by the Village Attorney. The Village Attorney interpreted a 2016 Trending Determination Letter (“TDL”) written by the former Director of the Department of Planning and Zoning, which stated: “both rezoning and an amendment to the Village’s adopted Comprehensive Plan would **typically** be required” prior to a transfer of development rights. The Village Attorney interpreted the word “typically” as a “must” or “shall” instead of an acknowledgement “that sometimes things are done differently.” The Court held that this was an erroneous interpretation and that Petitioner was not required to obtain a rezoning approval or a comprehensive plan amendment for the Donation Site in order to move forward with the site plan application because the Village already approved the transfer of development rights in 2016. The Court also held that the 2016 approval authorized the transfer of development rights from the Donation Site to the Development Site subject to five conditions, none of which required a rezoning or comprehensive plan amendment, and the Village was equitably estopped from imposing additional conditions.

With respect to the second basis for denial, the Court held that the Village was required to accept title to the Donation Site if Petitioner could provide clear title because Condition #4 to the 2016 approval stated: “Prior to transfer of the 85 residential units, The Village shall receive clear title to the dedicated lands as generally described in Attachment C of the Resolution and as further depicted in the survey submitted and accepted pursuant to Condition #2 of this recommendation.”

The Court held that the Village was required to accept the Donation Site if Petitioner provided clear title. Relying on the principle “[e]very citizen has the right to expect that he will be dealt with fairly by his government.” *Hollywood Beach Hotel Co. v. City of Hollywood*, 329 So. 2d 10, 18 (Fla. 1976), the Court held that the Village was equitably estopped from refusing title to the Donation Site based on the plain language of the 2016 approval and Petitioner’s ability to provide clear title.