

CIRCUIT COURT
POLK COUNTY, FLORIDA

T. MIMS CORP., MIMS/ALAFIA, LLC,]
MIMS INVESTMENTS, LLC, and]
NICHOLS RANCH, LLC,]
]]
Plaintiffs,]

vs.]

POLK COUNTY, FLORIDA, a political]
subdivision of the State of Florida,]
]]
Defendant.]

CASE No. 53-2010-CA-006058-0000-LK

Section: 7

SUSAN MCDUFFIE, et. al.,]
]]
Plaintiffs,]

vs.]

POLK COUNTY FLORIDA, a political]
Subdivision of the State of Florida, and]
T. MIMS CORP., MIMS/ALAFIA, LLC]
and MIMS INVESTMENTS, LLC,]
]]
Defendants.]

CASE No. 53-2010-CA-006077-0000-LK

MOTION FOR SUMMARY JUDGMENT
IN FAVOR OF DEFENDANT POLK COUNTY AND
AGAINST THE PLAINTIFF MIMS ENTITIES WITH
MEMORANDUM OF LAW IN SUPPORT THEREOF

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EXHIBITS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Pursuant to Fla. Rule of Civil Proc. 1.510(c), the County identifies the following depositions, affidavits, documents, and discovery responses of record, which have been filed in support of this motion:

- A. Deposition of William Thomas Mims with Exhibits dated August 29, 2012.
- B. Transcript of Public Hearing before the Polk County Board of County Commissioners dated February 18, 2010 Volume 1 of 2 with regard to CU 09-17 (Innovation Environmental Park to Consider the Approval of a Landfill), LDC 09D-04 (Innovation Environmental Park to Consider the Adoption of an Ordinance Amending the Land Development Code Subdistrict Map), and Transmittal of an Ordinance Adopting CPA 10A-03 to Change the Future Land Use on 1,741 +/- Acres from Phosphate Mining (PM) to Institutional (INST) to the Florida Department of Community Affairs.
- C. Transcript of Public Hearing before the Polk County Board of County Commissioners dated February 18, 2010 Volume 2 of 2 with regard to CU 09-17 (Innovation Environmental Park to Consider the Approval of a Landfill), LDC 09D-04 (Innovation Environmental Park to Consider the Adoption of an Ordinance Amending the Land Development Code Subdistrict Map), and Transmittal of an Ordinance Adopting CPA 10A-03 to Change the Future Land Use on 1,741 +/- Acres from Phosphate Mining (PM) to Institutional (INST) to the Florida Department of Community Affairs.
- D. Transcript of Public Hearing before the Polk County Board of County Commissioners dated June 3, 2010 Volume 1 of 2.
- E. Transcript of Public Hearing before the Polk County Board of County Commissioners dated June 3, 2010 Volume 2 of 2.
- F. Polk County Long Range Planning Division Staff Report dated December 7, 2009 (Case #LDC 09D-04).
- G. Polk County Development Review Committee Staff Report dated December 7, 2009 (Case #CU09-17).
- H. Polk County Long Range Planning Division Staff Report dated December 7, 2009 (Case #CPA 10A-03).

- I. Polk County Long Range Planning Division Staff Report dated February 18, 2010 (Case #LDC 09D-04).
- J. Polk County Development Review Committee Staff Report dated February 18, 2010 (Case #CU 09-17).
- K. Polk County Long Range Planning Division Staff Report dated February 18, 2010 (Case #CPA 10A-03).
- L. Polk County Long Range Planning Division Staff Report dated June 3, 2010 (Case #LDC 09D-04).
- M. Polk County Development Review Committee Staff Report dated June 3, 2010 (Case #CU 09-17).
- N. Polk County Long Range Planning Division Staff Report dated June 3, 2010 (Case #CPA 10A-03).
- O. Level 4 Land Development Code Comprehensive Plan Amendment Application dated September 1, 2008, but marked received September 8, 2009, Pre-Application Project #54361 (from PM to INST).
- P. Level 4 Land Development Code Comprehensive Plan Amendment Application dated September 17, 2009 (from INST-1 to INST. 2).
- Q. Level 3 & 4 Development Review Application dated September 17, 2009, marked received October 29, 2009 for Conditional Use.
- R. Stephen Barnes Affidavit
- S. Tom Deardorff Affidavit

I. STATEMENT OF THE FACTS
(Competent Substantial Evidence before Governmental Body)

This is a story about how one county arrived at a balanced solution among competing, emotional, legitimate interests concerning the disposal of garbage in the midst of changing times.

Background

In the days when no one wanted garbage, Polk County established what is known as the North Central Landfill (What some used to call “garbage dumps” are now known as “landfills” for the deposit of “waste.”) between Lakeland and Winter Haven. North Central was designed for a 100-year capacity and has 70 years of remaining life. In addition to North Central, the City of Bartow permitted an operating landfill known as the Cedar Trails Landfill. Cedar Trails accepts waste from outside the City. The County has two older landfills that are dormant.

Times have changed. Today, there is a great deal of money to be made in transporting, handling and disposing of garbage. Entrepreneurs have been attracted to the field. Changing times have also brought Polk County the aftermath of the phosphate mining industry, and the existence of mined-out phosphate lands. A County priority is to reclaim these lands for productive use.

The County’s Comprehensive Plan as approved by the Florida Department of Community Affairs, designates an area for phosphate mining activities in Polk County as “PM,” for Phosphate Mining. In addition to the mining of phosphate, the PM designation allows for a range of other uses including agricultural pursuits. The list of allowed uses does not include landfills.

Mims' Entities Invest in Phosphate Lands

In 2008, three companies owned and controlled by Tom Mims (hereafter "Mims") acquired the majority of the 1741 acres of mined-out phosphate lands in question. The total acquisition cost for the 1741 acres was \$2,523,200. (Mims Dep.-pp176, 183).

In September of 2009, Plaintiff (hereinafter known as "the Mims' Entities), applied to the Board of County Commissioners for Polk County (hereinafter "BoCC" or "Commission") for a change of the PM designation so as to allow the entire 1741 acres to be utilized for a resource recovery and landfill operation to be known as "Innovation Environmental Park." According to the appraiser hired by the Mims' Entities in this litigation, had the Commission granted this full request, the value of the property would have increased from the \$2,523,200 acquisition cost to a fair market value of \$59,500,000 (Mims Dep.-p196) and benefitted the Mims' Entities by almost \$57,000,000. (Mims Dep.-p196).

As will be demonstrated below, the Commission heard from all the competing interests, including the residents of the vicinity who passionately pleaded for the rejection of the project. The Commission decided to approve Mims' land use applications, with modifications to soften the impact on surrounding residents. The modifications were discussed by the Commission with Mims at the public hearing. Mims agreed to the modifications and the Commission thereafter enacted them. The Mims' appraiser was later to report that after the modifications, the value of the Mims' property had been enhanced from \$2,523,200 to \$33,100,000, resulting in an increase in value for the Mims' Entities of \$30,576,800. (Mims Dep.-p198).

Applications for Development

In 2009, Plaintiffs submitted to the County's Growth Management Department three separate applications regarding the 1,741 acre tract that had been acquired by Mims:

- (1) Application to amend the Comprehensive Plan to change the designation of the entire 1,741-acre tract from Phosphate Mining (PM) to Institutional (INST);
- (2) Application to amend the Land Development Code sub-district map from Institutional-1 (INST-1) to Institutional-2 (INST-2); and
- (3) Application for Conditions of Approval.

The applications sought approval for a "resource recovery facility" named "Innovation Environmental Park" (hereinafter "Environmental Park") designed to recycle 75 percent of all solid waste brought into the facility. The applications explained that the facility would utilize the "One Touch" method for its re-construction, re-use, and recycling. Although landfilling was stated to be "a process of last resort," the accompanying site plan showed 1,040 of the 1,741 acres to consist of a Class I (household garbage) landfill area, with waste disposal cells of heights of up to 220 feet (twice the height of the Polk County Courthouse). In addition, the site plan showed a Class III and C&D (construction and demolition debris) landfill area on approximately 150-200 acres of the property. As submitted, the site plan would have allowed for the development of one of the largest Class I landfills in the State of Florida and one of the largest Class I landfills along the East Coast of the United States.

The three applications proceeded through a "Level 4" review. This type of review calls for a hearing before the citizen Planning Commission which is thereafter expected to make a recommendation to the County Commission as to the disposition of the matter. The purpose of a

Level 4 Review “is to evaluate whether the requested development meets minimum development standards as stated with this [Land Development] Code, other County development regulations, and to provide for compatibility review.” §907(A), Polk County LDC. Section 907 further states that “the BoCC shall determine whether the proposed development complies with the standards of this Code and the Comprehensive Plan. . . .” §907(A), Polk County LDC.

The Planning Commission held a public hearing on December 7, 2009. On a 4-3 vote, the Planning Commission recommended adoption of all three applications to the BoCC.

Polk County Commission Hears Testimony and Views Evidence

The testimony before the Commission addressed the subject matter of the three ordinances (corresponding to the three applications submitted by Mims) that would have to be adopted by the County Commission in order to grant Mims’ request to operate the Environmental Park landfill:

1. Ordinance CPA 10A-03 amending the County’s Comprehensive Plan to designate the property in question for “Institutional” (INST) use in place of the existing PM (Phosphate Mining) use.
2. Ordinance LDC 09D-04 amending the County’s Land Development Code to establish a sub-classification known as “Institutional-2,” (INST-2) which is the only sub-classification allowing a landfill.
3. Ordinance CU 09-17 adopting appropriate operating conditions (“conditions of approval”) for the landfill that would, among other items, minimize the adverse affects of the landfill on surrounding property owners.

The first of two hearings before the Commission occurred on February 18, 2010 with the second taking place on June 3, 2010.¹ At both hearings, the Commission was presented with a great deal of competent substantial evidence in the form of extensive sworn testimony and supporting documents, maps, videos, pamphlets, and statistical data. The testimony came from the applicant, experts, attorneys, neighboring residents, citizens from elsewhere in the County, as well as organized and financed advocacy groups on both sides.

Strong Opposition to Landfill

The reasons given by the numerous speakers in opposition were essentially threefold. First, there was no need for more landfill capacity because of the 70 years of capacity that remained at the County's North Central facility as well as other existing and operating landfills in the County. The opponents noted that the Commission had previously denied two other applications for landfills (Mims Dep.-Exh.7-p9) and asked that the Commission be consistent and deny the Mims' application as well.

Second, the neighboring residents and representatives of the nearby cities of Mulberry and Bartow testified about their concerns relating to their quality of life, property values, truck traffic, odor, noise, dust and air quality, neighborhood stigma, and the like.

Third, the opponents claimed that the County was being exploited for profit. They made the point that the Mims' Entities had no history of landfill operations, but were instead just development and land investment companies. They contended that if Mims were successful in getting the needed votes for such a huge facility, the land would be sold for a big profit to an established landfill operator who could then use the approvals to make Polk County the repository for garbage from out of the county.

¹ Citations to the February 18, 2010 hearing before the BoCC will be designated as HT-2/18/10-p#. Citations to the June 3, 2010 hearing before the BoCC will be designated as HT-6/3/10-p#.

Mims' Response: Environmental Park Devoted Primarily to Recycling

In response to critics, Mr. Mims testified that his project was not a typical landfill as it had been characterized by the opponents. Environmental Park would be the solid waste processing facility of the future, devoted primarily to recycling. At one point, he even announced a preference for moving Environmental Park's Class I waste to the County so the Park would not even have to build a Class I landfill. (HT-6/3/10-p418).

Mims provided a professionally produced video that was played to the Commission showing 21st century methods for recycling waste streams which were quite different from the way Class I waste was being handled in Central Florida and at the County's North Central Landfill. He also distributed a professionally prepared booklet illustrating the way that Innovation Environmental Park would operate on the site under consideration by the Commission. (Mims Dep.- Exh.1). The booklet stressed that Environmental Park would be "saving the environment while creating jobs --- a concept we can all live with!" The Park's "features" would include:

- State of the art processing and recycling facility employing the latest in waste management technology.
- Re-manufacturing, and other re-use facilities for the re-manufacture and re-construction of waste materials into products to be shipped around the world.
- A \$35 million "resource recovery" park that would initially create jobs for the construction of buildings and facilities and later provide 350 permanent jobs.
- Jobs would range from office personnel, management supervisors, biologists, and teachers to heavy equipment operators, processors, and skilled machine operators.
- An educational component for high school and university student internships to do research on leachate and biological factors to advance recycling and disposal technology.
- Environmental Park's scientists would be made available for discussion groups and lectures concerning the technology at the Park.

- Student interview opportunities with engineers, hydrologists, geologists, and other professionals as part of student professional development.
- Re-construction facilities, composting areas, and a nursery “Get Growing” facility, with some of the material to be bagged and sold commercially.
- Gardening and compost classes as well as field trip opportunities.
- The Park’s “One Touch” approach to handling non-hazardous solid waste.
- Website showing Environmental Park’s modern recycling facilities in 3-D animation providing “an exclusive look at how garbage is handled in the 21st century.”
- A not-for-profit organization known as “IEP Green Team” to be politically active at local and state levels to “support more proactive legislation for green technologies in all areas. . . with a focus on non-hazardous solid waste and a push to mandate a 75% recycling rate in Florida.”
- Educational and research teaching opportunities at high school and university levels for Green Team members who wish to volunteer services.
- Environmental Park would “offer college level classes to study leachate, bio-fuels and new products which can be manufactured within IEP to increase our level of recycling beyond 75%.”
- “[I]ntern programs and educational seminars for other field rated professionals.”
- The recovery of “organic materials, such as yard waste, grass clippings, tree limbs, etc. which will be used in the IEP composting facility.”
- Would be the only “waste processing facility[y] permitted in Polk County to recover resources from Class I waste.”

First Hearing: Quasi-Legislative Action

At the first hearing in February, the Commission heard extensive testimony from both sides. The Commission decided that 1,741 acres (85% of the size of the City of Mulberry) was in excess of the acreage needed to accomplish the announced purpose. The Commission voted 3-2 to amend the Comprehensive Plan and change the Future Land Use Map of the County from PM (Phosphate Mining) to INST (Institutional) for 800 of the 1,741 acres involved in the Mims’

application. After enactment, the Comprehensive Plan amendment would have to be forwarded to the Department of Community Affairs for approval. The other questions in Mims' applications were deferred, since they were dependent upon the approval of the amendment by the Department of Community Affairs.

Second Hearing: Quasi-Judicial Action

The Department of Community Affairs had no objections to the proposed amendment. The matter was then brought back to the Commission in June for a decision on the remaining issues. Mims revised the site plan previously submitted to the County Commission to adjust the project in light of the 800 acres that had now been opened up to INST land use.

The second hearing was just like the first. Both sides worked diligently to organize their presentations and pack the house. The opposition's contentions were essentially the same: 1) No need for another landfill, 2) Adverse affects to neighboring properties, 3) Mims using "bait and switch" solely for profit.

The Commission gave Mims the opportunity to address the claims of the opposition that the County was being exploited by what would eventually turn out to be a "bait and switch" tactic. The claim was that Innovation Environmental Park's green, project-of-the-future was just a front to obtain the necessary land use approvals for a large Class I landfill site. Once the approvals had been obtained, Mims would be free to sell the re-zoned property for a handsome profit to an entity that was actually in the business of operating typical landfills. The result would be that the represented recycling and remanufacturing activities would fall by the wayside.

Mr. Mims responded for the Mims' Entities by assuring the Commission: (1) Environmental Park was different and unique, (2) the applicants were sincere in their convictions to carry out the vision, and (3) offering to prove their sincerity by making the continued

operation of the Park subject to achieving recycling levels as certified by the Florida Department of Environmental Protection.

Mims: Environmental Park “Different and Unique”

Chairman English gave Mims the direct opportunity to respond to the critics who contended that the motive was to resell for profit.

CHAIRMAN ENGLISH: I want to ask you a question point blank that has been raised. If you are successful in getting a Class I landfill with 500 or more acres are you going to flip it?

MR. MIMS: No sir, I’m not. The whole intent behind Innovation is a dream. *It’s a dream to make something different and unique.* I have been contacted by the largest waste companies in the country and they asked me and inquired about that, and they, too, were specifically told, you name any name you want, no, it’s not for sale, we’re building something unique here and that’s the goal of Innovation Environmental Park.

(HT-6/3/10-p74) (emphasis added). Mr. Mims went on to assure the Commission under oath that “Innovation Environmental Park is real. It is a vision, it is something that is unique, and it can literally shape and change the way this country handles the waste that we collect every single day.” (HT-6/3/10-p282). He reinforced his sincerity to the Commission by stating “I believe we’re on the cutting edge of making a significant difference in this county and how we handle the garbage.” (HT-6/3/10-p283).

Mims Volunteers to Submit 60-Acre Cells to Certified Recycling Rates

Mims also offered to silence his critics and assure the Commission of his sincerity by imposing conditions on the acreage that would be used for Class I (household garbage) landfill purposes. The Class I area would be constructed with separate 60-acre cells that could only be used one at a time. Mims volunteered that the entities would achieve certain specified recycling

rates as certified by the Florida Department of Environmental Protection before being eligible to move on to the next cell.

MR. MIMS: . . . But another one that I want to submit . . . “The approval permits 527 acres to be designated for Class I landfill within Area A; however, only 100 acres shall be available for immediate use, and the remaining acreage shall be divided in the cells of approximately 60 acres which is similar to the county. In order to permit the next cell, the applicant shall demonstrate that an average of 60 percent of solid waste material accepted with Innovation are certified as having been recycled, remanufactured or reused as reported to FDEP.” That’s a reporting that has to take place.

(HT-6/3/10-p281). Later in the discussion, the recycling rates were specified and agreed to:

COUNTY ATTORNEY CRAIG: And just one thing for point of clarification on condition one. Were we going to have the graduated rates of recycling going through? Was that done away with or was that included in the –

MR. MIMS: Yes it is.

CHAIRMAN ENGLISH: 65, 70 and it maxes out at 70.

COMMISSIONER REED: Maxes out at 75.

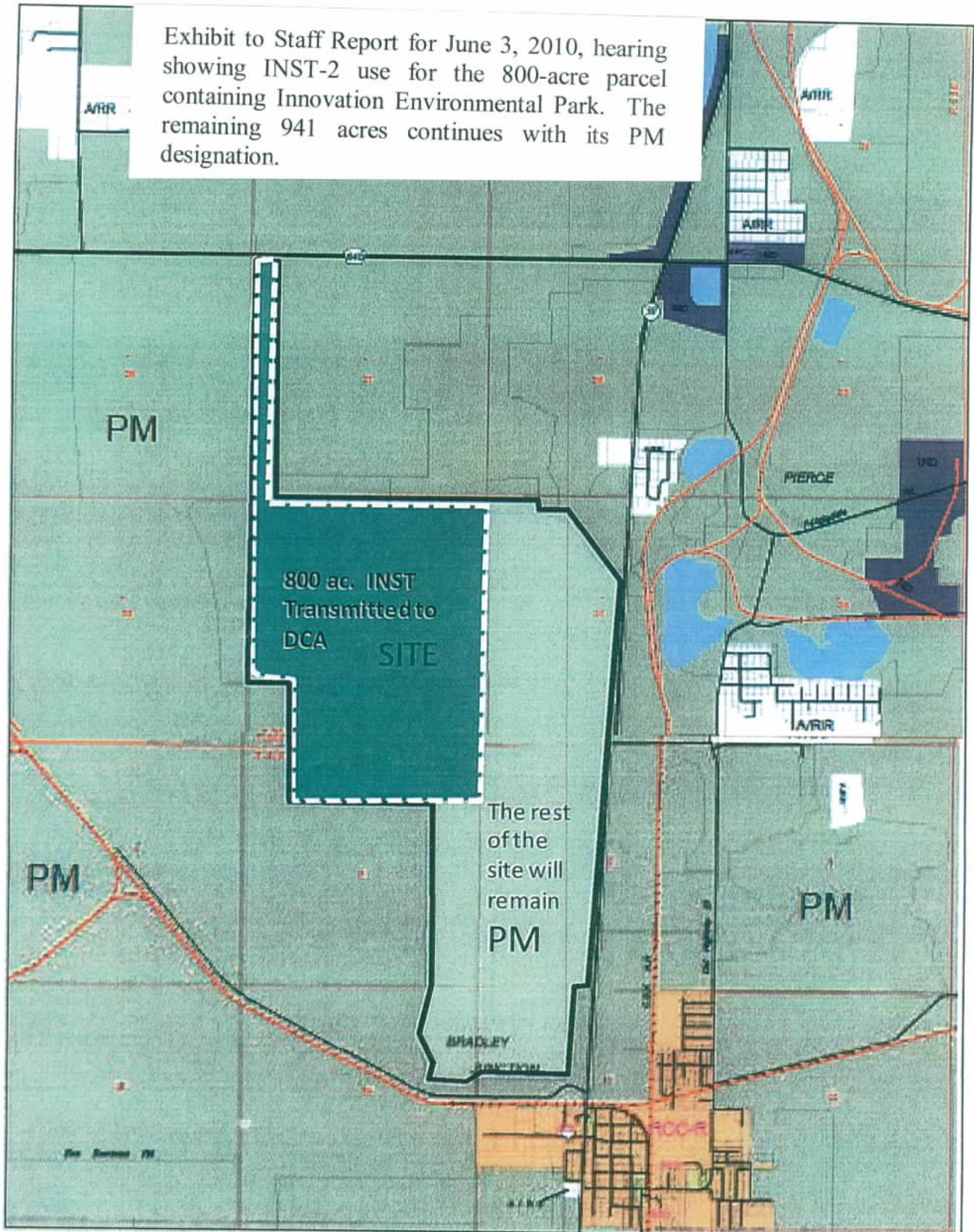
COMMISSIONER WILKINSON: It maxes out at 75, Erik.

MR. MIMS: I’m fine with that.

(HT-6/3/10-pp441-42).

Mims Volunteers to Confine Operations to the Approved 800 Acres without Change of Status for the Remaining 941 Acres

Concerns were raised about those parts of the operation that were proposed for the 941-acre portion of the property nearest to the residences. (See map on following page). The 941-acre portion had not been part of the amendment to the Comprehensive Plan. Even though it had retained its original PM designation, Mims’ revised site plan showed the property being used for a Class III and C&D landfill and also for Emergency Debris, Nursery and Stormwater. The property was on the East side of the Mims’ lands and across Highway 37 from the residential properties.



FUTURE LAND USE MAP

Mims responded by volunteering to confine the entire Environmental Park operation to the 800 acres that had been approved by the Department of Community Affairs for the amendment to the Comprehensive Plan. As a result, Mims explained that the site plan for Environmental Park would not involve the 941 acres, and the status of those lands would remain unchanged:

MR. MIMS: The proposal and what may address some of your concern, Mr. Chairman, if we take out the C&D landfill area towards [Highway] 37 and have the 527 acres [within the approved 800 acres] be the Class I, Class III, and C&D within that proposed area, and have it meet the same criteria that we are talking about, I would be acceptable to that.

CHAIRMAN ENGLISH: Repeat that again now.

MR. MIMS: If you had the 527 acres that we're talking about in area A and have it subject, or have it Class I, C&D, and Class III and remove the area B or the remaining part of the site plan, take it [the 941-acre portion] out where the only site plan we are dealing with is the 800 acres that was approved by DCA [Department of Community Affairs]. So the site plan would literally be the boundaries of the CPA [800-acre Comprehensive Plan Amendment] that was sent to DCA. I would be supportive of that under the same parameters that we would meet that 60 percent goal as we were discussing with that 527 acres.

(HT-6/3/10-pp348-49). See also Revised Site Plan.

After hearing the Mims' proposal, the Commission voted 4-1 to adopt the ordinance approving the Institutional use for Environmental Park on the 800 acres that had been the subject of the amendment to the Comprehensive Plan. (HT-6/3/10-p377). The next vote was 4-1 to adopt the ordinance approving the amendment to the Land Development Code to create a sub-district change for the property in question to INST-2, thereby allowing a landfill. (HT-6/3/10-p384). The status of the 941 acres remained unchanged.

Mims Agrees to all Conditions of Approval

The Commission was trying to strike a balance between the operations of the Environmental Park landfill and the potential adverse affects would be imposed upon neighboring residents by such a large solid waste processing and disposal facility. The protections for the residents took the form of “conditions of approval” for the project. The conditions would later be memorialized in writing by the Development Order entered by the Commission.

The Commission’s conditions were an elaboration of a list of conditions that had come forward from the citizen Planning Commission. Each of the conditions was reviewed and discussed one by one with Mims during the course of the public hearing. Eventually, Mims, testifying under oath, approved each and every one of the conditional uses that are today embodied in the County’s Development Order. (HT-6/3/10-pp347-443). The transcript of the June 3, 2010 hearing shows that, as the conditional uses were considered in numerical order, Mims responses were as follows:²

- I would be acceptable to that. (p348)
- I would be supportive of that. (p352)
- Absolutely, and I would be fine with that . . . I’m supportive of that. (p395)
- Right, I’m fine with it left off. (p402)
- We’re supportive of that. That’s the provision that’s in there. (p405)
- Oh, I’ll live with that. (p406)
- No objection. (p408)
- That’s fine. (p410)

² For ease of reference, citations have been made only to the page numbers of the 6/3/10 Hearing Transcript.

- Yes. (p411)
- I agree. (p411)
- Agreed. (p411)
- I suppose the applicant doesn't have a problem with that. MIMS: (p412)
- Correct. (p412)
- Correct. (p412)
- Correct. (p412)
- Correct. (p414)
- Okay. (p414)
- Correct. (p414)
- Correct. (p415)
- That would be fine. (p416)
- Correct. (p. 416)
- I think we're fine with that. I think we're fine with your language. (p417)
- You're right. (p418)
- Correct. (p419)
- Oh, I'm fine with those. (p423)
- We're supportive of that. (p428)
- We're in agreement with that. (p437)

Mims agreed to abide by each of the conditions of approval, following which, the Commission voted 3-2 to approve the conditions. (HT-6/3/2010-p442). This brought to a close the long and controversial process spanning the better part of a year, and resulted in the approval

for Innovation Environmental Park. Upon adjournment, the last comment came from Mr. Mims: “Thank you, Mr. Chairman and Commission. Thank you very much.” (HT-6/3/10-p443).

County Enters Development Order

One of the conditions of approval was for the applicant to submit a Revised Binding Site Plan which would graphically represent the decisions made by the Commission with respect to the project. The parties could then compare the County’s draft of the written Development Order with the applicant’s graphic depiction in the Revised Binding Site Plan to be certain that the parties had a meeting of the minds.

The Mims’ Entities drafted and made a timely submission of their Revised Binding Site Plan on June 11, 2010. The parties were able to make the comparison with the draft of the Development Order. The two coincided, demonstrating that the parties had indeed achieved a meeting of the minds. On June 16, 2010, the Board issued its “Order Partially Approving and Partially Denying CPA 10A-03 [amendment to Comprehensive Plan], LDC 09D-04 [INST-2 subdistrict], and CU 09-17 [conditions of approval].”

II. STATEMENT OF THE CASE (Significant Steps in the Legal Actions)

Both Sides File Suits Against County

On July 16, 2010, Susan McDuffie and 44 individual Plaintiffs filed an action protesting the County’s Development Order. The Mims’ Entities filed their own action on the same date. The two actions were consolidated on October 4, 2010. On June 6, 2012, the Mims’ Entities filed the Second Amended Complaint that is now at issue in this action. On June 14, 2012, the County filed Defendant Polk County, Florida’s Answer and Affirmative Defenses to Mims Entities Second Amended Complaint, to which the Mims’ Entities responded with Mims’

Entities Reply to County's Answer and Affirmative Defenses to Second Amended Complaint on June 25, 2012.

The cases have undergone two years worth of extensive and voluminous discovery. The original discovery cut-off date of January 15, 2013 was extended to January 31, 2013.

On December 13, 2012, the Mims' Entities filed Mims' Entities' Motion for Partial Summary Judgment with exhibits. The County has responded by filing this Motion for Summary Judgment in Favor of Defendant Polk County and Against the Plaintiff Mims Entities with Memorandum of Law in Support Thereof. This Motion and Memorandum of Law also serves in opposition to Plaintiffs' Motion for Partial Summary Judgment filed on or about December 13, 2012. The competing motions for summary judgment presently before the Court concern only the Mims' case. The County seeks full resolution of the action brought by the Mims' Entities as a matter of law.

III. MOTION FOR SUMMARY JUDGMENT

Defendant Polk County hereby moves the Court for a Summary Judgment as to each of the five counts in the Second Amended Complaint filed by the Mims' Entities and requests that the Court thereafter enter Final Judgment in favor of Polk County and against the Mims' Entities.

The five counts in the Mims' Second Amended Complaint are as follows:

- Count I – Section 163.3215, Consistency with Comprehensive Plan
- Count II – Substantive Due Process, Art. I, §9, Florida Constitution
- Counts III & IV – Damages and Injunctive Relief under The Equal Protection Clause, 42 U.S.C. §1983
- Count V – Bert J. Harris Private Property Rights Act, Chapter 70, Florida Statutes (2011)

Standard of Review

Motions for summary judgment test the sufficiency of the evidence to determine whether the evidence justifies a trial on the issues raised in the pleadings. *Florida Bar v. Greene*, 926 So. 2d 1195, 1200 (Fla. 2006). Rule 1.510(c), Florida Rules of Civil Procedure, specifically provides that summary judgment should be granted if the pleadings, depositions, answers to interrogatories, admissions, affidavits, and other evidence on file show that there is no issue of material fact and that the moving party is entitled to judgment as a matter of law. Applying this rule, the Florida Supreme Court, in *Moore v. Morris*, 475 So.2d 666, 668 (Fla. 1985), recognized that “a party moving for summary judgment must show conclusively the absence of any genuine issue of material fact and the court must draw every possible inference in favor of the party against whom summary judgment is sought.” (citations omitted). The movant has the initial burden of demonstrating the nonexistence of any genuine issue of material fact. Once the movant tenders competent substantial evidence to support the motion, the opposing party must come forward with counterevidence sufficient to reveal a genuine issue. It is not enough for the opposing party merely to assert that an issue does exist. *See e.g. Golden Hills Golf & Turf Club, Inc. v. Spitzer*, 475 So. 2d 254, 254-55 (Fla. 5th DCA 1985); *Millennium Group I, L.L.C. v. Attorneys Title Ins. Fund, Inc.*, 847 So. 2d 1115, 1117 (Fla. 1st DCA 2003). *See also Landers v. Milton*, 370 So.2d 368 (Fla. 1979). Rather, the opposing party “must demonstrate the existence of disputed issues of fact either by presenting evidence of countervailing facts or justifiable inferences from the facts presented. If the opposing party fails to present such evidence, summary judgment may be entered in favor of the moving party.” *Woodruff v. Gov’t Employees Ins. Co.*, 669 So. 2d 1114, 1115 (Fla. 1st DCA 1996).