

**CITY OF TAMARAC
INTEROFFICE MEMORANDUM (20 06 003M)
COMMUNITY DEVELOPMENT DEPARTMENT**

TO: Michael C. Cernech,
City Manager

FROM: Maxine Calloway,
Director of Community Development

DATE: June 23, 2020

**RE: Woodmont Amended and Restated Development Agreement Third
Periodic Review – Cure Plan Findings & Recommendations**

RECOMMENDATION: The Director of Community Development recommends that the City Commission reject the Woodmont Country Club (WCC) Cure Plan, dated June 9, 2020, presented by WCC and further authorize the issuance of a written notice to Woodmont Country Club, Inc. advising of the City's findings that there has been a failure to substantially comply with the terms of the Amended and Restated Development Agreement ("Agreement"), dated January 11, 2017, in accordance with Paragraph 26 of the Agreement and Section 163.3235 Florida Statutes.

ISSUE: The City Commission is required to determine whether WCC's Cure Plan is acceptable or whether WCC has demonstrated good faith compliance with the terms set forth in the Agreement.

BACKGROUND: Section 163.3223, F.S. authorizes any local government, by ordinance, to establish procedures and requirements, as provided in 163.3220 through 163.3243, and to enter into a development agreement with any person having legal or equitable interest in real property located within its jurisdiction. On July 9, 2014, the City of Tamarac entered into a development agreement with Woodmont Country Club, Inc., for the permitting and development of approximately 285 acres of property with the following uses; (i) up to 152 single family residential units not to exceed two (2) stories in height, generating a total population projection of approximately 324 persons; (ii) twenty seven (27) holes of golf and ancillary country club uses not to exceed forty (40) feet in height; (iii) public and private bodies of water; (iv) up to 28,000 square feet of commercial use, maximum forty (40) feet in height, on approximately four and one half (4.5) acres of land; and (v) other uses consistent and compatible with the Property's land use and zoning designations as may be permitted by the City.

Section 163.3237, F.S. further provides for the ability of a local government to amend or cancel a development agreement, by mutual consent of the parties to the agreement or by their successors in interest. On January 11, 2017, the City, Woodmont Country Club, Inc. ("WCC") and Pulte Home Company, LLC ("Pulte"), entered into an Amended and Restated Development Agreement which incorporates and further clarifies multiple procedures, obligations and requirements as provided in Sections 163.3220, F.S. through 163.3243, F.S.

In accordance with Section 163.3235 Florida Statutes, as may be amended from time to time, and Paragraph 26 of the Agreement, the City's Department of Community Development ("Community Development") is required to review the property subject to the Agreement at least once every twelve (12) months to determine if there has been demonstrated good faith

compliance with the terms and conditions set forth in the Agreement by each of the parties with respect to their obligations. If the City finds, on the basis of substantial competent evidence, that there has been a failure to comply with the terms of the Agreement, the Agreement may be revoked or modified by the City Commission.

On January 8, 2018, the City Commission of the City of Tamarac reviewed Community Development's memorandum and presentation containing the first Periodic Review of the Agreement at their scheduled workshop meeting. A determination of compliance hearing was subsequently held on January 24, 2018 at which the City Commission accepted a cure period and a phasing timeline from WCC (2018 Cure Plan), in which WCC was required to substantially comply with the outstanding findings identified in the Periodic Review. While a second Periodic Review of the Agreement was conducted in 2019, as required in Paragraph 26 and Section 163.3235 Florida Statutes, it was determined that there was no need for a City Commission meeting at that time, as certain dates in the 2018 Cure Plan were still outstanding.

On May 27, 2020, the City Commission of the City of Tamarac reviewed Community Development's memorandum and presentation containing the Third (3rd) Periodic Review of the Agreement at their scheduled virtual meeting. A determination of compliance hearing was held during the meeting, at which the City Commission directed WCC to prepare and present a Cure Plan for their consideration at the July 8, 2020 meeting.

Staff has reviewed the Cure Plan presented by WCC and proposes the following findings and recommendations, based on a thorough and meticulous review of the Agreement, plans, applications, submittals, approvals, communications, obligations, and activities as compared with the proposed Cure Plan as further outlined below:

CURE PLAN PROPOSAL IN RESPONSE TO: PARAGRAPH 7: WATERWAY CONVENYANCE:

Finding:

WCC's requiring the City to indemnify, hold harmless, assume liability, reimburse WCC for damage to irrigation system surrounding WCC's ownership of the aqua range lake in addition to WCC's position to no longer pursue an aqua range are all new proposals/terms not addressed in the Agreement which amounts to a failure to comply with the existing terms and as such would require a modification of the Agreement in order to effectuate WCC's new desires.

Analysis:

WCC's June 9, 2020 Cure Plan proposes a series of required obligations the City must accept, should WCC agree to take ownership of the aqua range lake. These include the obligation to indemnify and hold WCC harmless from any and all expense related to WCC's ownership of the aqua range lake, including but not limited to the restoration of the lake to its proper condition, the lakes ongoing maintenance, and any costs associated with insuring WCC from related liabilities. In addition, prior to WCC accepting title to the lake, WCC requires the City to reimburse WCC for the damage to its irrigation system caused by the City's failure to adequately maintain the lake, including but not limited to the costs associated with a replacement irrigation pump WCC recently had to purchase and install. Further, WCC no longer

intends on installing an aqua range and is considering a driving range elsewhere on WCC's property.

The terms of the Agreement, approved Master Plan for the Woodmont Country Club development, discussions, as well as the accepted 2018 Cure Plan all contemplates and further requires WCC to own and deliver an aqua range as a part of the Master Planned project. Any deviation from this requirement is an actual failure to substantially comply with the terms of the Agreement and would require a modification of the Agreement at a duly noticed City Commission meeting in order to consider the new terms being proposed by WCC.

Recommendation:

Staff recommends that the City Commission finds, based on competent substantial evidence, that there has been a failure to substantially comply with the terms and conditions of the Agreement by WCC and direct staff to issue the appropriate notice to WCC of their failure to comply. Said written notice shall provide WCC with no less than Thirty (30) days to cure such compliance failure or undertake such compliance efforts and diligently pursue to completion, prior to the City revoking or modifying the Agreement.

CURE PLAN PROPOSAL IN RESPONSE TO PARAGRAPH 8: GOLF COURSE:

Finding:

WCC's new proposal to build a driving range on Practice Hole B, as opposed to an aqua range, and to determine the location of its own driving range are all new terms not addressed in the Agreement which amounts to a failure to comply with the existing terms and as such would require a modification of the Agreement in order to effectuate WCC's new desires.

Analysis:

WCC's June 9, 2020 Cure Plan proposes to construct a driving range, as opposed to an aqua range, on Practice Hole B, near the Charter School and Bowling Alley properties. It further seeks the City's approval with a new delivery date of December 31, 2020 for the driving range improvements.

The terms of the Agreement, approved Master Plan for the Woodmont Country Club development, discussions, as well as the accepted 2018 Cure Plan all contemplates and further requires WCC to own and deliver an aqua range as a part of the Master Planned project. Further WCC's request for an approval of a driving range would necessitate an amendment to both the Agreement as well as the approved Master Plan. The deviation from the delivery of an aqua range as required by the Agreement, approved Master Plan and the 2018 Cure Plan is tantamount to an actual failure to substantially comply with the terms of the Agreement and would require a modification of the Agreement at a duly noticed City Commission meeting in order to consider the new terms being proposed by WCC.

Recommendation:

Staff recommends that the City Commission finds, based on competent substantial evidence, that there has been a failure to substantially comply with the terms and conditions of the Agreement by WCC and direct staff to issue the appropriate notice to WCC of their failure to comply. Said written notice shall provide WCC with no less than Thirty (30) days to cure such compliance failure or undertake such compliance efforts and diligently pursue to completion, prior to the City revoking or modifying the Agreement.

CURE PLAN PROPOSAL IN RESPONSE TO PARAGRAPH 9: IMPROVEMENTS AND MAINTENANCE:

Finding:

WCC's new proposal to build a wrought iron fence with metal reinforced columns along Southgate and Hole #6 of the Pines Course, as opposed to the design identified in Paragraph 15 and Exhibit "M" of the Agreement is contrary to the terms of the Agreement and amounts to a failure to comply with the existing terms, and as such would require a modification of the Agreement in order to effectuate WCC's new desires.

Analysis:

WCC has offered a delivery date of late 2021 for completion of the new Maintenance Area which includes the Maintenance Building which is substantially later than the previous date, despite the availability and readiness of the permit to commence. While the Commission can determine whether the late 2021 date is acceptable, the introduction of a new fence design, contrary to the requirements set forth in Paragraph 15 and Exhibit "M" of the Agreement, will require a modification to the Agreement in order to accept this new obligation.

WCC has offered no timeline for the following:

- Enhanced Outer Roughs
- Cart Paths (This obligation is WCC's not Pulte's)

Recommendation:

Staff recommends that the City Commission finds, based on competent substantial evidence, that there has been a failure to substantially comply with the terms and conditions of the Agreement by WCC and direct staff to issue the appropriate notice to WCC of their failure to comply. Said written notice shall provide WCC with no less than Thirty (30) days to cure such compliance failure or undertake such compliance efforts and diligently pursue to completion, prior to the City revoking or modifying the Agreement.

CURE PLAN PROPOSAL IN RESPONSE TO PARAGRAPH 13: RESERVATION AND DEDICATION OF LAND

Finding:

WCC's denial of non-compliance with regard to the failure to grant a storm water utility easement ("Flowage Easement") to the City for the drainage and flow of storm water into, through and out of the Aqua Range parcel is inconsistent with the City's interpretation of the Agreement.

Analysis:

Paragraph 13 of the Agreement obligates WCC to make any and all required dedications and reservations for canal rights of way or utility easements as are required by the City and Broward County. The City requires a storm water utility easement upon and through the Aqua Range parcel to allow for the flowage of storm water from the development and surrounding properties into, through and out of the Aqua Range parcel.

WCC's Cure Plan proposes to remove the obligation of the ownership and delivery of an improved aqua range from both the Agreement and the Golf Course Master Plan. The removal of this obligation and the replacement with a driving range would require a modification to the Agreement and the Golf Course Master Plan.

Recommendation:

Staff recommends that the City Commission finds, based on competent substantial evidence, that there has been a failure to substantially comply with the terms and conditions of the Agreement by WCC and direct staff to issue the appropriate notice to WCC of their failure to comply. Said written notice shall provide WCC with no less than Thirty (30) days to cure such compliance failure or undertake such compliance efforts and diligently pursue to completion, prior to the City revoking or modifying the Agreement.

CURE PLAN PROPOSAL IN RESPONSE TO PARAGRAPH 16: DEVELOPMENT OF COMMERCIAL PARCEL:

Finding:

WCC proposes to commence all related improvements to the Commercial Parcel prior to November 2020, with completion slated for January 2021. The City Commission can make a determination, as to whether the proposal is acceptable.

Analysis:

Paragraph 16 of the Agreement provides for the completion of the Commercial Parcel Temporary Improvements no later than twelve (12) months from the Approval Date, which effectively was May 26, 2017 (Site Plan approval plus thirty (30) day appeal period as defined in Agreement). The Agreement further provides for the conditional suspension of the Temporary Improvements upon the formal filing of a site plan for development of the Commercial Parcel. While the filing was beyond the six (6) months allowed in the Agreement, WCC formally submitted the Brookstone project site plan for a residential development on April 24, 2018. This submittal effectively granted WCC a stay on the installation of the Temporary Improvements.

On May 24, 2018, the Brookstone Site Plan was rejected which restarted WCC's obligation under the Agreement. WCC was essentially given a new twelve (12) months ("new clock") from the May 24, 2018 Brookstone rejection date, which would have required the installation of the Temporary Improvements on or before May 24, 2019. Based on the above, WCC is in excess of ten (10) months beyond their required delivery date of the Temporary Improvements.

While WCC has filed a Temporary Improvements Site Plan with the Community Development Department, as of April 22, 2020, it has not been permitted through engineering or the building department, nor has the improvements been installed, as the Site Plan still awaits information from WCC, which they have not provided.

WCC has raised the issue of "Force Majeure" as outlined in Section (9) of Paragraph 27 of the Agreement, due to the occurrence of the Covid 19 pandemic and any other acts of God they may claim, as a cause for the delay of the performance of their obligations under the Agreement. While the Commission can duly consider the intent of the Force Majeure provision, it should be noted that WCC was beyond delayed in the delivery of the temporary improvements for the Commercial Parcel prior to March 2020.

Recommendation:

Staff recommends that the City Commission consider the proposed date and determine whether November 2020 with a January 2021 completion date is acceptable for the delivery of the Temporary Improvements to the Commercial Parcel.

CONCLUSION/RECOMMENDATION: Staff recommends that the City Commission finds, based on competent substantial evidence, that there has been a failure to substantially comply with the terms and conditions of the Agreement by WCC and direct staff to issue the appropriate notice to WCC of their failure to comply. Said written notice shall provide WCC with no less than Thirty (30) days to cure such compliance failure or undertake such compliance efforts and diligently pursue to completion, prior to the City revoking or modifying the Agreement.



Maxine Calloway,
Director of Community Development

Attachments: WCC June 9, 2020 Cure Plan
 WCC Fence Sample
 Exhibit "M" City Envisioned Fence Design

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