From:	Cheryl Kleen
To:	Gail Coniglio
Cc:	Paul Castro; Public Comment
Subject:	FW: Another look at the Law to Consider for Carriage House Decision
Date:	Monday, February 12, 2018 1:11:21 PM
Attachments:	Zoning Bertolucci case.pdf

From: Steven Jeffrey Greenwald, Esq. [mailto:3102724@gmail.com]
Sent: Monday, February 12, 2018 12:44 PM
To: John (Skip) C. Randolph <JRandolph@jonesfoster.com>; Town Council <TCouncil@TownofPalmBeach.com>; Danielle Hickox Moore <DMoore@TownofPalmBeach.com>; Bobbie Lindsay <BLindsay@TownofPalmBeach.com>; Margaret Zeidman <MZeidman@TownofPalmBeach.com>; Julie Araskog <jaraskog@TownOfPalmBeach.com>; Richard Kleid <RKleid@TownofPalmBeach.com>; Maura Ziska <mziska@floridawills.com>
Subject: Another look at the Law to Consider for Carriage House Decision

To John C. Randolph, Esq.: What is in my letter about case law you of course know. But in my careful discussions with perhaps 100 or so against the club plan (many wrote letters) the feeling described by both laymen and lawyers alike, has been a bit like that in the case of: ***Berolucci vs Orange County*** (attachment below).

There are a number of cases like *Berolucci*, and many throughout the US. This is the feeling also of the Florida lawyers (some trial lawyers) who live on the Seas Streets. Some have written letters to council objecting to the club plan. The idea of avoiding even the appearance of lack of notice is ingrained in lawyers. Moreover, a ***special*** exception could very well fail the many very difficult tests required. *A simple reading of this short case will explain. It is good for all to re-read a case like this. (See attachment below)*

On the other hand, if the developer's current plan is declined by council, as you (and the council must) know the following is still the law today: *Thomas v City of West Palm Beach*, the Florida Supreme Court, 299 So. 2d 11 (1974) the Florida Supreme court cites: *Harrell's Candy Kitchen v. Sarasota-Manatee Airport Authority* (Fla. 1959), 111 So. 2d 439. It's good to look again at what the Florida Supreme Court said on this:

"Zoning regulations duly enacted pursuant to lawful authority are presumptively valid and the **burden is upon him who attacks such regulation to carry the extraordinary burden** of both alleging and proving that it is unreasonable and bears no substantial relation to the public health, safety, morals or general welfare. **Courts will not substitute their judgment** as to the reasonableness of a particular rule or regulation where such has been duly adopted pursuant to lawful authority **when such reasonableness is fairly debatable**... " (111 So. 2d at 443, 444)

Even the Florida Attorney General in a *Slip opinion*, a sort of re-announcement to town governments in AG No. 3087 (1997), stated as follows: *"Amendments to comprehensive land use plans are ... subject to the "fairly debatable" standard of review, the Florida Supreme Court said (in Yusem)."*

The **Supreme Court** in Yusem:

"(A)ll comprehensive plan amendments are legislative decisions subject to the "fairly debatable standard of review." *Martin County vs Yusem*, 664 So. 2d 976 (1995). The AG Opinion and the Supreme Court Case, still the law today, explain that the **"fairly debatable"** is the proper standard of review.

Therefore, if council should decide against the club plan, it in fact has *full authority to*

decline the application, and it should never make its decision simply out of fear of developer possibly asking for judicial review. If he does, developer's attorney will simply be reminded by the Circuit Court that if the reasonableness of the council decision to decline the application was **"fairly debatable"** then the court can do nothing.

The Circuit Court will also remind council for developer that: Florida Appellate Courts (and Courts throughout the US) have told lower courts repeatedly to **not sit as a super zoning board.** Raskiewicz v. Town of New Boston, 754 F.2d 38, 44 (1st Cir. 1985) ("... **courts** do **not sit as a super zoning board** or a zoning **court** of appeals."); Hubenthal v. County of Winona, 751 F.2d 243 (8th Cir. 1984)

Respectfully, S J Greenwald, Esq.

Notes: I am not representing anyone in this matter. I am not receiving anything or any compensation whatsoever if this club application is either denied or approved.

Courtesy copy sent to: Maura Ziska, Esq.

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