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 MERITAS LAW FIRMS WORLDWIDE

February 5, 2009

Winter Park City Commission  
401 Park Avenue South  
Winter Park, FL 32789-4386

**Re: Winter Park Comprehensive Plan**

Dear Mayor and Commissioners:

As you are aware, this firm represents several property and business owners in Winter Park. It has been a long and laborious process to bring the proposed Comprehensive Plan this far, but if it is adopted as proposed, the end of this process will be no closer. The Comprehensive Plan proposed for adoption on February 9<sup>th</sup> and February 23<sup>rd</sup> contains many troubling provisions, most of which have been presented both to you and the LPA previously.

Land use regulations in the form of both Comprehensive Plans and Land Development Codes are restrictions upon and a derogation to common law property rights. Florida case law holds that any adoption of land use regulations intended to make any alteration to private property rights must be specifically, clearly, and plainly announced. Florida case law also states that the Comprehensive Plan is not a tool for making individual changes based on "political vagary" but instead is a broad statement of a legislative objective "to protect human, environmental, social and economic resources and to maintain through orderly growth and development, the character and stability of present and future land use and development in this state." The City has ignored the intent and purpose of comprehensive planning and has instead brought forward a document that blatantly violates the private property rights of its citizens and business owners.

As you should each be aware, the Federal Constitution, the Constitution of the State of Florida and the Florida Statutes protect the rights of property owners from overreaching government regulations. Specifically, the Bert Harris Act provides a statutory remedy for property owners to seek relief when a new regulation or government activity burdens an existing use or vested right in real property. Additionally, "inverse condemnation" occurs when a government body's actions substantially interfere with the owner's vested property rights. After review of the proposed Comprehensive Plan, there are many instances which deprive property owners of their current ability to use and develop their property in compliance with their existing vested rights.

Attached you will find a synopsis of those Comprehensive Plan policies which encumber the rights of property owners to a degree which will create a cause of action for violation of property rights with a corresponding obligation to pay the property owners monetary damages in the millions of dollars, along with attorney's fees. The synopsis does not attempt to address the policies in the Comprehensive Plan which are ill-

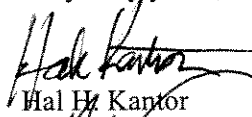
conceived, arbitrary, vague, or ambiguous. Nor does the synopsis address those items which have still not been adequately addressed to meet the requirement of Florida Statutes Chapter 163.

In addition to violating vested property rights, the proposed Comprehensive Plan discourages appropriate economic development at a time when such development (and the tax revenues that accompany such development) is needed to maintain the City's standard of service to its citizens. Winter Park has been the beneficiary of several years of escalating property values. Capital has been abundant and Winter Park's reputation attracted investment. These trends masked two serious issues: (1) only 13.5% of the City's land makes up the commercial tax base of the entire City and (2) the City's policies discourage redevelopment.


The proposed Comprehensive Plan inhibits (and in some cases prevents) redevelopment and decreases density and intensity in almost all areas of the City. We've watched the City's commercial corridors languish while we've waited for a new Comprehensive Plan to be adopted. Now, as this plan is being prepared for adoption, it still lacks incentives to redevelop these corridors and encourages them to remain a hodgepodge of fast food restaurants, tattoo parlors and defunct retail spaces. To add insult to injury, no economic analysis was included to determine how this proposed Comprehensive Plan will affect our commercial or residential tax base.

You are encouraged to review the attached synopsis and change each of these policies for four important reasons. First, each of these policies eliminates a right to develop or use property which gives rise to a cause of action. Second, these policies will (along with others in the Comp Plan) deter the redevelopment of the City's commercial corridors and impede potential tax revenues needed to maintain Winter Park's level of services. Third, the value of residential properties throughout the City will be diminished because of the FAR reduction. Finally, if the proposed Comprehensive Plan is adopted with these provisions, we will vigorously defend the property rights of our clients through all legal means necessary and available. Such actions will include lawsuits under the Bert Harris Act to remunerate the property owners of the City for the economic damages arising from the City's actions. It should be emphasized again that not only are the private property owners damaged, but you also establish a pattern whereby the tax base of the City will continue to deteriorate and the City will either have to raise taxes again, cut more services, or both. In any case, your adoption of the Comprehensive Plan in its present form is a disservice to the citizens of the City of Winter Park.

Very truly yours,



Hal H. Kantor



Rebecca Furman

MRF/bmb

c: Mayor David Strong  
Commissioner Margie Bridges  
Commissioner Beth Dillaha  
Commissioner Karen Diebel  
Commissioner Phillip M. Anderson, Jr.  
Trippe Cheek, Esq.

<b>Section</b>	<b>Statement</b>	<b>Effect</b>
1-2.1.4	The floor area of private garages (above grade) or parking levels shall be counted toward the floor area ratio when such parking is provided to meet the parking requirements of the Land Development Code . . . .	Reduces currently available FAR.
Table 2	Divides current FLU of “Multi-Family” into “Medium-Density Residential” and “High-Density Residential”	Reduces property rights of 25 units an acre to 17 units an acre.
Table 2	Removal of R-4 from Commercial and Office/Professional	Removes currently approved uses.
1-2.1.5 and Map 1-3	Limits heights on Park Ave. and New York Ave. to 2-story (30') maximum.	Properties currently zoned C-2 in this area can go up to 40' (3 stories on Park Ave.) and on New York Ave. can go up to 55' (4 stories). Removes current development rights.
1-2.1.5 and Map 1-3	Limits heights throughout City to 3 stories including CBD, portions of Fairbanks, and Orange Ave.	Properties currently zoned O-1 and C-3 are now allowed up to 55'.
1-2.2.1	Limits Single-Family Residential to .38 FAR (38%)	Can currently go up to 42%.
1-2.2.3	Limits R-3 to 1.10 FAR (110%)	Currently no maximum FAR, reduces ability to build.
1-2.2.4	Limits R-4 to 2.0 FAR (200%)	Currently no maximum FAR, reduces ability to build.
1-2.3.1	States residential is allowed up to 17 units an acre; limits residential to above ground	Currently 25 units an acre are allowed and can be on ground floor.
1-2.3.2	States residential is allowed up to 17 units an acre; limits residential to above-ground floor	Currently 25 units an acre are allowed and can be on ground floor.
1-3.2.2	Imposes 2-story and 30' height limit “throughout Central Business District.”	Inconsistent with Map 1-3 and removes right to building heights as set forth above.
1-3.2.2	Third floors approved by conditional use in the CBD must be set back on street frontages equal to their height on a one-foot setback for each one-foot height of the third floor.	Removes current right to intensity.

1-3.6.6	The City shall not consider or approve any subdivisions or lot splits of estate lots (one acre or greater)	Owner could now split lots as long as they met the zoning code requirements and 1991 "Comp Plan Test."
1-3.6.8	Precludes lot consolidations resulting in new lot sizes greater than 125% of the lot width and area standards. requires City Commission approval.	Removes current property right to consolidate property.
1-3.7 & 1-3.7.1	Prohibits lot splits on lakes	Violates current property right to divide property.
1-3.7.3(3)	"The development of large, unplatted lakefront tracts shall include provisions for public access of a passive nature and public visual access along with agreements for the proper maintenance of these areas."	Violation of property rights per U.S. Supreme Court case.
1-3.7.4	"The City may require access easements to accomplish a public purpose."	Violation of property rights per U.S. Supreme Court case.
1-3.8.5	Reduces maximum impervious coverage in R-3 and R-4	Reduces current rights to build
1-3.8.6	Reduces R-3 FAR to 75% and 2 stories	Reduces current rights to build
1-3.8.7	Removes apartment/hotel as use in R-4	Removes current property use in R-4.
1-3.8.9	Limits development for any property designated non-residential to two stories in height (30') or three stories (40') (including mezzanine levels) on a case by case basis via conditional use and by requiring a super majority (four votes) of approval by City Commission for any third floor.	Removes current property rights as discussed above.
1-3.8.10	Vehicle, boat and recreational vehicle sales are restricted to the "northwest section of the City"	Revises the C-3 zoning classification, removing current property uses.
1-3.8.12	"City shall have the authority ... to require that a portion of such property be reserved for the construction of such gateway design structures to be constructed and that the City Commission may require on a case by case basis a financial partnership arrangement between the property owner /developer and the City to facilitate the construction of such gateway design structures."	Violation of property rights by taking property

1-3.8.13	<p>“All properties facing on Park Avenue or adjacent roads within 140 feet of Park Avenue shall be limited in height to two stories in height (30 feet). All properties that about Central Park shall also be limited to two stories in height (30 feet) as depicted on the Maximum Height Map. Variances or approvals of development in violation of this policy are prohibited.”</p>	Removes current development rights as set forth above.
1-3.10.1	Development cannot adversely impact “natural features of the site.”	Violation of property rights since ANY development will adversely impact a natural feature.
1-4.1.F.3	Mead Garden Planning area includes properties on Fairbanks and Orange Ave. This policy prohibits new or used car sales, auto repair businesses, fast food businesses and convenience stores.	These properties are already permitted for such uses per Code.
1-4.1.F.15	R-3 zoned properties limited to 2 stories	Current building height is 35' (3 stories). This removes current development rights.
1-3.8.9	Prohibits drive-in businesses in C-2 east of Virginia Ave.	Removes current use allowed in this zoning classification by conditional use.
1-4.1.G.4	“All properties facing on Park Avenue or adjacent roads within 140 ft. of Park Avenue shall be limited in height to two stories in height (30 feet). All properties that about Central Park or are located across the park where development would impact the open vista of Central Park shall also be limited to two stories in height (30 feet) as depicted on the Maximum Height Map. Variances or approvals of development in violation of this policy are prohibited.”	As set forth above, this removes a current development right.
1-4.1.G.5	Limits all development in CBD planning area to 3 stories	As set forth above, this removes a current development right.
1-4.1.G.19	“Buildings greater than two stories shall be prohibited on properties abutting Fairbanks between New York Avenue on the west and Interlachen Avenue on the east”	As set forth above, this removes a current development right.

1-4.1.H.5	Prohibits auto sales/service enterprises, auto repair businesses, fast food businesses, and convenience stores along Fairbanks Ave.	Such uses are currently permitted in the zoning along Fairbanks.
1-4.1.J.10	Prohibits parking garage on "Florida Gas Building."	Removes parking garage from use in O-1.
1-4.1.J.13	"The City shall consider proposals for redevelopment within the parking fields of the center of Winter Park [K-Mart] if such redevelopment proposals contain significant public benefits, including affordable/workforce housing, relatively high estimated tax yield, open space, and park amenities.	Removes ability to redevelop under current zoning of C-1.
1-4.1.L.4	Prohibits new or used car sales, auto repair businesses, fast food businesses, and convenience stores on west Fairbanks.	Removes uses currently allowed on properties on Fairbanks zoned C-3.