

**IN RE: TERAMORE DEVELOPMENT, LLC et. al, DENIAL OF ADMINISTRATIVE
APPEAL BY ESCAMBIA COUNTY - SEC. 70.51, F.S. SPECIAL MAGISTRATE
PROCEEDING**

PROCEDURAL GUIDELINES FOR THE MEDIATION SESSION ON JUNE 11, 2019

These guidelines are provided to familiarize the parties and participants with the purpose and procedures applicable to the mediation portion of the Section 70.51, F.S. proceeding to be conducted on June 11, 2019.

Section 70.51 is titled "The Florida Land Use and Environmental Dispute Resolution Act." The purpose for this section of the statute is to give the property owners, Shu Shurett and Leo Huang (together as "Owner"), Teramore Development, LLC as buyer ("Buyer") (all together "Petitioners") and Escambia County ("County") an opportunity to resolve their disputes over the denial of the Petitioners' administrative appeals by the County through negotiation in a non-judicial proceeding conducted by the undersigned Special Magistrate ("Magistrate").

This statutory process is not intended to serve as an appellate process to decide if the County's denial should be reversed or upheld. The Magistrate does not have the power to make that determination.

The process involves two separate procedures. In the first phase, the Magistrate conducts a mediation between the Petitioners and the County. His first responsibility is to facilitate an informal resolution of the conflict between these parties through a mutual agreement implementing ideas like modification of the Petitioners' proposed use of the property, adjustment in the Petitioners' pending development application or compensation for surrender or transfer of Petitioners' development rights related to the property. In this phase, the Magistrate acts as a facilitator or mediator between the parties in an effort to find a mutually acceptable solution.

If the Petitioners and County cannot settle the matter in the initial phase, the process goes to a second phase which is an evidentiary hearing in which the Magistrate considers evidence on each party's position and any other information he determines is relevant to his duty to make a non-binding determination on the question of whether the action by the County is unreasonable or unfairly burdens the Petitioners' property.

The June 11th meeting is the mediation session. Again, this session is designed to help the Magistrate accomplish his "first responsibility" under Section 70.51(17)(a), F.S. to facilitate a resolution of the conflict. This session will be informal and parts of the process **may** be open to the public at the Magistrate's and parties' discretion. The Magistrate serves as facilitator and mediator in this process and has the authority and legal responsibility to conduct the mediation according to these rules.

It is important to note that this meeting is not going to be another public hearing on the Petitioner's appeal and underlying land use application. The Magistrate's job is to guide the mediation as a productive and collaborative process to resolve the conflict for the benefit of the parties.

The Magistrate may gather information to assist the parties in settlement discussions in the form of confidential written memoranda from the two parties. Additionally, owners of land contiguous to the Petitioners' property and any substantially affected person who submitted oral or written testimony at the Board of Adjustment hearing of a substantive nature which stated with particularity objections to or support for the development order may participate in the proceeding by providing written statements to the Magistrate to be considered during the mediation session. The scope of those statements should be limited to proposing settlement alternatives which may address their substantial interests and assist the parties in their settlement discussions. Helpful settlement ideas are the only items which will be considered by the Magistrate, so all parties are asked to avoid non-settlement related comments or argument at this stage.

The procedure for the mediation session will be as follows:

- There will be a sign-up sheet at the door for any owner of land **contiguous** to the Petitioners' property who has previously requested to participate in the process to sign in for the purpose of offering settlement suggestions as may be allowed by the Magistrate during the mediation session.
- The Magistrate will give a brief opening statement to start the session and describe the mediation process and ground rules.
- The two parties will have the opportunity to make opening statements to present information they want to share with the Magistrate and the other party at the outset of the mediation. If the parties desire to make an opening statement, the Petitioner will present first and the County will follow. The Magistrate may ask the parties to answer questions or provide additional information about their respective positions during this process.
- Owners of contiguous land who have previously requested to participate in the process and signed in **may**, at the discretion of the Magistrate, each be given 3 minutes to address their settlement proposals which they feel might address their substantial interests. The Magistrate recommends that groups of owners with similar positions designate a person to speak to settlement ideas that address that group's substantial interest. This portion of the mediation process will proceed as long as it is determined to be helpful to the primary purpose of facilitating a resolution of the conflict.
- The Magistrate **will** exercise his authority to eliminate disruptive behavior, respond to inappropriate comments and outbursts and enforce time limits on comments by both parties and non-parties during the mediation session. Security officers may be present at the session to assist the Magistrate as required to maintain order.
- A large part of the mediation session will be conducted in a series of confidential settlement meetings between the Magistrate and the parties as provided for in Sec. 70.51(20), F.S. The Magistrate will meet privately with both parties at his discretion to advance the settlement discussion between the parties. These meetings are called confidential caucuses and will be held in nearby offices. No other parties or attendees will be allowed to access these meetings without the express invitation of the Magistrate and the consent of the party involved in the caucus. The mediation session will begin and end in general session.

If the parties are able to reach an agreement, the parties will prepare and execute a written summary of the substantive terms of their agreement at the mediation. Counsel for the parties will have leave to prepare and submit a more detailed joint agreement implementing their preliminary agreement for incorporation into the Magistrate's settlement recommendation to the

County Commission and Petitioners. The Magistrate's recommendation will then be the subject of a future duly noticed public hearing before the Escambia County Board of County Commissioners and also be submitted for formal consideration by the Petitioners. The existing rules and procedures applicable to public meetings of the County Commission will be utilized at that public hearing convened for the Board's consideration of the proposed settlement agreement. As I understand it, that public meeting process will at some point include the opportunity for public comment on the proposed settlement.

If the parties are not able to reach an agreement through mediation, the statutory process will move on to a more formal evidentiary hearing on another date at which either party, qualified contiguous landowners and substantially affected persons who submitted oral or written testimony of a substantive nature which stated with particularity objections to or support for the Petitioners' appeal at the prior Board of Adjustment hearing may submit evidence and additional argument to the Magistrate who will then make an independent recommendation to the Escambia County Commission pursuant to Sections 70.51(17) (b),(c),(18) and (19), F.S.

Specific rules, policies, and procedures governing the conduct of the Magistrate's evidentiary hearing will be addressed, if necessary, by specific written guidelines issued in the future by the Magistrate.

Provided to the parties on June 6, 2019.

Steven K. Hall, Esq.
Special Magistrate