

# Ruling favors planner in suit

Citizen fears due process stifled

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In an Orange County Superior Court hearing Monday, the lead planner for the Winmore Village development was granted his request to enter the lawsuit of Joyce vs. Town of Carrboro on behalf of the town.

Plaintiff Brian Joyce filed a lawsuit against the town of Carrboro because he thought town officials violated due process and the joint planning agreement in approving the rezoning and development of Winmore Village.

Joyce, representing himself in the case, said the judge's decision Monday could prevent his ability as a resident to question local government because he cannot match financially developer Phil Szostak.

"Is the good, progressive town of Carrboro so afraid of its citizens questioning how it acts that it has to engage in tactics that essentially bring in the developer as their pit bull?" Joyce asked.

The Carrboro Board of Aldermen approved the mixed-use development of Winmore Village on June 10.

Mayor Mike Nelson cast the lone opposing vote when the project was approved.

The 66-acre subdivision will include 98 single-family houses, 66 townhouses, 68 apartments and 20 commercial sites — approximately four units per acre.

James Cox, Szostak's attorney, argued in the hearing that the developer had a mandatory and permissive right to enter into the lawsuit.

While Judge Ronald Stephens denied the claim that Szostak had a mandatory right to enter the lawsuit, the permissive right, which is court-granted, was given.

Szostak of Winmore Land Management LLC, expressed satisfaction with the court's decision to allow him to enter the lawsuit.

"We need to be part of the lawsuit so our side can be heard as well as the city's," Szostak said.

The developer's entrance into the suit changes the whole picture, said town resident Marty Mandell, who supports Joyce.

"It's a dispute between citizens and the government," Mandell said.

Szostak denies claims that he is trying to stifle residents' opinions.

"I think the judge saw that Brian Joyce's issue — that we're intervening because we're trying to squash public opinion — was wrong," Szostak said.

But Mandell said that by allowing Szostak to enter into litigation, the court had stifled local protest.

"I think it's very difficult now for a citizen with legitimate complaints to go ahead and sue their government, as we have the constitutional right to do," she said.

Szostak said that he hopes the lawsuit will not continue but that he is prepared for the long run.

After Monday's decision, Joyce said he will have to evaluate the cost of continuing with the lawsuit before pursuing it.

Carrboro mayoral candidate Jeff Vanke said a developer's entrance into a resident's lawsuit likely prevents its continuance.

"I oppose (the decision) because the town is outside of judicial review by its citizens — because they can't afford to be counter-sued," Vanke said.

Joyce said the board also did not provide residents with ample time to address its opposition to the project.

"I think the process was riddled with favoritism for the developer," said Joyce. "The process was loaded for the decision that was going to happen."

"It illustrates that in Orange County, the right of the developer is more important than the rights of the citizens."

But board member Joal Broun said the needs of all citizens, whether they are businessmen or not, are given equal consideration.

"The board listened to all of the participants in the hearing and all of the information given by staff and made a decision," she said.

"We followed the ordinances as they were written."

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