

Update: Walden Oaks HOA Board on the Top Hat Auto Application

Facts:

The board and the special committee reporting to it has pursued a two pronged strategy to: 1) explore means to block the Top Hat Application while; 2) also negotiate actively to ensure that if resistance fails to block the application, the dealership produced would still be less intrusive (less seen, heard and smelled) than King Richards.

Concessions:

Top Hat Auto agreed before the Planning Commission on February 7 to place the following concessions to Walden Oak in the enforceable PUD :

- 1) Eliminate tire retreading and paint shop;
- 2) Install an automatic door to the enclosed service area that only opens as a car exits and closes once the car has passed through;
- 3) Permit no gasoline tank on property;
- 4) Reduce display lighting to .5 feet lumens (or low intensity by display standards) and placed on a timer to dim to security lighting intensity at 1 lpm;
- 5) Reduce security lighting (back of property and adjacent to Walden Oaks) will be 50 % of the intensity of display lighting;
- 6) Install an 8 foot wall from beginning of WO property (by office park) to 100ft past the building and 6 foot wall on the rest of WO/ Top Hat border;
- 7) Plant an enhanced tree filled buffer (to be specified by WO);
- 8) Build to a **maximum height of 35ft**;
- 9) **Enclose the one lane car wash and install automatic doors** that open only when machinery (specially loud blowers) are turned off;
- 10) Adopt a code enforceable prohibition to test drive in Walden Oaks.

These concessions that will be published in an executive report by the Planning Commission on March 7 must be adopted by the Board of County Commissioners at the March 12 meeting to become law. We are pressing for additional

concessions as well. Please let your board members know if you have any suggestions or advice.

Legal Opinion:

- The expert on zoning law at the John Goede law firm felt it was **highly unlikely** that he would find some significant technical error or discrepancy in the staff reports on which a solid legal case could be built because Mark Strain (Chairman of the Planning Commission), known for his rigor in reviewing staff reports, has already done a fine tooth comb study;
- Even if he found something upon which to build a case , it would have to be very strong to counter the planning board's 8 - 0 recommendation;
- In the extremely unlikely case that all worked out in favor of Walden Oaks' and the lawyer found a legal hole in the technical justification for the rezoning application and was able to move some Commissioners, the Top Hat Lawyer, Anderson, would call a recess at the Commissioners meeting and he would recalibrate his position (and negotiate with WO) until he could sway the County Commission vote in his favor;
- We would then need to negotiate, and in the case we did not, we would be considered uncooperative and essentially negate our claim (like the Toll Brothers and the driving range applicants did);
- In the **exceedingly unlikely** case that two County Commissioners eventually voted to block the Top Hat Auto application, Top Hat would appeal;

Dispelling rumors:

- If a dealership, which very few residents welcome, is built next door it is **NOT** likely to have an effect on home values, according the several credible realtors, as long as the concessions by Top Hat are preserved by the County Commission.
- There were no secret meetings, all findings have been reported either in: 1) informational meetings; 2) documents on the Walden Oaks web site (WaldenOaks.org); or 3) video of planning commission meets, on line at: www.colliergov.net/Index.aspx?page=2280

Not negotiating up front and just resisting, without a strong case based in law and fact, would undermine WO credibility and all but disqualify WO's claim. The County Commission process works for those who are willing to negotiate.

For those who want to send letters to the County Commissioners, please don't sacrifice or demean the concessions achieved or bad mouth negotiations. We need to work together to avoid the kind of breakdown of strategy, diligence, unity and transparency that produced the Baptist Church debacle.