

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR ORANGE COUNTY, FLORIDA

WINDERMERE COUNTRY CLUB,  
LLC, a Florida limited liability company,

Petitioner,

v.

ORANGE COUNTY, FLORIDA,  
a charter county and political  
subdivision of the State of Florida,

Respondent.

\_\_\_\_\_ /

Petition for Writ of Certiorari from the decision  
of the Board of County Commissioners of  
Orange County, Florida.

Keith A. Graham, Esquire, and  
Christopher J. Wilson, Esquire, for Petitioner.

Joel D. Prinsell, Deputy County Attorney, and  
Whitney E. Evers, Assistant County Attorney,  
for Respondent.

Scott A. Glass, Esquire, Amicus Curiae,  
for Respondent.

Daniel W. Langley, Esquire,  
A. Kurt Ardaman, Esquire, and  
Christopher R. Conley, Esquire, for  
Amici Curiae Windermere Club  
Homeowners Association, Inc.,  
Leigh Ann Dyal, Gregory Pounds, and  
Chesley "Chet" Moody.

Before BLECHMAN, WEISS, and MYERS, J.J.

PER CURIAM.

CASE NO.: 2016-CA-009999-O

Petitioner Windermere Country Club, LLC (Windermere) timely seeks certiorari review of the decision of the Orange County Board of County Commissioners (Orange County or BCC), denying its petition to vacate two notes on the plat for Butler Bay, a residential cluster development. The plat notes provided that the development and access rights to Tract A had been previously dedicated to Orange County. Tract A is a 155-acre open space area within Butler Bay that is presently owned by Windermere and is the site of a now-closed golf course. Windermere sought to vacate the plat notes so it could acquire the development and access rights to Tract A and then seek zoning approval to develop 95 single family homes there. After a careful review of all the arguments presented, we deny Windermere's amended petition for writ of certiorari.

Windermere argues that it is entitled to certiorari because (1) BCC denied it procedural due process, (2) BCC's decision departed from the essential requirements of law, and (3) BCC's decision was not supported by competent substantial evidence. *See Fla. Power & Light Co. v. City of Dania*, 761 So. 2d 1089, 1092 (Fla. 2000); *City of Deerfield Bch. v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982).

First, we conclude that Windermere's procedural due process arguments lack merit. Accordingly, we reject them without discussion.

Next, we conclude that BCC did not depart from the essential requirements of law in its decision. In our view, section 177.101(3), Florida Statutes, may not be used as a vehicle for vacating the notes on a plat without returning the property itself to acreage. The statute by its own terms expressly contemplates "vacating plats" for the stated purpose of "returning the property covered by such plats either in whole or in part into acreage." However, far from seeking to return Tract A to acreage, Windermere seeks the removal of the plat notes so it may obtain the development and access rights to Tract A, which would then enable it to seek zoning approval to

build homes on the property. If the legislature had intended that section 177.101(3) also apply to the removal of plat notes without returning the platted land to acreage, it readily could have included appropriate language in the statute. This Court is not permitted to assume that the legislature meant to include other types of plat vacations by reading language into the statute that is not already there. *See Martin v. Town of Palm Beach*, 643 So. 2d 112, 115 n.7 (Fla. 4th DCA 1994) (“[A]ppellate courts do not possess the authority to rewrite a statute[.]”). Conversely, this Court is also not permitted to ignore the provision in section 177.101(3) providing that vacating a plat results in “returning the property covered by such plats either in whole or in part into acreage.” *See St. Mary’s Hosp., Inc. v. Phillipe*, 769 So. 2d 961, 967 (Fla. 2000) (“It is a cardinal rule of statutory construction that a statute must be construed in its entirety and as a whole.”). *Windermere* does not cite to any legal authority that would allow for the vacation of plat notes pursuant to section 177.101(3), without returning the property “into acreage,” and this Court is unaware of any such authority.

Even if section 177.101(3), Florida Statutes, could generally be used for vacating notes on a plat without returning property to acreage, for several reasons we conclude that BCC did not depart from the essential requirements of law in its decision not to vacate the plat notes at issue since they involve the development and access rights to Tract A that had been dedicated to Orange County. First, under Florida law, Orange County holds these rights in trust for the public and may not relinquish them without legislative authorization. *See City of Daytona Beach v. Tuttle*, 630 So. 3d 586, 588 (Fla. 5th DCA 1993). Second, a dedication to the public is, by its inherent nature, permanent and irrevocable. *See City of Hollywood v. Hollywood, Inc.*, 432 So. 2d 1332, 1338 (Fla. 4th DCA), *review denied*, 441 So. 2d 632 (Fla. 1983); *Santa Rosa County v. Pollak*, 418 So. 2d 300, 302 (Fla. 1st DCA 1982); *Mainor v. Hobbie*, 218 So. 2d 203, 205 (Fla. 1st DCA), *appeal*

*dismissed*, 225 So. 2d 530 (Fla. 1969). Third, when the development rights of Tract A were dedicated to Orange County, the adjoining property owners acquired a negative or implied easement, giving them rights as intended beneficiaries of the dedication. See *McCorquodale v. Keyton*, 63 So. 2d 906, 910 (Fla. 1953); *Flowers v. Seagrove Beach, Inc.*, 479 So. 2d 841, 844 (Fla. 1st DCA 1985); *Bonifay v. Dickson*, 459 So. 2d 1089, 1096 (Fla. 1st DCA 1984). Windermere does not cite to any legal authority that would allow section 177.101(3) to be used as a vehicle for a local governmental body such as Orange County to relinquish development and access rights that had been dedicated to it, and this Court is unaware of any such authority.

Windermere's case *Blair Nurseries, Inc. v. Baker County*, 199 So. 3d 534 (Fla. 1st DCA 2016) does not dictate a different result because it is readily distinguishable. In contrast to the instant case, the applicant in *Blair Nurseries* sought to vacate a subdivision plat pursuant to section 177.101(3), Florida Statutes, so "its property could be returned to acreage for agricultural purposes." 199 So. 3d at 535. Also in contrast to the instant case, in *Blair Nurseries* there was no indication that the plat vacation would have impacted any dedicated development rights or any easement rights of the adjoining property owners.

Finally, even to assume for the sake of argument that section 177.101(3), Florida Statutes, could be properly used under the instant facts and circumstances, we conclude that there was competent substantial evidence from which BCC could have found that Windermere failed to satisfy all of the statutory criteria. At a minimum, there was competent substantial evidence that vacating the plat notes would adversely "affect the ownership" of the adjoining property owners for purposes of the statute with respect to their implied easement rights as intended beneficiaries of the dedication.

Accordingly, the amended petition for writ of certiorari is DENIED.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this \_\_\_\_\_  
day of \_\_\_\_\_, 2019.

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MARK S. BLECHMAN  
Presiding Circuit Judge

WEISS and MYERS, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Keith A. Graham, Esquire, Marchena and Graham, P.A., 976 Lake Baldwin Lane, Suite 101, Orlando, FL 32814; Christopher J. Wilson, Esquire, Marchena and Graham, P.A., 976 Lake Baldwin Lane, Suite 101, Orlando, FL 32814; Joel D. Prinsell, Deputy County Attorney, P.O. Box 1393, Orlando, FL 32802-1393; Whitney E. Evers, Assistant County Attorney, P.O. Box 1393, Orlando, FL 32802-1393; Scott A. Glass, Esquire, 300 S. Orange Ave., Suite 1000, Orlando, FL 32801; Daniel W. Langley, Esquire, Fishback, Dominick, Bennett, Ardaman, Ahlers, Langley & Geller LLP, 1947 Lee Road, Winter Park, FL 32789; A. Kurt Ardaman, Esquire, Fishback, Dominick, Bennett, Ardaman, Ahlers, Langley & Geller LLP, 1947 Lee Road, Winter Park, FL 32789; and Christopher R. Conley, Fishback, Dominick, Bennett, Ardaman, Ahlers, Langley & Geller LLP, 1947 Lee Road, Winter Park, FL 32789; on this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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Judicial Assistant