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Developer sues DeBary over horse track denial

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DEBARY -- Jockeying over a proposed horse track and poker room, now called the DeBary Town Center and Equestrian Park, has moved to a new arena -- circuit court.

Attorney Ty Harris, representing DeBary Real Estate Holdings, filed suit Tuesday against the city, saying officials violated his client's right to a fair hearing and failed to follow the law when the City Council rejected the proposal by a 3-2 vote Dec. 13.

According to the suit, "because (the developer) was denied an unbiased decision maker, the applicant did not have fair notice of the actual issues and claims which decided the case."

The suit also asks the court to throw out the council's claim the project didn't fit in with the city's comprehensive plan.

". . . the action of the City Council materially alters the use and/or density of the property and was merely a pretext to wrongly and illegally deny the plaintiff's rezoning application," the suit states.

Attempts to reach Harris and members of the DeBary City Council have been unsuccessful but news of the lawsuit seemed to travel quickly through the community. At Wednesday's council meeting, resident Shirley Horchler pleaded with the council to change its comprehensive plan so gambling is expressly forbidden.

"The people of DeBary don't want it," she said. "They can't come back and do this again." On Thursday afternoon, an e-mail from Tom Blawn announced the lawsuit. Blawn and other members of the Victorious Living Church were vocal in their objections to the proposed horse track and poker room on 67 acres at the intersection of U.S. 17-92 and Dirksen Drive. Right now, Blawn said, members are reviewing their options but he called the suit unfair and unsportsman-like.

"This is not the way to win friends and influence the community where you want to be a good neighbor," Blawn said. "When you sue the city, you are suing the citizens. The citizens will have to pay for defense."

The suit refers to comments made by Councilmen Lenny Marks and Norm Erickson and former Mayor George Coleman as reasons why developers feel they weren't given a fair hearing at the Dec. 13 meeting. Coleman, Marks and Erickson all voted against the project.

Marks referred to talking with a local police officer about what effect the project would have on the city. His comments, according to the suit, violated the developers' rights because it "stepped beyond evaluating evidence and introduced evidence into the record through the unsubstantiated quotes of local law enforcement officials and a purported Department of Justice source."

The suit also states that "it was clear that council member Marks was biased from the beginning . . . and could not be fair and impartial."

The suit also accuses city leaders of talking to attorneys hired by the Daytona Beach Kennel Club but not disclosing it, as required by law.

Kennel Club representatives have openly objected to the proposed development and helped fund a nonprofit group -- Committee For Open Government -- to lead the opposition. DeBary Real Estate Holdings filed suit against the Kennel Club in December, saying its actions violated the Florida Deceptive and Unfair Trade Practices Act.

Rachel Gustafsons, a committee spokeswoman, said it was just another example of the developer trying to "strong-arm the expansion of gambling into DeBary."

"The City Council and citizens clearly stated (the project) is not the right vision for West Volusia, so why continue to force the issue down their throats?"

She added that as long as the developer tries to push this issue, ". . . we must continue to fight it."