

**FLAGLER COUNTY HAS NEVER ACTED TO
AUTHORIZE ANY CONSTRUCTION ON THE
OCEAN HAMMOCK GOLF COURSE PARCEL
INCONSISTENT WITH THE OPEN SPACE PLAT
RESTRICTION FOR THAT PARCEL**

**A GOLF CLUBHOUSE
IS NOT A HOTEL.**

IN 2001 THE CURRENT PLAT ADDENDUM FOR THE PARCEL ON WHICH THE OCEAN HAMMOCK GOLF COURSE AND CLUBHOUSE WERE BUILT WAS RECORDED BY THE COUNTY.

Inst No: 01036693 Date: 12/11/2001
GAIL WADSWORTH, FLAGLER COUNTY
By: *[Signature]* D.C. Time: 07:52:36

OFF REC 0786 PAGE 0824

PLAT ADDENDUM

Ocean Hammock Golf Course

This **PLAT ADDENDUM** is entered into this 10 day of ~~DECEMBER~~ 2001 between **LOWE OCEAN HAMMOCK, LTD.**, a Florida Limited Partnership, Post Office Box 354489, Palm Coast, Florida 32135-4489 (904)-446-6418, ("**Developer**") and the **BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA**, 1200 E. Moody Blvd., Bldg. No. 1, Bunnell, Florida 32110 (the "**County**"), and they are collectively referred to as the "**Parties**".

WHEREAS, Developer has applied for and the County has approved a plat for the Ocean Hammock Golf Course Subdivision ("**Plat**") located within Flagler County, Florida (the "**Property**"). This Plat is binding on the County, the Developer and its successors in title, and shall run with the land and bind all future owners.

In consideration of the mutual promises, covenants and conditions contained herein, the parties agree as follows in regard to the Plat:

1. MAINTENANCE BOND

Developer has installed all applicable improvements as provided in Section 4.03.01 of the Land Development Code of Flagler County (the "**LDC**"). The scope and value of the improvements are identified in Exhibit "A" (Engineers' Estimate of Probable Cost of Improvements, prepared by Gee & Jenson E-A-P, Inc.), attached hereto and incorporated herein by reference. A maintenance bond shall be provided by the Developer to the County per section 4.03.03 of the Land Development Code for all subdivision improvements designated in Exhibit "A" attached hereto and incorporated herein by reference.

2. PLAT RECORDATION

The Plat shall be recorded in Map Book 33, Page 11-18, of the Public Records of Flagler County, Florida.

3. DEVELOPMENT ORDER CONDITIONS

Ocean Hammock Golf Course is contained within the Ocean Recreation Community of the Hammock Dunes (**DR1**) development and is subject to all conditions of the Hammock Dunes Development Order issued by the County in Resolution 84-7 dated March 30, 1984, as amended in Resolution 95-50 dated July 17, 1995 and as amended in Resolution 98-10 dated March 6, 1998 (the "**Development Order**").

THE PLAT EXPLICITLY LIMITS THE USE OF THE PARCEL TO:

6. GOLF COURSE PARCEL RESTRICTIONS

The parcel shown hereon will be perpetually used as **golf course land**, lake, **clubhouse**, appropriate associated golf course facilities, open space, parks, dune preservation or such other appropriate recreational or governmental usages approved by the Board of County Commissioners.

4. MAINTENANCE RESPONSIBILITY

REF 0786 PAGE 0825

The Ocean Hammock Golf Course will be a privately owned golf course and attendant facilities and all maintenance obligations with respect thereto shall be performed by the owner of the golf course facilities. The golf course property owner will not be required to belong to the Ocean Hammock Property Owners Association, Inc. (the "Association"). The golf course property owner shall be responsible for the maintenance of all cart paths, including, without limitation, those located within the landscape buffer parcels. In addition, the golf course property owner shall initially be responsible for the maintenance of the internal storm water management system; provided, however, that the golf course property owner shall have the right to transfer such maintenance obligation to the Association or the Dunes Community Development District.

The Association shall be responsible for maintenance of all internal roadways, common landscape improvements, the dunes preservation area, the internal stormwater management system (subject to the terms and conditions set forth in the foregoing paragraph), the landscape buffers (excluding the golf cart paths located thereon), all recreational trails, all improvements located within the beach access easement areas (including those located within the landscape buffers), and any common property or facilities owned by the Association within the platted area, provided however, that the Association and/or Developer shall have the right to transfer such maintenance obligation and/or title of the common property or facilities owned by the Association or Developer within the platted area to the Dunes Community Development District.

The Dunes Community Development District is responsible for maintenance of the community wide drainage system, the wastewater collection system, water distribution system and reuse water system.

5. WATER/SEWER AND REUSE

All proposed golf course related buildings open to the public and providing sinks and/or toilet facilities will connect to central water and sewer services. Potable wells and/or septic systems are prohibited.

Installation of reuse lines is required to serve the entire golf course for irrigation including all golf course related buildings, open space and common areas.

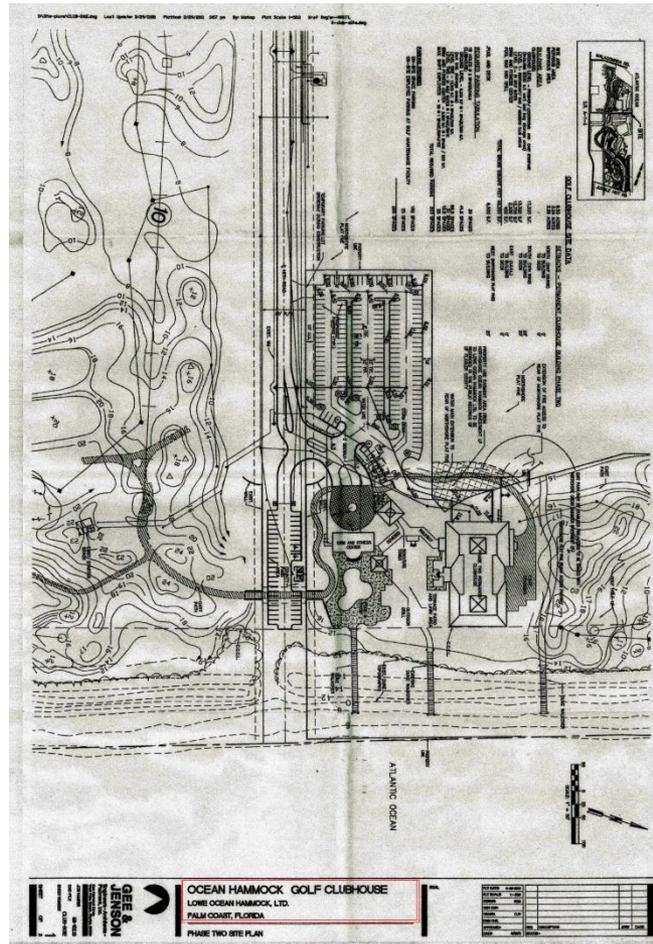
6. GOLF COURSE PARCEL RESTRICTIONS

The parcels shown hereon will be perpetually used as golf course land, lake, clubhouse, appropriate associated golf course facilities, open space, parks, dune preservation or such other appropriate recreational or governmental usages approved by the Board of County Commissioners.

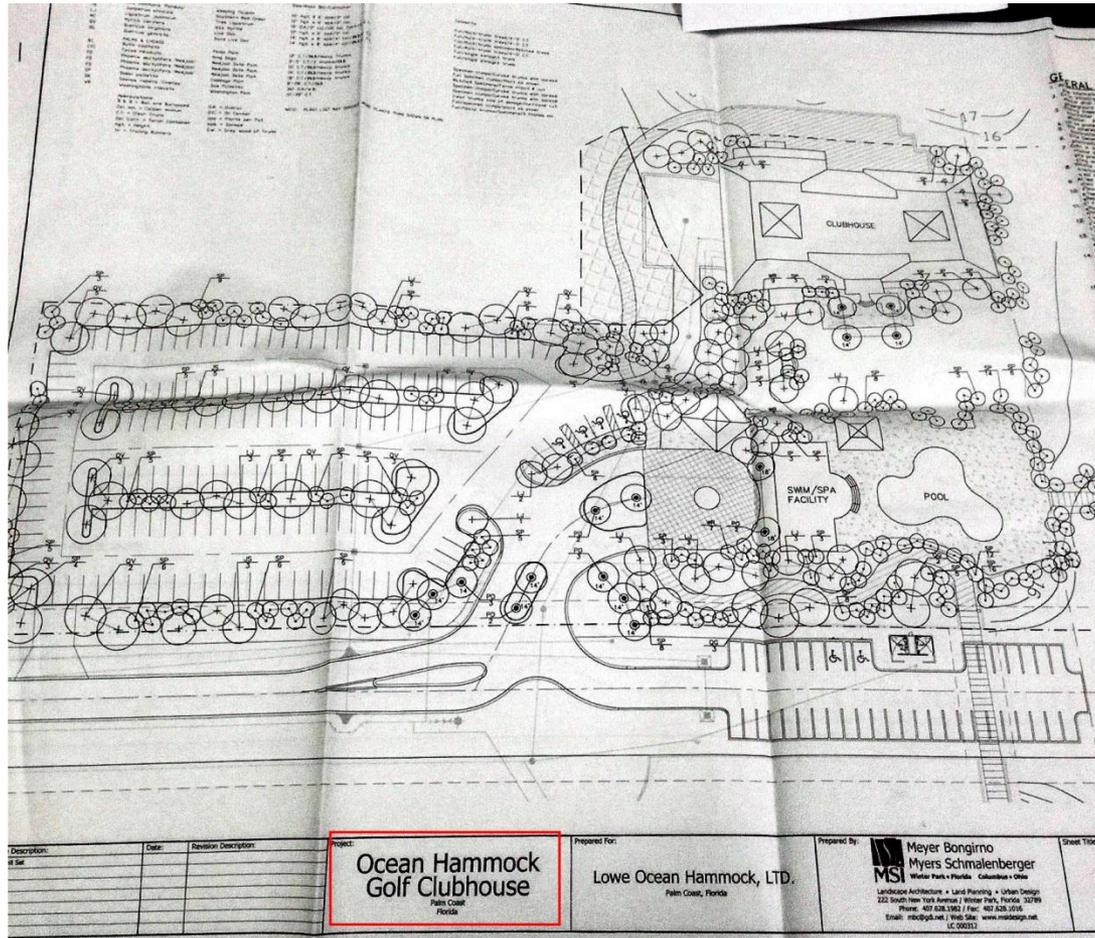
7. FLAGLER COUNTY LAND DEVELOPMENT CODE REQUIREMENTS

Development is subject to the Flagler County Land Development Code except to the

IN 2001, THE DEVELOPER OF THE GOLF COURSE FILED AN APPLICATION TO BUILD A **“GOLF CLUBHOUSE”** ON THE PARCEL AS IS SPECIFICALLY ALLOWED IN THE PLAT.



A **CLUBHOUSE** FOR THE PRIVATE OCEAN HAMMOCK GOLF CLUB THAT COULD ONLY BE USED BY THE MEMBERS OF THE CLUB AND WAS NOT AVAILABLE FOR TRANSIENT USE BY THE GENERAL PUBLIC.



As the developer of the club, Mr. Robert W. Devore, testified under oath in the 2011 NOPC proceeding:

6 -- the lodge was designed to meet our criteria for what we thought would be the most successful, at that time, to support the membership,... so the lodging component, we felt enhanced that ...and that took care of the membership...

TRANSCRIPT OF PROCEEDINGS

**BEFORE THE HONORABLE DONALD R. ALEXANDER,
CIRCUIT COURT JUDGE VOLUME III (Pages 273 - 418)**

At Page 363, Testimony of ROBERT W. DEVORE, President of Lowe Destination Development, the developer of Ocean Hammock and the Ocean Hammock Golf Course.

THE PLANNING BOARD CONSIDERED THE APPLICATION FOR THE “CLUBHOUSE” AND RECOMMENDED APPROVAL.

FLAGLER COUNTY
TECHNICAL REVIEW COMMITTEE COMMENTS
04/18/01

OCEAN HAMMOCK GOLF COURSE CLUBHOUSE
LOWE OCEAN HAMMOCK LTD,
99 16TH RD

OCEAN HAMMOCK/CLUBHOUSR
21040005*003

Attached are departmental comments regarding your submittal to the Flagler County Technical Review Committee for the above referenced project. Any questions regarding any of the comments should be addressed to the department providing the comment.

Flagler County Planning Department	904-437-7484
Flagler County Engineering Department	904-437-7496
Flagler County Fire Services	904-437-7462
Environmental Health Department	904-437-7358
Palm Coast Service District Road & Bridge Department	904-446-6756
Flagler County Building Department	904-437-7492
E-911 Addressing	904-437-7555

Attachment: TRC Comments

THE BOARD OF COUNTY COMMISSIONERS CONSIDERED THE APPLICATION FOR THE “**CLUBHOUSE**” FOR THE GOLF COURSE AND APPROVED IT AS CONSISTENT WITH THE PLAT RESTRICTION. IT DID NOT APPROVE A TRANSIENT HOTEL FACILITY.

June 11, 2001
Regular Meeting

ITEM 39 – HAMMOCK DUNES DRI – PHASE TWO – OCEAN HAMMOCK CLUBHOUSE – PRELIMINARY PLAT SITE DEVELOPMENT PLAN IN A PUD

Chairman Darby reviewed the following information provided by Planning Director Barrett:

*Board of County Commissioners
Agenda Request*

Item # 39

SUBJECT: THE PLANNING BOARD REQUESTS THE BOARD OF COUNTY COMMISSIONERS APPROVE A PRELIMINARY PLAT SITE DEVELOPMENT PLAN REVIEW IN A PUD LOCATED WITHIN OCEAN HAMMOCK, BEING A PORTION OF HAMMOCK DUNES DRI GOLF COURSE AND CLUSTER 33 LYING NORTH OF 16TH ROAD.

DATE: JUNE 11, 2001

DEPT: PLANNING AND ZONING

STATEMENT OF ISSUE: The Board of County Commissioners (BCC) is requested to approve a preliminary plat site development plan review in a PUD in the Hammock Dunes DRI Phase Two of Ocean Hammock Clubhouse Site.

BACKGROUND: On May 8, 2001, the Planning Board recommended to approve the preliminary Plat/Site Plan Review in the Hammock Dunes DRI Golf Course and Cluster 33 lying North of 16th Road with conditions. The proposed project of 6.53 acres more or less includes 45,200 SF permanent clubhouse, (including +/-9,000 SF cart storage) swim fitness center, 21 golf suites and associated swimming pool and deck, bar/dining room and outdoor pool bar and grill.

FACTS AND ISSUES: The County Technical Review Committee (TRC) reviewed the preliminary plan/site development plan on April 18, 2001 and offered comments (attached). As per Flagler County Land Development Code, Article IV, Subdivision Regulations, Section 4.07.00 the Planning Board must review preliminary plans and site plans for projects in a PUD District and make a recommendation to the County Commission for their final decision.

RECOMMENDATION: The Planning Board and the Planning Department staff recommend approval of the preliminary plat site development plan in a PUD in the Hammock Dunes DRI Golf Course and Cluster 33 lying North of 16th Road.

ATTACHMENTS:

1. Application for Review, Preliminary Plat/Site Development Plan Review in a PUD
2. May 8, 2001 Memo to the Flagler County Planning Board
3. April 18, 2001 Technical Review Committee Comments
4. Site Plan
5. Landscape Plan


PLANNING DIRECTOR


COUNTY ADMINISTRATOR

**IN FACT, AS SHOWN IN THE BOCC MEETING MINUTES
THERE WAS NO DISCUSSION WHATSOEVER ABOUT
THE **CLUBHOUSE** HAVING “HOTEL ROOMS” OR
WAIVING OR MODIFYING THE PLAT RESTRICTION TO
ALLOW FOR HOTEL ROOMS.**

June 11, 2001
Regular Meeting

(Item 39 – continued)

Chairman Darby stated the BCC would be functioning in a quasi-judicial capacity in its consideration of this item and asked if there were any disclosures to be made by the commissioners.

There were no disclosures.

A motion was made by Commissioner Hanns to approve Item 39. Seconded by Commissioner Kanbar.

Commissioner Kanbar stated this would be a very large clubhouse and asked if anyone knew the taxable value for the County.

Daniel Baker, Ocean Hammock, stated he did not have an estimate for that property.

Chairman Darby requested public comments on the motion before the BCC.

There were no public comments.

Chairman Darby called the question. No nay votes, motion carried 4-0, with Commissioner King absent.



AFTER APPROVAL THE DEVELOPER FILED AN APPLICATION FOR A BUILDING PERMIT TO CONSTRUCT A "CLUBHOUSE".

No. 21110167
(BUILDING PERMIT)

APPLICATION for

(FLOOD ZONE)

FLAGLER COUNTY BUILDING PERMIT 13

IMPORTANT: Submit Plan Including: 1) Floor Plan, 2) Foundation, 3) Wall Vertical Section, 4) Elevation, and 5) Plot Plan.

1. Owner's Name: Lowe Ocean Hammock Ltd.
 Address: P. O. Box 354489, Palm Coast, FL 32135-4489
 2. Location of Property: 105 16th Road, Palm Coast, FL 32137
Number Street Community
 3. Contractor: Foley & Associates Construction Co., Inc. Telephone # 386/274-1111
 Address: 735 Fentress Blvd. F.C. Occupational Lic. # 1123
 City/State/Zip Code: Daytona Beach, FL 32114 State Lic. # CGC000129

If Owner Is To Be Builder and Occupy Home, Then File "Disclosure Statement" Affidavit With Building Department.

4. Legal Description: Six parcels of land being portions of Government Sections 20, 21, 28, 29 & 33, Township 10 South, Range 31 East, Flagler County, Florida
 Section: 20, 21, 28, 29 & 33 Block: N/A Lot: N/A Sub: Ocean Ridge
 Parcel # 04-11-31-2984-00000-0000
(Found On Your Current Tax Receipt, or Secure Copy From Tax Assessor's Office)

Parcel Width: _____ x Depth: _____ = Square Feet: _____
 Year Parcel Was Subdivided: _____

5. Description of Work: Ocean Hammock Club - Clubhouse

6. List Area Totals:
 Living Area: 42,159 Sq. Ft. Open Porch: 4,925 Sq. Ft. Carport: None Sq. Ft.
 Garage: None Sq. Ft. Patio: None Sq. Ft. Accessory Bldgs: None Sq. Ft.
 Screen Porch: None Sq. Ft. Driveway: x Number of Stories: 1

FOR ZONING USE ONLY:	Land Use Classification: <u>PUD</u>	Approved By: 	Date: <u>1/15/02</u>

7. Septic Tank # N/A
 8. Check One: Public Water Private Well R-47,084
 9. Check Equipment: HEATING: Oil Bottled Gas Electric
 KITCHEN RANGE: Bottled Gas Electric WATER HEATER: Bottled Gas Electric
 AIR CONDITIONING: Yes No
 10. Size of Electrical Service: Phase 3 Amps 2500 amp
 11. Type of Floor Construction: Concrete x Wood _____ Other _____
 12. Number of Bathrooms in Residence: N/A Total Amount of Plumbing Fixtures and Floor Drains: 129
 13. Type of Exterior Walls: Block _____ Stucco x Wood _____ Brick _____ Brick Veneer _____
 Shingles _____ Alum. Siding _____ Stone _____ Metal _____ Composition x
 14. Type of Interior Walls: Lath & Plaster _____ Drywall x Paneling _____ Unfinished _____
 15. Type and Kind of Roof: Common Roof Construction _____ Trusses x Gable x Flat _____ Shed _____
 Hip _____ Metal x Tile _____ Tar & Gravel _____ Shingles _____ Roll _____ Composition _____

THE FLAGLER COUNTY BUILDING DEPARTMENT ISSUED A BUILDING PERMIT TO THE DEVELOPER TO BUILD A "CLUBHOUSE"

02/25/2004 21:15 904-586-2180 FLAGLER CO. BLDG-DPT PAGE 08

FLAGLER COUNTY
1200 E. Moody Blvd. #6
Bunnell, FL 32110
Building Department

For Inspection, Call INSPECTIONS 386-437-7495 OFFICE 386-437-7492

P E R M I T

Page 1 of 1

Permit #: 21110167 Issued: 01/22/02 by: ENG12
Job Location: 105 16TH RD / Applied: 11/19/01
Lot: 0A0 Blk: 0000 Subdiv: OCEAN HAMMOCK PARCEL A-4
Parcel: 04-11-31-2984-00000-00A0 Master Nbr: 21110167
Flood Zone: C Elevation: FEMA Flood Map Number: 120085-0035C
Owner: LOWE OCEAN HAMMOCK,
12 OFFICE PARK DR
PALM COAST, FL 32137

Project: Ocean Hammock Club/Clubhouse

Job Description: Clubhouse/Commercial Building
Business Name: FOLEY & ASSOCIATES CNST CO INC
Contact Phone: (386) 274-1111 work w/o permit fee: N

Setbacks Front: 80 Left: 50 Right: 10 Rear: 30
FCC Code: 318 AMUSEMENT/REC BLDG
Square Footage: Rate: Job Value: \$6,000,000.00
Number of Units: 21 Floors: 1 Buildings: 1
Zoning: PUD Bathrooms:

TYPE: DBA:
BC FOLEY & ASSOCIATES CNST CO INC
EL ADKINS ELECTRIC CO
PL G & W PLUMBING CO
ME BILL WILLIAMS A/C & HEATING INC
RF AEICOR METAL PRODUCTS

Fee Description	Cost
RADON FEE	\$235.42
BUILDING CODE ADMIN FUND	\$235.42
BC PERMIT FEE	\$3,911.50
PLAN CHECK FEE	\$391.15
LAND USE CLAS. PERMIT - RES BLDG	\$20.00
CONCURRENCY DETER. SF/DUPLEX	\$10.00
TIF DIST 1 (EAST)	\$37,620.12
FIRE PLANS REVIEW	\$470.84
FLOOD ZONE DETERMINATION	\$20.00
REINSPECTION FEE	\$25.00
REINSPECTION FEE	\$25.00
REINSPECTION FEE	\$25.00
EL PERMIT FEE	\$1,797.00
PL PERMIT FEE	\$903.00
ME PERMIT FEE	\$3,246.50
RF PERMIT FEE	\$25.00
TOTAL FEES	\$48,960.95

Notice: In addition to the requirements in this permit, there may be additional restrictions applicable to this property that may be found in the records of this county, and there may be additional permits required from other governmental entities such as water management districts, state agencies, or federal agencies. s:553.79(10),F.S.

WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR BUILDING IMPROVEMENTS TO YOUR PROPERTY. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT. s.713.135, F.S.

UPON COMPLETION OF CONSTRUCTION, THE COUNTY ISSUED A CERTIFICATE OF OCCUPANCY FOR THE "CLUBHOUSE"

Flagler County
1200 E. Moody Blvd. #6
Bunnell, FL 32110
Building Department

CERTIFICATE OF OCCUPANCY

This is a Final Certificate of Occupancy

This Certificate issued pursuant to the requirements of the Standard Building Code certifying that at the time of issuance this structure was in compliance with the various ordinances of the County regulating building construction or use. For the following:

Certificate of Occupancy No. 21110167-001 Building Permit No. 21110167

Building Address: 105 16TH RD

Parcel Number: 04-11-31-3605-00010-0000

Legal Description:
Northshore Plat 5, Parcel 1 (Condominium)
Map Book 32, Pgs 38-40

Use Classification: Group CO : CERTIFICATE OF OCCUPANCY

Zoning: PUD

Power Release Information: 02/28/03

C.O. Description: COMMERCIAL BUILDING - CLUBHOUSE

Built by: FOLEY & ASSOCIATES CNST CO INC

Owner of Building: LOWE OCEAN HAMMOCK, LTD,
P.O. BOX 354489
PALM COAST FL 32135

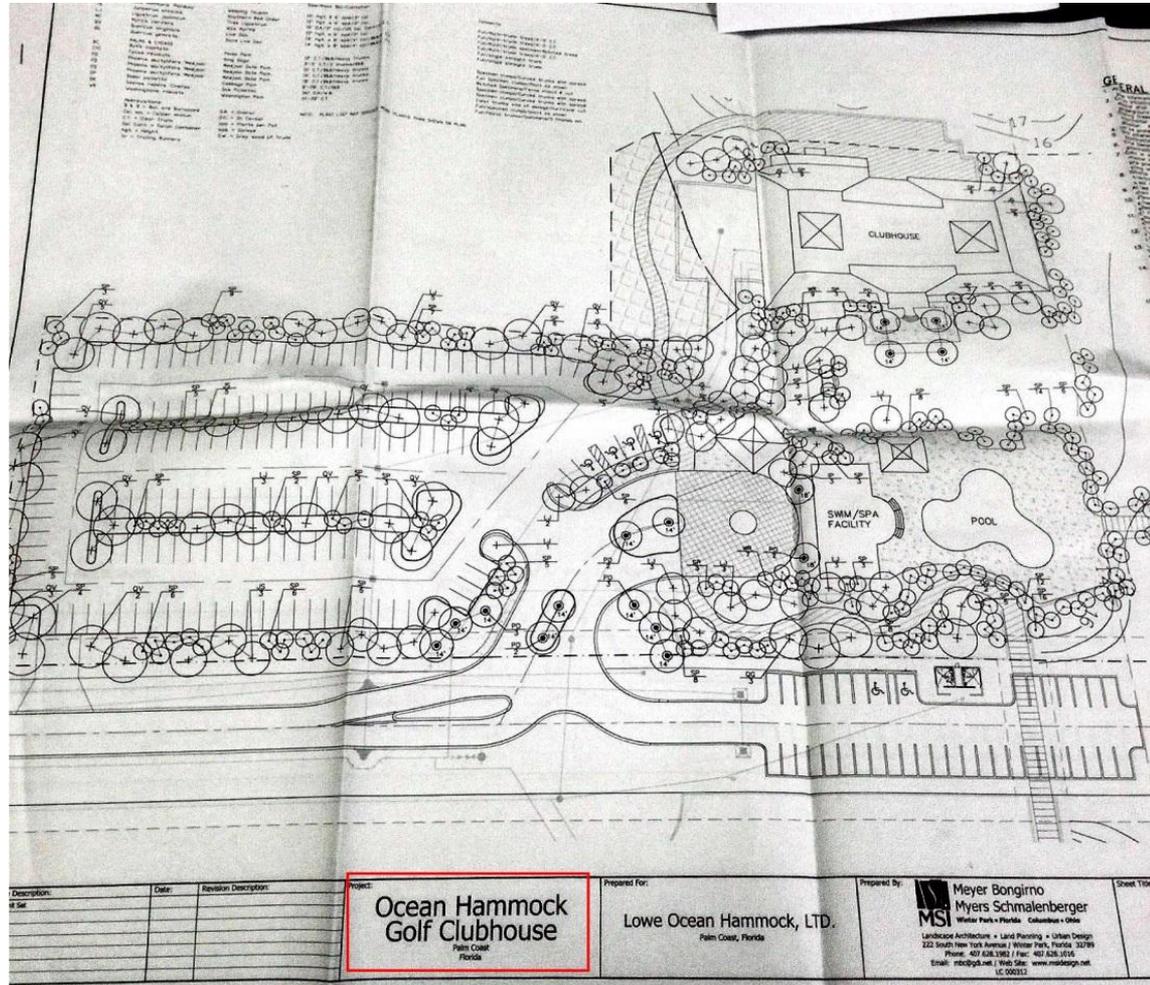

Building Inspector

Date: 02/28/03

NOTE: A new certificate is required if the use of the building or premises is changed, or if alterations are made to the building or property described. A new certificate voids any certificate of prior date.

Post in a Conspicuous Place

THROUGHOUT THE ENTIRE PROCESS, NO ONE, INCLUDING THE BOCC, CONSIDERED THE **CLUBHOUSE** TO BE A HOTEL OR AUTHORIZED THE CONSTRUCTION OF A HOTEL IN VIOLATION OF THE TERMS OF THE PLAT RESTRICTION, OR WAIVING THOSE TERMS.



THUS, THE COUNTY HAS NEVER “...RECOGNIZED THE USE OF TRANSIENT LODGING AS APPROPRIATE ON THIS SITE AS A GOLF RELATED USE...” CONTRARY TO THE ERRONEOUS ASSERTION IN THE STAFF REPORT SINCE THE CLUBHOUSE WAS NEVER CONSIDERED OR APPROVED AS A TRANSIENT LODGING BUILDING OR HOTEL BY THE BOCC

The applicant has asserted that the restriction is to protect the golf course use from encroachment by non-golf related uses. The BCC, in their 2001 approval of the current Lodge building, recognized the use of transient lodging as appropriate on this site as a golf related use. Ultimately, for clarity of the public record, the plat addendum should be amended to specifically include lodging. **REPORT AT Ocean Hammock Golf Course Plat Addendum-Page 1-**

THE CONSTRUCTION OF A HOTEL AND CONFERENCE CENTER WOULD VIOLATE THE PLAT AND DEED RESTRICTION FOR THE SITE AND WOULD BE CONTRARY TO THE COUNTY'S PROMISE TO THE RESIDENTS OF THE COUNTY THAT THIS SITE WOULD REMAIN AS OPEN SPACE "PERPETUALLY". THE VERY INTEGRITY AND HONESTY OF THE COUNTY IS FRONT AND CENTER IN THIS MATTER.

