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**SEE MINUTES**  
**FOR MOTION**  
**SEP 15 2015 JLB**

**MEMORANDUM**

*Deputy County Attorney*  
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- Andrea Adibe
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**TO:** Mayor Teresa Jacobs  
and the  
County Commissioners

**FROM:** Jeffrey J. Newton, County Attorney *JJN*  
Joel D. Prinsell, Deputy County Attorney *JDP*

**DATE:** September 8, 2015

**SUBJ:** Board of County Commissioners' Decision regarding Request for Stay of Board's Rezoning Decision Approving Wedgefield K-8 School; *Dawn Vroombout and others vs. Orange County and the School Board of Orange County*, Circuit Court Case No. 2015-CA-3922

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Dawn Vroombout, Donna Rimkus, and Cindy Lauenders, citizens who have filed a Petition for Writ of Certiorari with the Circuit Court challenging the Board of County Commissioners' March 3, 2015, decision approving the rezoning for the School Board's proposed Wedgefield K-8 school, have recently filed a Request for Stay with the County requesting that the BCC "stay" its rezoning decision until the Circuit Court issues its final decision in the pending certiorari case. Attached is a copy of their Request for Stay.

The petitioners have filed their Request for Stay pursuant to a rule of court in appellate proceedings that allows an aggrieved party to try to "freeze" a decision (in this case, the BCC's rezoning decision) until the reviewing court makes a decision.

Subsequently, the School Board filed an Objection to the Request for Stay. Attached is a copy of the School Board's Objection.

On September 15, 2015, the BCC will need to hear from the attorneys for the petitioners and the School Board, before making a decision on the Request for Stay. If the BCC denies the Request for Stay, Ms. Vroombout and the others are free to then ask the Circuit Court to enter a stay, subject to conditions that the Circuit Court may deem appropriate. Or, if the BCC grants the Request for Stay, the School Board may ask the Circuit Court to review the BCC's decision granting the request.

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**ACTION REQUESTED:** Board Decision regarding Request for Stay of Board's Rezoning Decision Approving Wedgefield K-8 School; *Dawn Vroombout and others vs. Orange County and the School Board of Orange County*, Circuit Court Case No. 2015-CA-3922

Please let us know if you have any questions regarding this matter.

JDP:sac  
Attachments  
cc: Ajit Lalchandani, County Administrator  
jprinsell:corresp;jacobs-bcc-vroombout

DENIED  
BY ORANGE COUNTY BOARD  
OF COUNTY COMMISSIONERS  
SEP 15 2015 SLB

BOARD OF COUNTY COMMISSIONERS  
ORANGE COUNTY, FLORIDA

DAWN VROOMBOUT, DONNA  
RIMKUS and CINDY  
LAUNDERS,  
Petitioners,

vs.

ORANGE COUNTY FLORIDA, a  
charter county and a political  
subdivision of the State of Florida,  
and THE SCHOOL BOARD OF  
ORANGE COUNTY FLORIDA, a  
public body corporation organized  
and existing under the laws and the  
Constitution of the State of Florida,  
Respondents.

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Matter No. LUP-14-08-228

Case No. 2015-CA-003922-O

**REQUEST FOR STAY**

COME NOW the Petitioners, DAWN VROOMBOUT, DONNA RIMKUS and CINDY LAUNDERS, by and through the undersigned counsel, and pursuant to Fla. R. App. P. 9.310, hereby request that the Orange County Board of County Commissioners, sitting as the lower tribunal in this matter, stay the zoning decision it issued in Matter No. LUP-14-08-228 until a pending Petition for Writ of Certiorari in the above-styled case is adjudicated by the Ninth Judicial Circuit Court in its appellate capacity. Petitioners request that this stay be granted without bond as they are citizens with limited funds; and

further because the certiorari review at issue does not pose a threat of financial damage to the Respondents.

**RESPECTFULLY SUBMITTED**, September 1, 2015.

/s/ Gregory A. Fencik  
Gregory A. Fencik, Esquire  
Florida Bar No.: 0957755

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by electronic mail upon: **Joel Prinsell, Esq.**, [joel.prinsell@ocfl.net](mailto:joel.prinsell@ocfl.net), Deputy County Attorney, 201 S. Rosalind Ave., 3<sup>rd</sup> Floor, Orlando, FL 32801; **Diego “Woody” Rodriguez, Esq.**, [woody.rodriguez@ocps.net](mailto:woody.rodriguez@ocps.net), General Counsel, Orange County Public Schools, 445 W. Amelia St., Orlando, FL 32801; **Scott A. Glass, Esq.**, [sglass@shutts.com](mailto:sglass@shutts.com), Shutts & Bowen L.L.P., PO Box 4956, Orlando, FL 32802-4956.

/s/ Gregory A. Fencik

Gregory A. Fencik, Esquire  
Florida Bar No.: 0957755  
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BOARD OF COUNTY COMMISSIONERS  
ORANGE COUNTY, FLORIDA

DAWN VROOMBOUT, DONNA  
RIMKUS and CINDY LAUNDERS,

Petitioners,

Matter No. LUP-14-08-228

v.

Case No. 2015-CA-003922-O

ORANGE COUNTY, FLORIDA, a  
Charter county and a political  
subdivision of the State of Florida,  
and THE SCHOOL BOARD OF  
ORANGE COUNTY FLORIDA, a  
public body corporate organized  
and existing under the laws and the  
Constitution of the State of Florida,

Respondents.

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**SCHOOL BOARD'S OBJECTION TO MOTION FOR STAY**

COMES NOW, Respondent, School Board of Orange County, Florida, by  
and through the undersigned counsel and files this Objection to Motion for Stay in  
accordance with Rule 9.300, Fla. R. App. P. and states as follows:

1. Petitioners have filed their Motion for Stay pursuant to Rule 9.310,  
Fla. R. App. P. and request that the lower tribunal, to wit, the Board of County  
Commissioners of Orange County, Florida, stay the decision it reached on March

3, 2015, rezoning the School Board's property from A-2 to PD in order to allow construction of a K-8 school.

2. While Respondent School Board understands that Petitioners are acting, at least partially, in response to an order issued by the Circuit Court for the Ninth Judicial Circuit declining to consider Petitioners' Motion for Stay, Respondent School Board is unaware of any legal authority vesting equitable powers to enter injunctive relief in the Board of County Commissioners. Accordingly, School Board respectfully asserts that the Board does not have the authority to grant the relief requested by Petitioners.

3. Furthermore, even if the Board were vested with authority to entertain Petitioners' motion it could not do so without violating a fundamental tenant of procedural due process, to wit, the right to an independent decision-maker. In the instant case the Board is a party and fundamental due process precludes a party from also acting as a decision-maker. *Cherry Commun. v. Deason*, 652 So. 2d 803 (Fla. 1995).

4. Assuming, *arguendo*, that the Board of County Commissioners has the authority to hear Petitioners' motion and is capable of doing so without violating one or the other parties' procedural due process rights, Respondent School Board respectfully submits that the appropriate ruling, in fact the only ruling supported by the facts and the law, is a denial.

5. As previously stated, Petitioners' have filed their motion pursuant to Rule 9.310, Fla. R. App. P. That rule states, in pertinent part, that:

a party seeking to stay a final or non-final order pending review shall file a motion in the lower tribunal, which shall have continuing jurisdiction, in its discretion, to grant, modify or deny such relief. A stay pending review may be conditioned on the posting of a good and sufficient bond, other conditions, or both.

Ergo, as acknowledged by Florida courts, Rule 9.310(a) "establishes how a stay is to be obtained (by filing a motion), where the motion is to be filed (in the trial court), and what authority the trial court has upon receipt of the motion (to grant, modify, or deny a stay)." *R.J. Reynolds Tobacco Co. v. Hall*, 67 So.3d 1084, 1093 (Fla. 1<sup>st</sup> DCA 2011) (parentheticals in original).

6. All motions filed in appellate matters, including the Petitioners' motion, must be filed in accordance with the requirements set forth in Rule 9.300, Fla. R. App. P., which provides in relevant part, that:

(a) **Contents of Motion; Response.** Unless otherwise prescribed by these rules, an application for an order or other relief available under these rules shall be made by filing a motion therefor. The motion shall state the grounds on which it is based, the relief sought, argument in support thereof, and appropriate citations of authority.

Underscored emphasis added.

7. Petitioners' motion utterly fails to comply with the requirements of Rule 9.300(a), Fla. R. App. P. in that it fails to state any grounds whatsoever for the relief requested, fails to set forth any argument

in support of the motion and is devoid of citations to authority which would permit the relief requested under the facts of this case. Accordingly, the motion is deficient and should be denied.

8. Furthermore, even if Petitioner had complied with Rule 9.300(a), which they clearly have not, Petitioners would still not be entitled to the relief requested without the posting of an appropriate bond.

9. Petitioners have alleged that: (1) they are citizens with limited funds; and, (2) the grant of a stay would not pose a threat of financial damage to the Respondents, they have offered no factual support for these allegations. As such, these allegations are meaningless and cannot support issuance of stay without the posting of an appropriate bond to fully protect the public coffers.

WHEREFORE, Respondent, School Board of Orange County, Florida, respectfully requests that Petitioners Request for Stay be denied.

Respectfully submitted,

/s/ Scott A. Glass

**Scott A. Glass, Esq.**

Fla. Bar No. 911364

sglass@shutts.com

**SHUTTS & BOWEN, LLP**

300 South Orange Avenue

Orlando, FL 32801

407-423-3200

Attorneys for The School Board  
of Orange County, Florida



**CERTIFICATE OF SERVICE**

I hereby certify that on this 2<sup>nd</sup> day of August, 2015, a true and correct copy of the foregoing has been electronically served on Greg Fencik, Esq., Attorney for Petitioners, at greg.fencik@gmail.com and on Joel Prinsell, Deputy Orange County Attorney, at Joel.Prinsell@ocfl.net .

/s/ Scott A. Glass  
Scott A. Glass, Esq.