

## Cutler Bay wins legal battle to build Publix in town center

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A state-of-the art Publix is set to move into The Shoppes at Cutler Bay, a new site on the east side of Old Cutler Road, between Southwest 208th and 212th streets. The news follows a legal battle involving Publix and the property owner at its existing location at 20424 Old Cutler Rd.

"I am glad to see there has been some progress with this litigation," Cutler Bay Town Manager Ralph Casals said. "The planned mixed-use development will serve as a centerpiece, along Old Cutler Road and provide residents additional shopping (grocery, retail, and dining) options. The design elements approved by the town, capture the same features as our award-winning roadway project (Old Cutler Road)."

The town council passed a resolution to permit the new Publix site in May 2013, but Reality Associates Fund IX, LP filed a complaint the next month.

Lawyers, representing the town of Cutler Bay and Publix, recently earned an involuntary dismissal from Miami-Dade Circuit Judge Norma S. Lindsey on the complaint that the mixed-use development was "inconsistent with the town's growth management plan" because it did not contain a

"residential component." The property owner also claimed inconsistencies with the town's growth management plan because the project did not contain any public streets and did not contain any "public streets connected directly into the low density residential neighborhood located to the east of the project."

"That is ultimately what we went to trial on," said John Quick, an attorney who represented Cutler Bay. "There were two different orders. The first one, the judge disposed of ... the unconstitutionality complaints in February during trial. After the town's motion to prevail on those counts."

"The other three counts, which I will call the consistency counts, with the resolutions, (Cutler Bay) along with Publix, filed a motion. Ultimately the judge ruled on that this past Friday in favor of the town and Publix."

Attorneys Quick, Chad Friedman and Laura Wendell represented Cutler Bay, while Mark Miller and Michael Marshall of Gray Robinson represented Publix. Quick, Friedman and Wendell were able to refute the claims that Cutler Bay had the right to permit the proposed development.

"I am very happy the court confirmed our decision for a new mixed-use development, including a Publix to be built along Old Cutler Road," Mayor Peggy Bell said. "This follows the town's vision of creating a more pedestrian-friendly atmosphere and will include restaurants & other retail shops."

Reality Associates Fund IX still has the right to appeal the decision, which could again delay construction.

"Residents have long expressed a desire for a larger grocery store with ample parking," Bell said. "This will also expand the opportunity for more dining options, another resident priority. I am quite glad we were successful in defending our approval of this project and excited to see it finally come to fruition."

The Shoppes at Cutler Bay will include Publix, retail, restaurants, banking, and more.

"The owner of the old shopping center still has the right to appeal," Quick said. "Hopefully this will get the ball rolling to get this developed. What the elected officials and town staff have really been fighting for, for the town, is to have this marquee town center ... a beautiful trellised walkways, Publix and a number of outdoor eating venues. It's just a place where people can come together in the town."

"That's really what hopefully will get the ball rolling on this. The real estate fund testified at trial that they want to be a good corporate citizen and I take them at their word. I hope they understand that part of being a good citizen is doing what is best for the town, not is just the best for the bottom line of the real estate fund."

Quick said that if an appeal is taken, Publix and the town would make a determination as to when they can break ground. He said if no appeal is taken, he would think "they would probably break ground pretty quickly, in building terms."

"Ultimately I think (the property owner) wanted (Publix to stay) at its former location," Quick said. "The representative did testify on the stand that their primary concern was basically their bottom line. I think what he said that he said he was concerned that if they lost their anchor tenant, that they would use what he called their in-line tenants, which are the other businesses in that shopping center. It sounded like they were trying to maintain the existence of the shopping center as it is or at least maintain their tenants and the revenue that flowed from that."