

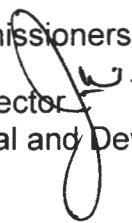


Interoffice Memorandum

AGENDA ITEM

DATE: February 11, 2020

TO: Mayor Jerry L. Demings
-AND-
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Director 
Planning, Environmental and Development
Services Department

**CONTACT PERSON: Eric Raasch, DRC Chairman
Development Review Committee
Planning Division
(407) 836-5523**

SUBJECT: March 10, 2020 — Consent Item
Adequate Public Facilities Agreement for Horizon West
Village I - Parcel 1 PD
Case # APF-19-11-363
(Related to Case # LUP-19-02-052)

The proposed Horizon West - Village I - Parcel 1 PD Planned Development (PD) contains 37.04 gross acres (18.41 net developable acres) and is located generally west of County Road 545 (Avalon Road), north of Flemings Road, and south of Water Spring Boulevard. The subject property is located within the Village I Special Planning Area of Horizon West and is designated as Apartment District (APT) on the Village I Special Planning Area Land Use Map. Through rezoning application # LUP-19-02-052, the Horizon West - Village I - Parcel 1 PD proposes a development program of 300 multi-family residential dwelling units.

Pursuant to Orange County Code Section 30-714, each property owner in a Horizon West PD is required to convey their proportionate share of Adequate Public Facilities (APF) lands, which are based on the ratio of required APF acres to net developable acres within the Special Planning Area. For the Village I Special Planning Area, the adopted ratio of APF acres to net developable acres is 1.0 to 7.25. In the event that APF land requirements cannot be met within a particular PD, an owner may pay a fee to the County equal to the value of the ratio of required APF lands and based upon the average fair market value of land, as established by an independent appraiser. Alternately, they may receive a transfer of surplus APF credits from another property owner in the same Village.

In order to satisfy the requirements of Chapter 30, Article XIV of the Orange County Code ("APF/TDR Ordinance"), the Parcel 1 PD is subject to an APF Agreement that recognizes that the project is responsible for a minimum of 1.90 acres of APF lands. A

Page Two

March 10, 2020 — Consent Item

Adequate Public Facilities Agreement for Horizon West Village I - Parcel 1 PD (Case #APF-19-11-363)
(Related to Case # LUP-19-02-052)

transfer of surplus APF credits from the Withers PD (CDR-19-10-331), as indicated by a note on the Horizon West Village I - Parcel 1 PD and Horizon West Village I - Withers PD Land Use Plans will satisfy this APF requirement.

The Adequate Public Facilities Agreement for Horizon West Village I - Parcel 1 PD received a recommendation of approval from the Development Review Committee on January 22, 2020 and has been placed on the March 10, 2020 consent agenda to be pulled for consideration with the associated PD Land Use Plan. Upon approval by the Board, the Agreement will be recorded in the Public Records of Orange County.

ACTION REQUESTED: Approval and execution of Adequate Public Facilities Agreement for Horizon West Village I – Parcel 1 PD by and between Spring Grove Properties, LLC and Orange County. District 1

JVW/EPR/nt
Attachments

2 This instrument prepared by and after
recording return to:

4 Daniel T. O’Keefe, Esq.
6 Shutts & Bowen LLP
300 S. Orange Avenue, Suite 1600
8 Orlando, FL 32801

10 Tax Parcel I.D. No(s):
a portion of 18-24-27-0000-00-009
12

14 **ADEQUATE PUBLIC FACILITIES AGREEMENT**
FOR HORIZON WEST VILLAGE I – PARCEL 1 PD

16 **THIS ADEQUATE PUBLIC FACILITIES AGREEMENT FOR HORIZON WEST**
18 **VILLAGE I – PARCEL 1 PD** (the “Agreement”), effective as of the latest date of execution (the
“Effective Date”), is made and entered into by and between SPRING GROVE PROPERTIES,
20 LLC, a Florida limited liability company, with its principal place of business at 1353 Palmetto
Avenue, Suite 101, Winter Park, Florida 32789 (“Owner”) and ORANGE COUNTY, a charter
22 county and political subdivision of the State of Florida whose mailing address is P.O. Box 1393,
Orlando, Florida 32802-1393 (“County”).

24 **RECITALS:**

26 A. OWNER is the fee simple owner of certain real property located in Orange County,
28 Florida, as generally depicted in Exhibit “A” and as more particularly described in Exhibit “B,”
both of which exhibits are attached hereto and made a part hereof by this reference (The “PD
30 Property”).

32 B. The PD Property, also known as Parcel 1 PD, is identified in the Orange County
Comprehensive Plan 2010-2030 (the “Comprehensive Plan”) Future Land Use Map with the
34 “Village” land use designation and constitutes a portion of Village I, in Horizon West, as same is
described and depicted in the Village I Specific Area Plan approved by the Board of County
36 Commissioners of Orange County, Florida (the “BCC”) on June 10, 2008 (the Village I SAP”).

38 C. The PD Property is included in the Horizon West Village Land Use Classification
Area. The BCC adopted the Horizon West Village Land Use Classification Comprehensive
40 Policy Plan (“CPP”) amendment on June 5, 1995. The Horizon West Village Land Use
Classification was the result of a public-private partnership between the BCC and Horizon West,
42 Inc. The partnership conducted an extensive visioning and community consensus building process
that was summarized in the Horizon West Study Report issued February 7, 1995.

46 D. The Parcel 1 PD has relied on the prior approvals of the Horizon West Study and
the Village I SAP, and on the Village I SAP approvals and studies included in the SAP.

48 E. The Village I SAP contemplates certain multi-family residential uses within the PD
Property.

50 F. OWNER desires to develop the PD Property in accordance with the Parcel 1 PD
52 LUP, submitted by OWNER to COUNTY, and with the PD zoning application on file with
COUNTY.

54 G. The Goals, Objectives, and Policies contained in the Future Land Use Element of
56 the Comprehensive Plan have been implemented through Chapter 30, Article XIV, of the Orange
County Code (“APF/TDR Ordinance”) adopted by the BCC on May 20, 1997, as amended.

58 H. Division 2 of the APF/TDR Ordinance requires, in Section 30-712(b), that
60 OWNER enter into a developer’s agreement identifying required adequate public facilities within
the development and addressing the conveyance to the COUNTY of adequate public facilities
62 lands prior to or in conjunction with PD approval, unless otherwise addressed in such agreement,
pursuant to Section 30-714(c).

64 I. The parties have agreed that this Agreement constitutes the aforementioned
66 developer’s agreement referenced in Division 2 of the APF/TDR Ordinance.

68 J. If Owner is unable to convey sufficient adequate public facilities lands to County,
the APF/TDR Ordinance, at Sections 30-712(b) and 30-714(d), states that OWNER may make
70 payment of an adequate public facility lands fee to COUNTY. Additionally, the APF/TDR
Ordinance, at Section 30-714(g), allows for application of APF acreage credits to satisfy an APF
72 deficit.

74 K. It is the intent of the parties that COUNTY will consider approval of the Parcel 1
LUP with its consideration of this Agreement.

76 L. The PD Property contains approximately 13.81 acres of **net** developable land, and
both the Village I SAP and Section 30-714 of the APF/TDR Ordinance require 1 acre of public
facilities acreage for every 7.25 acres of net developable land (the “APF Ratio”).

78 M. When applied to the PD Property, the APF Ratio equals approximately 1.90 acres
of public facilities lands.

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82 N. As shown on the Horizon West Village I – Parcel 1 PD Land Use Plan, and as
described in this Agreement, OWNER is not providing any acreage of adequate public facilities
land (the “APF Land”) to COUNTY, thereby creating an APF deficit of 1.90 acres.

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86 **NOW THEREFORE**, for and in consideration of the above premises, the mutual
covenants and agreements set forth herein, and for other good and valuable consideration, the
receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

88
90 **AGREEMENT**

92 1. Recitals. The above recitals are true and correct and are hereby incorporated as
material provisions of this Agreement by this reference.

94 2. APF Deficit. The Village I APF Ratio requires that Owner convey to County
approximately 1.90 acre(s) of APF Land. This Agreement provides for conveyance of
96 approximately 0 acre(s) of APF Land, thereby creating a 1.90-acre APF Deficit.

98 3. APF Acreage Credits. OWNER will obtain 1.90 APF acreage credits within
Village I and will ask COUNTY to apply these credits toward the APF deficit. Application of the
APF acreage credits will satisfy the APF deficit.

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102 4. Recording. Within thirty (30) days after the Effective Date, this Agreement shall
be recorded in the Public Records of Orange County, Florida, at Owner’s expense

104 5. Limitation of Remedies. County and Owner expressly agree that the consideration,
in part, for each of them entering this Agreement is the willingness of the other to limit the
106 remedies for all actions arising out of or in connection with this Agreement.

108 a) Limitations on County’s Remedies. Upon any failure by OWNER to perform its
obligations under this Agreement, COUNTY shall be limited strictly to only the following
110 remedies:

- 112 (i) action for specific performance; or
- (ii) action for injunction; or
- 114 (iii) the withholding of development permits and other approvals and/or
permits in connection with the Project and/or the PD Property; or
- 116 (iv) any combination of the foregoing.

118 In addition to the foregoing, nothing in this Agreement prohibits or estops COUNTY from
exercising its power of eminent domain with respect to the APF Land and/or any portion of the PD
Property as County may lawfully elect.

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b) Limitations on OWNER'S Remedies. Upon any failure by COUNTY to
122 perform its obligations under this Agreement, OWNER shall be limited strictly to only the
following remedies:

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- (i) action for specific performance; or
- 126 (ii) action for injunction; or
- (iii) action for declaratory judgment regarding the rights and
128 obligations of Owner; or
- (iv) any combination of the foregoing.

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Both parties expressly waive their respective rights to sue for damages of any type for
132 breach of or default under this Agreement by the other. Venue for any actions initiated under or in
connection with this Agreement shall be in the Circuit Court of the Ninth Judicial Circuit in and
134 for Orange County, Florida.

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6. Binding Effect. This Agreement shall be binding upon and shall inure to the
benefit and burden of the parties hereto and their respective heirs, successors, and assigns and
138 shall run with title to the PD Property and be binding upon any person, firm, corporation, or other
entity acquiring any interest in all or any portion of the PD Property.

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7. Severability. If any provision of this Agreement, the deletion of which would not
142 adversely affect the receipt of any material benefits by any party hereunder nor substantially
increase the burden of any party hereunder, shall be held to be invalid or unenforceable to any
144 extent by a court of competent jurisdiction, the same shall not affect in any respect whatsoever the
validity or enforceability of the remainder of this Agreement.

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8. Notices. Any notice delivered with respect to this Agreement shall be in writing
148 and shall be deemed to be delivered (whether or not actually received) (i) when hand delivered to
the person(s) hereinafter designated, or (ii) upon deposit of such notice in the United States mail,
150 postage prepaid, certified mail, return receipt requested, addressed to the person at the address set
forth opposite the party's name below, or to such other address or to such other person as the party
152 shall have specified by written notice to the other party delivered in accordance herewith.

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COUNTY: Orange County, Florida
c/o County Administrator
Post Office Box 1393
158 Orlando, Florida 32802-1393

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With copies to: Orange County Planning, Environmental,
and Development Services Department
Manager, Planning Division
Post Office Box 1393
Orlando, Florida 32802-1393

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Orange County Planning, Environmental,
and Development Services Department
Manager, Transportation Planning Division
Orange County Public Works Complex
4200 S. John Young Parkway
Orlando, Florida 32839-8070

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OWNER: Spring Grove Properties, LLC
1353 Palmetto Avenue, Suite 101
Winter Park, Florida 32789

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With a copy to: Shutts & Bowen LLP
Attn: Daniel T. O'Keefe, Esq.
300 S. Orange Avenue, Suite 1600
Orlando, Florida 32801

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9. Disclaimer of Third Party Beneficiaries. This Agreement is solely for the benefit of the formal parties hereto and no right or cause of action shall accrue by reason hereof to or for the benefit of any third party not a formal party hereto. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give any person or entity any right, remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof, other than the parties hereto and their respective representatives, heirs, successors, and assigns.

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10. Applicable Law. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

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11. Interpretation. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that all parties have contributed substantially and materially to the preparation hereof. Captions and section headings in this Agreement are provided for convenience only and shall not be deemed to explain, modify, amplify, or aid in the interpretation, construction, or meaning of this Agreement.

200 12. Attorney Fees. Each party to this Agreement agrees to bear its own attorney and
202 other legal fees and costs in connection with all actions to be undertaken in compliance with, and
enforcement of, this Agreement.

204 13. Survival. The obligations of this Agreement shall survive the satisfaction of the
APF Deficit by OWNER.

206 14. Amendment. No amendment, modification, or other change to this Agreement
208 shall be binding upon the parties unless in writing and formally executed in the same manner as
this Agreement.

210 15. Entire Agreement. This Agreement embodies and constitutes the entire
212 understanding of the parties with respect to the subject matter addressed herein, and all prior or
contemporaneous agreement, understandings, representations, and statements, oral or written, are
214 merged into this Agreement.

216 16. Counterparts. This Agreement may be executed in up to two (2) counterparts, both
of which taken together shall constitute one and the same instrument and any party or signatory
218 hereto may execute this Agreement by signing either such counterpart.

220 17. Authority to Contract. The execution of this Agreement has been duly authorized
by the appropriate body or official of each party hereto.

222 18. Termination; Effect of Annexation. This Agreement shall remain in effect so long
224 as the PD Property remains in unincorporated Orange County, Florida, unless the Parties terminate
it, in writing, with the same formality as its execution. If any portion of the PD Property is
226 proposed to be annexed into a neighboring municipality, County may, in its sole discretion,
terminate this Agreement upon notice to Owner.

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[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

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234 IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed
by their respective duly authorized representatives on the dates set forth below.

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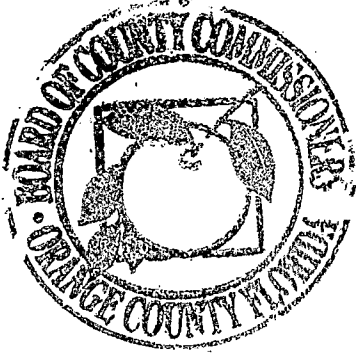
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ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

Date: *12 March 2020*

248 ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

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By: *Jennifer Klimetz*
for Deputy Clerk

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Printed Name: *Jennifer Klimetz*

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SPRING GROVE PROPERTIES, LLC,
a Florida limited liability company

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By: [Signature]

Print Name: Robert Hewitt

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Title: Managing Member

Date: 2/13/20

264 WITNESSES:

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[Signature]
Print Name: Ursula Palmer

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[Signature]
Print Name: Thomas Hewitt

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STATE OF FLORIDA
COUNTY OF ORANGE

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The foregoing instrument was acknowledged before me by means of physical presence
or online notarization by Robert Hewitt, as Managing Member of SPRING GROVE
276 PROPERTIES, LLC, a Florida limited liability company, who is known by me to be the person
described herein and who executed the foregoing, this 13 day of February, 2020. He is
278 personally known to me or has produced _____ as identification and did/did not
take an oath.

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WITNESS my hand and official seal in the County and State last aforesaid this 13 day
282 of February, 2020.

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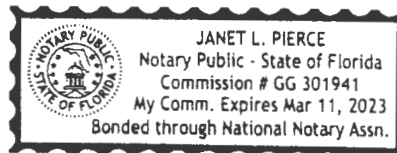
[Signature]
Notary Public
Print Name: Janet L. Pierce

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My Commission Expires: Mar. 11, 2023

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Exhibit "A"

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Project area location map

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Vicinity Map

Scale: 1" = 3,000'

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Exhibit "B"

Legal Description of the PD Property

A portion of Section 17, Township 24 South, Range 27 East, Orange County, Florida. Being more particularly described as follows:

Commence at the West 1/4 corner of aforesaid Section 17; thence run North 89°57'03" East along the North line of the Southwest 1/4 of said Section 17, for a distance of 858.78 feet to a point on the Westerly right-of-way line of County Road 545 per Deed Book 400, Page 311 of the Public Records of Orange County, Florida; thence run South 11°22'36" East along said Westerly right-of-way line, for a distance of 233.52 feet to the Point of Beginning; thence continuing along said Westerly right-of-way line, run South 11°22'36" East, for a distance of 1978.26 feet to a point on the East line of the West 1/2 of aforesaid Southwest 1/4 of said Section 17; thence departing said Westerly right-of-way line, run South 00°29'57" West along said East line, for a distance of 143.24 feet; thence departing said East line, run North 79°02'54" West, for a distance of 954.60 feet; thence run North 11°44'02" West, for a distance of 1070.98 feet; thence run North 21°08'26" East, for a distance of 733.34 feet; thence run North 71°24'39" East, for a distance of 529.16 feet to aforesaid Point of Beginning.