

**GENERAL INFORMATION**

**APPLICANT** Kathy Hattaway, Poulos and Bennett, LLC

**OWNERS** Withers, LLC and Columnar Partnership Holding I, LLC

**PROJECT NAME** Withers Planned Development (PD)

**HEARING TYPE** Planning and Zoning Commission

**REQUEST** **A-1 (Citrus Rural District) and  
A-2 (Farmland Rural District) to  
PD (Planned Development District)**

*A request to rezone eight (8) parcels containing 320.75 gross acres from A-1 and A-2 to PD, in order to construct 814 residential units, 10,000 square feet of commercial uses, and future conveyance of an Adequate Public Facility (APF) park, a middle school, and an elementary school.*

*The request also includes the following waivers from Orange County Code:*

1. A waiver from Section 34-152(c), for PD Parcels 4, 5, 11, 12, and 17, to allow lots to front a mews, park, open space, etc. and have access via a tract or easement, in lieu of the requirement that each lot shall have a minimum access width of twenty (20) feet to a dedicated public paved street.

***Applicant Justification:*** *Orange County Code Section 38-1382(h)(6) provides for the incorporation of mews in project design where residential units have only rear access. Legal access to these lots will be through an ingress/egress tract shown on the plat.*

2. A waiver from Section 38-1382(h)(4), for PD Parcels 4, 5, 11, 12, and 17, to allow alleys to be designed as a tract, in lieu of the requirement that they shall be designed as a private easement.
3. A waiver from Section 38-1384(g)(1), for PD Parcels 4, 5, 11, 12, and 17, to allow garage access to be setback from an alley tract, in lieu of an easement.
4. A waiver from Section 38-1384(g)(2), for PD Parcels 4, 5, 11, 12, and 17, to allow detached garages without

access to a rear alley tract, including garages with an accessory dwelling unit, shall be located a minimum of five (5) feet from side and rear property lines, and shall be no closer than ten (10) feet to any other detached structure on the same lot, in lieu of detached garages without access to a rear alley easement, including garages with an accessory dwelling unit, shall be located a minimum of five (5) feet from side and rear property lines, and shall be no closer than ten (10) feet to any other detached structure on the same lot.

5. A waiver from Section 38-1384(i)(2), for PD Parcels 4, 5, 11, 12, and 17, to allow vehicular access to garages or other off-street parking to be from a rear alley tract, in lieu of an easement.

***Applicant Justification for Waivers 2-5:*** *The alleys are to be owned and maintained by the Home Owners Association (HOA). Placing them in a fee simple tract without underlying individual ownership allows for a clearer separation of ownership and maintenance responsibilities.*

6. A waiver from Section 30-714(c) is requested to allow the project to proceed beyond 5% of the approved PD entitlements, which 5% threshold is identified in the APF Agreement as 40 dwelling units (attached or detached); provided, however, that prior to said 5% threshold being reached or exceeded: (A) the approximately 5.81 acres of Future APF Right-of-Way have been conveyed to the County or to an escrow agent who is obligated to release a deed conveying such right-of-way to the County, in accordance with that certain Hartzog Road Right-of-Way Agreement recorded at ORB 9712/4850, as amended, and as affected by that certain First Amendment to Agreement Concerning Hartzog Road Right-of-Way Agreement recorded at ORB 11021/4154, as amended; (B) the approximately 0.98 acres of APF ROW have been conveyed to the County or placed into escrow, pursuant to an escrow agreement acceptable to the County; and (C) the approximately 5.0 acre APF Park has been conveyed to the County or placed into escrow, pursuant to an escrow agreement acceptable to the County.

***Applicant Justification:*** *The school sites cannot be conveyed unless and until the School Board of Orange County requests such conveyances. The timing of*

*conveyance will be addressed in the Capacity Enhancement Agreement for this PD.*

<b>LOCATION</b>	Generally east of Avalon Road, north of Hartzog Road, and south of Western Way
<b>PARCEL ID NUMBERS</b>	29-24-27-0000-00-001, 29-24-27-0000-00-003, 29-24-27-0000-00-004, 29-24-27-0000-00-008, 29-24-27-0000-00-009, 29-24-27-0000-00-010, 29-24-27-0000-00-017, and 30-24-27-0000-00-011
<b>TRACT SIZE</b>	320.75 gross acres
<b>PUBLIC NOTIFICATION</b>	The notification area for this public hearing was 700 feet [Chapter 30-40(c)(3a) of the Orange County Code requires 300 feet]. Forty-nine (49) notices were mailed to those property owners in the mailing area. A community meeting was not required for this application.
<b>PROPOSED USE</b>	814 residential units, 10,000 square feet of commercial uses, APF Park, Elementary School, and Middle School

### **STAFF RECOMMENDATION**

#### **Development Review Committee – (September 11, 2019)**

**Make a finding of consistency with the Comprehensive Plan and recommend APPROVAL of the Withers Planned Development / Land Use Plan (PD/LUP), dated “Received June 5, 2019”, subject to the following conditions:**

1. Development shall conform to the Withers Land Use Plan (LUP) dated "Received June 5, 2019," and shall comply with all applicable federal, state, and county laws, ordinances, and regulations, except to the extent that any applicable county laws, ordinances, or regulations are expressly waived or modified by any of these conditions. Accordingly, the PD may be developed in accordance with the uses, densities, and intensities described in such Land Use Plan, subject to those uses, densities, and intensities conforming with the restrictions and requirements found in the conditions of approval and complying with all applicable federal, state, and county laws, ordinances, and regulations, except to the extent that any applicable county laws, ordinances, or regulations are expressly waived or modified by any of these conditions. If the development is unable to achieve or obtain desired uses, densities, or intensities, the County is not under any obligation to grant any waivers or modifications to enable the developer to achieve or obtain those desired uses, densities, or intensities. In the event of a conflict or inconsistency between a condition of approval and the land use plan dated "Received June 5, 2019," the condition of approval shall control to the extent of such conflict or inconsistency.

2. This project shall comply with, adhere to, and not deviate from or otherwise conflict with any verbal or written promise or representation made by the applicant (or authorized agent) to the Board of County Commissioners ("Board") at the public hearing where this development received final approval, where such promise or representation, whether oral or written, was relied upon by the Board in approving the development, could have reasonably been expected to have been relied upon by the Board in approving the development, or could have reasonably induced or otherwise influenced the Board to approve the development. In the event any such promise or representation is not complied with or adhered to, or the project deviates from or otherwise conflicts with such promise or representation, the County may withhold (or postpone issuance of) development permits and / or postpone the recording of (or refuse to record) the plat for the project. For purposes of this condition, a "promise" or "representation" shall be deemed to have been made to the Board by the applicant (or authorized agent) if it was expressly made to the Board at a public hearing where the development was considered and approved.
3. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
4. Developer / Applicant has a continuing obligation and responsibility from the date of approval of this land use plan to promptly disclose to the County any changes in ownership, encumbrances, or other matters of record affecting the property that is subject to the plan, and to resolve any issues that may be identified by the County as a result of any such changes. Developer / Applicant acknowledges and understands that any such changes are solely the Developer's / Applicant's obligation and responsibility to disclose and resolve, and that the Developer's / Applicant's failure to disclose and resolve any such changes to the satisfaction of the County may result in the County not issuing (or delaying issuance of) development permits, not recording (or delaying recording of) a plat for the property, or both.
5. Property that is required to be dedicated or otherwise conveyed to Orange County (by plat or other means) shall be free and clear of all encumbrances, except as may be acceptable to County and consistent with the anticipated use. Owner / Developer shall provide, at no cost to County, any and all easements required for approval of a project or necessary for relocation of existing easements, including any existing facilities, and shall be responsible for the full costs of any such relocation prior to Orange County's acceptance of the conveyance. Any encumbrances that are discovered after approval of a PD Land Use Plan shall be the responsibility of Owner / Developer to release and relocate, at no cost to County, prior to County's acceptance of conveyance. As part of the review process for construction plan approval(s), any required off-site easements identified by County must be conveyed to County prior to any such approval, or at a later date as determined by County. Any failure to comply with this condition may result in the withholding of development permits and plat approval(s).

6. The following Education Condition of Approval shall apply:
- a) Developer shall comply with all provisions of the Capacity Enhancement Agreement entered into with the Orange County School Board as of September 24, 2019.
  - b) Upon the County's receipt of written notice from Orange County Public Schools that the developer is in default or breach of the Capacity Enhancement Agreement, the County shall immediately cease issuing building permits for any residential units in excess of the 15 residential units allowed under the zoning existing prior to the approval of the PD zoning. The County may again begin issuing building permits upon Orange County Public Schools' written notice to the County that the developer is no longer in breach or default of the Capacity Enhancement Agreement. The developer and its successor(s) and/or assign(s) under the Capacity Enhancement Agreement, shall indemnify and hold the County harmless from any third party claims, suits, or actions arising as a result of the act of ceasing the County's issuance of residential building permits.
  - c) Developer, and its successor(s) and/or assign(s) under the Capacity Enhancement Agreement, agrees that it shall not claim in any future litigation that the County's enforcement of any of these conditions are illegal, improper, unconstitutional, or a violation of developer's rights.
  - d) Orange County shall be held harmless by the developer and its successor(s) and/or assign(s) under the Capacity Enhancement Agreement, in any dispute between the developer and Orange County Public Schools over any interpretation or provision of the Capacity Enhancement Agreement.

Prior to or concurrently with the County's approval of the plat, documentation shall be provided from Orange County Public Schools that this project is in compliance with the Capacity Enhancement Agreement.

7. The Owner shall convey the school site(s) as required by the Adequate Public Facilities (APF) agreement and Capacity Enhancement Agreement (CEA), as may be amended; failure to comply shall authorize OCPS to request that Orange County discontinue the issuance of any building permits, certificates of occupancy, or any other approvals associated with this PD.
8. Unless the property is otherwise vested or exempt, the applicant must apply for and obtain a Capacity Encumbrance Letter (CEL) prior to construction plan submittal and must apply for and obtain a Capacity Reservation Certificate (CRC) prior to approval of the plat. Nothing in this condition, and nothing in the decision to approve this land use plan, shall be construed as a guarantee that the applicant will be able to satisfy the requirements for obtaining a CEL or a CRC.
9. The Applicant shall comply with the terms and conditions of the Hartzog Road Right-of-Way Agreement recorded at Official Records Book/Page 9712/4850, Public Records of Orange County, Florida, as may be amended.

10. This project will be subject to the terms and conditions of the pending Village I Road Network Agreement.
11. Approval of this plan does not constitute approval of a permit for the construction of a boat ramp. Any person desiring to construct a boat ramp shall apply to the Orange County Environmental Protection Division as specified in Orange County Code Chapter 15 Environmental Control, Article XV Boat Ramps, prior to installation, for an Orange County Boat Ramp Facility Permit, as well as to any other Orange County Division(s) for any other applicable permits.
12. All acreages identified as conservation areas and wetland buffers are considered approximate until finalized by a Conservation Area Determination (CAD) and a Conservation Area Impact (CAI) Permit. Approval of this plan does not authorize any direct or indirect conservation area impacts.
13. Approval of this plan does not constitute approval of a permit for the construction of a boat dock, boardwalk, observation pier, fishing pier, community pier or other similar permanently fixed or floating structures. Any person desiring to construct any of these structures shall apply to the Orange County Environmental Protection Division, as specified in Orange County Code Chapter 15 Environmental Control, Article IX Dock Construction, prior to installation, for an Orange County Dock Construction Permit, as well as to any other Orange County Division(s) for any other applicable permits.
14. Prior to mass grading, clearing, grubbing or construction, the applicant is hereby noticed that this site must comply with habitat protection regulations of the U.S. Fish and Wildlife Service (USFWS) and the Florida Fish & Wildlife Conservation Commission (FWC).
15. No activity will be permitted on the site that may disturb, influence, or otherwise interfere with: areas of soil or groundwater contamination, or any remediation activities, or within the hydrological zone of influence of any contaminated area, unless prior approval has been obtained through the Florida Department of Environmental Protection (FDEP) and such approval has been provided to the Environmental Protection Division of Orange County. An owner/operator who exacerbates any existing contamination or does not properly dispose of any excavated contaminated media may become liable for some portion of the contamination pursuant to the provisions in section 376.308, F.S.
16. The developer shall obtain water, wastewater, and reclaimed water service from Orange County Utilities subject to County rate resolutions and ordinances.
17. Construction plans within this PD shall be consistent with an approved and up-to-date Master Utility Plan (MUP) for Village I. MUP updates shall be submitted to Orange County Utilities at least thirty (30) days prior to the corresponding construction plan submittal. The updated MUP must be approved prior to construction plan approval.
18. At least thirty (30) days prior to construction plan submittal, the applicant shall submit a Master Utility Plan (MUP) for the PSP, including hydraulically dependent parcels

- outside the PSP boundaries: such MUP shall include supporting calculations showing that the PSP-level MUP is consistent with the approved and up-to-date MUP for the Village, or shall include an update to the Village MUP to incorporate any revisions. The MUP(s) must be approved prior to construction plan approval.
19. The developer shall be responsible for building master utilities transmission and collection infrastructure adequate to serve the project to accommodate the ultimate flows for the entire Village (SAP). Utilities infrastructure shall be built connecting to the build-out points of connection approved in the Master Utilities Plan (MUP).
  20. Prior to construction plan approval, all property owners within the Village I, excluding public entities, shall be required to sign an agreement between the parties addressing their proportionate share of funds for the costs of the offsite and onsite master utilities sized to Village requirements. Property owners may elect to use alternate financing in lieu of the private proportionate cost share agreement provided master utilities sized for Village requirements are constructed.
  21. A 5-year interim Master Utility Plan (MUP) for Village I must be approved prior to Construction Plan approval within this PD.
  22. Pole signs and billboards shall be prohibited. Ground and Fascia signs shall comply per Chapter 31.5 and Section 38-1755(o) of the School Siting Regulations.
  23. Tree removal/Earthwork shall not occur unless and until construction plans for the first Preliminary Subdivision and/or Development Plan with a tree removal and mitigation plan have been approved by Orange County.
  24. A current Phase One Environmental Site Assessment (ESA) and current title opinion shall be submitted to the County for review as part of any Preliminary Subdivision Plan (PSP) and /or Development Plan (DP) submittal and must be approved prior to Preliminary Subdivision Plan (PSP) and /or Development Plan (DP) approval for any streets and/or tracts anticipated to be dedicated to the County and/or to the perpetual use of the public.
  25. The following waivers from Orange County Code are granted:
    - a. A waiver from Section 34-152(c), for PD Parcels 4, 5, 11, 12, and 17, to allow lots to front a mews, park, open space, etc. and have access via a tract or easement, in lieu of the requirement that each lot shall have a minimum access width of twenty (20) feet to a dedicated public paved street.
    - b. A waiver from Section 38-1382(h)(4), for PD Parcels 4, 5, 11, 12, and 17, to allow alleys to be designed as a tract, in lieu of the requirement that they shall be designed as a private easement.
    - c. A waiver from Section 38-1384(g)(1), for PD Parcels 4, 5, 11, 12, and 17, to allow garage access to be setback from an alley tract, in lieu of an easement

- d. A waiver from Section 38-1384(i)(2), for PD Parcels 4, 5, 11, 12, and 17, to allow vehicular access to garages or other off-street parking to be from a rear alley tract, in lieu of an easement.
- e. A waiver from Section 38-1384(g)(2), for PD Parcels 4, 5, 11, 12, and 17, to allow detached garages without access to a rear alley tract, including garages with an accessory dwelling unit, shall be located a minimum of five (5) feet from side and rear property lines, and shall be no closer than ten (10) feet to any other detached structure on the same lot, in lieu of detached garages without access to a rear alley easement, including garages with an accessory dwelling unit, shall be located a minimum of five (5) feet from side and rear property lines, and shall be no closer than ten (10) feet to any other detached structure on the same lot.
- f. A waiver from Section 30-714(c) to allow the project to proceed beyond 5% of the approved PD entitlements, which 5% threshold is identified in the APF Agreement as 40 dwelling units (attached or detached); provided, however, that prior to said 5% threshold being reached or exceeded: (A) the approximately 5.81 acres of Future APF Right-of-Way have been conveyed to the County or to an escrow agent who is obligated to release a deed conveying such right-of-way to the County, in accordance with that certain Hartzog Road Right-of-Way Agreement recorded at ORB 9712/4850, as amended, and as affected by that certain First Amendment to Agreement Concerning Hartzog Road Right-of-Way Agreement recorded at ORB 11021/4154, as amended; (B) the approximately 0.98 acres of APF ROW have been conveyed to the County or placed into escrow, pursuant to an escrow agreement acceptable to the County; and (C) the approximately 5.0 acre APF Park has been conveyed to the County or placed into escrow, pursuant to an escrow agreement acceptable to the County.

## **IMPACT ANALYSIS**

### **Land Use Compatibility**

The proposed development program is compatible with existing development in the area, and would not adversely impact any adjacent properties.

### **Comprehensive Plan (CP) Consistency**

The subject property has an underlying Future Land Use Map (FLUM) designation of Village (V), indicating that it is within the Horizon West Special Planning Area. More specifically, the subject property is located within Horizon West Village I and is currently proposed as Village Home District (VHD), which allows for a required density of six (6) dwelling units per net developable acre, Townhome District (THD), which allows for a required density of eight (8) dwelling units per net developable acre, and Neighborhood Center (NC) which allows for commercial development. Additionally, there are school and APF Park designations being proposed.



The proposed use is consistent with the underlying Village FLUM designation and applicable CP provisions, which include (but are not limited to) the following goals, objectives and policies:

**FLU1.4.1** states Orange County shall promote a range of living environments and employment opportunities in order to achieve a stable and diversified population and community.

**FLU1.4.2** states that Orange County shall ensure that land uses changes are compatible with and serve existing neighborhoods.

**GOAL FLU2** states that Orange County will encourage urban strategies such as infill development, coordinated land use and transportation planning, and mixed-use development, which promote efficient use of infrastructure, compact development and an urban experience with a range of choices and living options.

**GOAL FLU4** (Horizon West) states that it is Orange County's goal to ensure sustainable, quality development in Southwest Orange County to allow a transition from rural to urban uses while protecting environmental quality.

**OBJ FLU4.1** states that Orange County shall use a Village Land Use Classification to realize the long range planning vision for West Orange County created through the Horizon West planning process. The Village land use classification has been designed to address the need to overcome the problems associated with and provide a meaningful alternative to the leap-frog pattern of sprawl now occurring in western Orange and eastern Lake County; create a better jobs/housing balance between the large concentration of employment in the tourism industry and the surrounding land uses; create a land use pattern that will reduce reliance on the automobile by allowing a greater variety of land uses closer to work and home; and, replace piecemeal planning that reacts to development on a project by project basis with a long range vision that uses the Village as the building block to allow the transition of this portion of Orange County from rural to urban use through a specific planning process that uses a creative design approach to address regional, environmental, transportation, and housing issues.

**OBJ FLU8.2** states that compatibility will continue to be the fundamental consideration in all land use and zoning decisions. For purposes of this objective, the following polices shall guide regulatory decisions that involve differing land uses.

**FLU8.2.1** states that land use changes shall be required to be compatible with the existing development and development trend in the area. Performance restrictions and/or conditions may be placed on property through the appropriate development order to ensure compatibility. No restrictions or conditions shall be placed on a Future Land Use Map change.

**FLU8.2.2** states that continuous stretches of similar housing types and density of units shall be avoided. A diverse mix of uses and housing types shall be promoted.

**SITE DATA**

<b>Existing Use</b>	Undeveloped, Citrus Grove, Grazing
<b>Adjacent Zoning</b>	N: N/A (Reedy Creek Improvement District)
	E: PD (Planned Development District) (2004) ( <i>Orange Lake County Club PD</i> )
	PD (Planned Development District) (2006) ( <i>Brighthouse PD</i> )
	R-T-2 (Combination Mobile Home and Single-Family Dwelling District) (1986)
	W: A-1 (Citrus Rural District) (1957)
	A-2 (Farmland Rural District) (1957)
	S: R-CE (Country Estate District) (1972)
	R-T (Mobile Home Park District) (1984)
<b>Adjacent Land Uses</b>	N: Resource Management
	E: Mobile Home, CAT-TV Center, Undeveloped
	W: Undeveloped, Single-Family Dwelling
	S: Single-Family Residential, Mobile Home Park

**APPLICABLE PD DEVELOPMENT STANDARDS**

Unless expressly waived by the Board of County Commissioners, development shall comply with all standards found in Section 38-1387 (Neighborhood Center District, Townhome District, and Village Home District) of the Village Planned Development Code or with Article XVII, Public School Siting Regulations, as it relates to the Elementary and Middle School parcels.

**SPECIAL INFORMATION**

**Subject Property Analysis**

The applicant is seeking to rezone the subject parcels from A-1 (Citrus Rural District) and A-2 (Farmland Rural District) to PD (Planned Development District) in order to construct 814 single-family attached and detached residential dwelling units and 10,000 square feet of commercial uses. The request also includes the future conveyance of an Adequate Public Facility (APF) park, a middle school site, and an elementary school site.

Additionally, six (6) waivers from Orange County Code are requested to allow for alleys to be in tracts in lieu of easements; to allow lots that front mews, parks, or open spaces to access through tracts and easements in lieu of fee simple access to a County right-of-way; and to allow the project to proceed beyond 5% of the approved entitlements prior to

conveyance of the school sites. The school site conveyance is addressed in the approved Capacity Enhancement Agreement with Orange County Public Schools.

Given the 123.63 net developable acres and given the Village Home District required density of 6.0 dwelling units per net developable acre and the Townhome District required density of 8.0 dwelling units per net developable acre, the required residential yield is 752 dwelling units. The applicant is proposing to use 62 Transfer of Development Rights (TDR) credits internally within the proposed PD, increasing the development program to the proposed 814 dwelling units. A TDR agreement by and between Spring Grove, LLC, Columnar Partnership Holding I, LLC, and Withers, LLC, which assigns the TDR credits from designated sending areas to the receiving areas has been executed and recorded in Orange County Public Records under Document # 20190586529.

There are 17.05 acres of Adequate Public Facilities (APF) lands required with this application, with 51.18 acres of APF lands being dedicated for rights-of-way, school sites, and an APF Park location, creating an APF surplus of 34.13 acres. With this request, surplus APF acreage will be used to cover APF acreage deficits within the Spring Grove – Northeast PD (2.26 acres), the Spring Grove Jaffers PD (8.39 acres), the proposed Lake Mac PD (0.37 acres), and the proposed KRPC Hartzog Road PD (1.20 acres). This will result in an overall APF surplus of 21.91 acres. The related APF agreement (Case #APF-19-07-252) will be considered concurrently with this request at the Board of County Commissioners (BCC) hearing.

**Comprehensive Plan (CP) Amendment**

A CP amendment is not required for this application, as the requested zoning is consistent with the underlying Village (V) Future Land Use Map (FLUM) designation.

**State of Florida Notice**

Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.

**Community Meeting Summary**

A community meeting was not required for this request.

**Rural Settlement**

The subject property is not located within a Rural Settlement.

**Joint Planning Area (JPA)**

The subject property is not located within a JPA.

**Overlay District Ordinance**

The subject property is not located within an Overlay District.

**Airport Noise Zone**

The subject property is not located within an Airport Noise Zone.

**Environmental**

Wetlands and surface waters amounting to 104.7 acres are located on site as shown on the plan, including a large portion of Lake Gifford. Orange County Conservation Area Determination #CAD-16-05-049 was completed for this project with a certified wetland boundary survey approved on September 12, 2016. No wetland impacts are proposed with this request

The applicant is responsible for addressing any adverse impacts, including secondary impacts, to surface waters or wetlands that may occur as a result of development of the site. Protective measures include but are not limited to: 25-foot minimum undisturbed upland buffer along the wetland boundary, signage, and pollution abatement swales upland of the buffer if adjacent to surface waters and if drainage is not diverted to treatment. Clearly show and label all the protective measures employed to prevent adverse impacts in PSP/DP and permit applications.

This project site has a prior agricultural land use that may have resulted in soil and/or groundwater contamination due to spillage of petroleum products, fertilizer, pesticide or herbicide. Prior to the earlier of platting, demolition, site clearing, grading, grubbing, review of mass grading or construction plans, the applicant shall provide documentation to assure compliance with the Florida Department of Environmental Protection (FDEP) regulation 62-777 Contaminant Cleanup Target Levels, and any other contaminant cleanup target levels found to apply during further investigations, to the Orange County Environmental Protection and Development Engineering Divisions.

**Transportation / Access**

Orange County requires road right-of-way for re-aligned Hartzog Road from this project. The associated Adequate Public Facilities agreement (APF-19-07-252) provides for the conveyance of 5.81 acres for Hartzog Road and an additional 0.98 acre of right-of-way for a portion of a north / south connector road to the proposed middle school site. The associated APF agreement will be considered by the Board concurrent with this rezoning request.

On November 13, 2018 the Board of County Commissioners accepted a Term Sheet for Village I. The Roadway Network Agreement being negotiated currently is based on the terms of the term sheet. Per the County's Comprehensive Plan Policy FLU4.3.10, the Roadway Network Agreement, which must substantially conform with the Term Sheet, must be signed by the owners of a majority of the undeveloped acreage in Village I and approved by the BCC prior to approval of the first Preliminary Subdivision Plan and/or Development Plan in Village I, with the exception of any project that has a Capacity Encumbrance Letter issued prior to November 13, 2018.

The Hartzog Road Right-of-Way Agreement was approved by the BCC on June 3, 2008 and recorded at OR Book/Page 9712/4850. This agreement follows two prior agreements and realigns Hartzog Road through the Developer's properties to CR 545 Avalon Road north of the previously contemplated alignment. Under the terms of the agreement, the Developers will dedicate Right-of-Way for the re-aligned Hartzog Road and design the roadway for a four-lane roadway then construct the first two lanes of the roadway. Road

impact fee credits will be provided for the design and construction of the portion of the road beyond the first two lanes. The owners shall also receive a certain number of vested trips for participation in the roadway agreement. Currently the design is complete, however no Right-of-Way has been dedicated and construction has not started.

**Code Enforcement**

There are no active code enforcement violations on the subject property.

**Utilities**

Water: Orange County Utilities

Wastewater: Orange County Utilities

Reclaim Water: Orange County Utilities

**Schools**

A Capacity Enhancement Agreement (CEA) application was approved by OCPS on September 24, 2019.

**Parks and Recreation**

Orange County Parks and Recreation reviewed this request, but did not identify any issues or concerns.

**Specific Project Expenditure Report and Relationship Disclosure Form**

The original Specific Project Expenditure Report and Relationship Disclosure Form are currently on file with the Planning Division.

**PLANNING AND ZONING COMMISSION (PZC) FINDINGS**

The staff report was presented to the PZC with the recommendation that they make a finding of consistency with the Comprehensive Plan and recommend approval of the Withers Planned Development (PD) Land Use Plan, subject to twenty-five (25) conditions.

Staff indicated that forty-nine (49) notices were mailed to surrounding property owners within a buffer of 700 feet from the subject property, with zero (0) commentaries received in support or in opposition to the request. The applicant was present for the hearing and concurred with staff's recommendation. There were no members of the public present to speak on this request.

After a brief discussion, a motion was made by Commissioner Velazquez to find the request to be consistent with the Comprehensive Plan and recommend APPROVAL of the Withers PD Land Use Plan, subject to the twenty-five (25) conditions listed under the DRC Recommendation. Commissioner Fernandez seconded the motion, which then carried on a 3-0 vote.

**Motion / Second**

*Diane Velazquez / Eddie Fernandez*

**Voting in Favor**

*Diane Velazquez, Eddie Fernandez, and Yog Melwani*

***Voting in Opposition***                      *None*

***Absent***    *Carlos Nazario and JaJa Wade*

***Jimmy Dunn, Jose Cantero, Gordon Spears and Mohammed Abdallah declared conflicts of interest and recused themselves from the vote.***

## **PZC RECOMMENDED ACTION**

**Planning and Zoning Commission (PZC) Recommendation** – (September 19, 2019)

**Make a finding of consistency with the Comprehensive Plan and recommend APPROVAL of the Withers Planned Development / Land Use Plan (PD/LUP), dated "Received June 5, 2019", subject to the following conditions:**

1. Development shall conform to the Withers Land Use Plan (LUP) dated "Received June 5, 2019," and shall comply with all applicable federal, state, and county laws, ordinances, and regulations, except to the extent that any applicable county laws, ordinances, or regulations are expressly waived or modified by any of these conditions. Accordingly, the PD may be developed in accordance with the uses, densities, and intensities described in such Land Use Plan, subject to those uses, densities, and intensities conforming with the restrictions and requirements found in the conditions of approval and complying with all applicable federal, state, and county laws, ordinances, and regulations, except to the extent that any applicable county laws, ordinances, or regulations are expressly waived or modified by any of these conditions. If the development is unable to achieve or obtain desired uses, densities, or intensities, the County is not under any obligation to grant any waivers or modifications to enable the developer to achieve or obtain those desired uses, densities, or intensities. In the event of a conflict or inconsistency between a condition of approval and the land use plan dated "Received June 5, 2019," the condition of approval shall control to the extent of such conflict or inconsistency.
2. This project shall comply with, adhere to, and not deviate from or otherwise conflict with any verbal or written promise or representation made by the applicant (or authorized agent) to the Board of County Commissioners ("Board") at the public hearing where this development received final approval, where such promise or representation, whether oral or written, was relied upon by the Board in approving the development, could have reasonably been expected to have been relied upon by the Board in approving the development, or could have reasonably induced or otherwise influenced the Board to approve the development. In the event any such promise or representation is not complied with or adhered to, or the project deviates from or otherwise conflicts with such promise or representation, the County may withhold (or postpone issuance of) development permits and / or postpone the recording of (or refuse to record) the plat for the project. For purposes of this condition, a "promise" or "representation" shall be deemed to have been made to the Board by the applicant (or

- authorized agent) if it was expressly made to the Board at a public hearing where the development was considered and approved.
3. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
  4. Developer / Applicant has a continuing obligation and responsibility from the date of approval of this land use plan to promptly disclose to the County any changes in ownership, encumbrances, or other matters of record affecting the property that is subject to the plan, and to resolve any issues that may be identified by the County as a result of any such changes. Developer / Applicant acknowledges and understands that any such changes are solely the Developer's / Applicant's obligation and responsibility to disclose and resolve, and that the Developer's / Applicant's failure to disclose and resolve any such changes to the satisfaction of the County may result in the County not issuing (or delaying issuance of) development permits, not recording (or delaying recording of) a plat for the property, or both.
  5. Property that is required to be dedicated or otherwise conveyed to Orange County (by plat or other means) shall be free and clear of all encumbrances, except as may be acceptable to County and consistent with the anticipated use. Owner / Developer shall provide, at no cost to County, any and all easements required for approval of a project or necessary for relocation of existing easements, including any existing facilities, and shall be responsible for the full costs of any such relocation prior to Orange County's acceptance of the conveyance. Any encumbrances that are discovered after approval of a PD Land Use Plan shall be the responsibility of Owner / Developer to release and relocate, at no cost to County, prior to County's acceptance of conveyance. As part of the review process for construction plan approval(s), any required off-site easements identified by County must be conveyed to County prior to any such approval, or at a later date as determined by County. Any failure to comply with this condition may result in the withholding of development permits and plat approval(s).
  6. The following Education Condition of Approval shall apply:
    - a) Developer shall comply with all provisions of the Capacity Enhancement Agreement entered into with the Orange County School Board as of September 24, 2019.
    - b) Upon the County's receipt of written notice from Orange County Public Schools that the developer is in default or breach of the Capacity Enhancement Agreement, the County shall immediately cease issuing building permits for any residential units in excess of the 15 residential units allowed under the zoning existing prior to the approval of the PD zoning. The County may again begin issuing building permits upon Orange County Public Schools' written notice to the County that the

developer is no longer in breach or default of the Capacity Enhancement Agreement. The developer and its successor(s) and/or assign(s) under the Capacity Enhancement Agreement, shall indemnify and hold the County harmless from any third party claims, suits, or actions arising as a result of the act of ceasing the County's issuance of residential building permits.

- c) Developer, and its successor(s) and/or assign(s) under the Capacity Enhancement Agreement, agrees that it shall not claim in any future litigation that the County's enforcement of any of these conditions are illegal, improper, unconstitutional, or a violation of developer's rights.
- d) Orange County shall be held harmless by the developer and its successor(s) and/or assign(s) under the Capacity Enhancement Agreement, in any dispute between the developer and Orange County Public Schools over any interpretation or provision of the Capacity Enhancement Agreement.

Prior to or concurrently with the County's approval of the plat, documentation shall be provided from Orange County Public Schools that this project is in compliance with the Capacity Enhancement Agreement.

- 7. The Owner shall convey the school site(s) as required by the Adequate Public Facilities (APF) agreement and Capacity Enhancement Agreement (CEA), as may be amended; failure to comply shall authorize OCPS to request that Orange County discontinue the issuance of any building permits, certificates of occupancy, or any other approvals associated with this PD.
- 8. Unless the property is otherwise vested or exempt, the applicant must apply for and obtain a Capacity Encumbrance Letter (CEL) prior to construction plan submittal and must apply for and obtain a Capacity Reservation Certificate (CRC) prior to approval of the plat. Nothing in this condition, and nothing in the decision to approve this land use plan, shall be construed as a guarantee that the applicant will be able to satisfy the requirements for obtaining a CEL or a CRC.
- 9. The Applicant shall comply with the terms and conditions of the Hartzog Road Right-of-Way Agreement recorded at Official Records Book/Page 9712/4850, Public Records of Orange County, Florida, as may be amended.
- 10. This project will be subject to the terms and conditions of the pending Village I Road Network Agreement.
- 11. Approval of this plan does not constitute approval of a permit for the construction of a boat ramp. Any person desiring to construct a boat ramp shall apply to the Orange County Environmental Protection Division as specified in Orange County Code Chapter 15 Environmental Control, Article XV Boat Ramps, prior to installation, for an Orange County Boat Ramp Facility Permit, as well as to any other Orange County Division(s) for any other applicable permits.
- 12. All acreages identified as conservation areas and wetland buffers are considered approximate until finalized by a Conservation Area Determination (CAD) and a



- Conservation Area Impact (CAI) Permit. Approval of this plan does not authorize any direct or indirect conservation area impacts.
13. Approval of this plan does not constitute approval of a permit for the construction of a boat dock, boardwalk, observation pier, fishing pier, community pier or other similar permanently fixed or floating structures. Any person desiring to construct any of these structures shall apply to the Orange County Environmental Protection Division, as specified in Orange County Code Chapter 15 Environmental Control, Article IX Dock Construction, prior to installation, for an Orange County Dock Construction Permit, as well as to any other Orange County Division(s) for any other applicable permits.
  14. Prior to mass grading, clearing, grubbing or construction, the applicant is hereby noticed that this site must comply with habitat protection regulations of the U.S. Fish and Wildlife Service (USFWS) and the Florida Fish & Wildlife Conservation Commission (FWC).
  15. No activity will be permitted on the site that may disturb, influence, or otherwise interfere with: areas of soil or groundwater contamination, or any remediation activities, or within the hydrological zone of influence of any contaminated area, unless prior approval has been obtained through the Florida Department of Environmental Protection (FDEP) and such approval has been provided to the Environmental Protection Division of Orange County. An owner/operator who exacerbates any existing contamination or does not properly dispose of any excavated contaminated media may become liable for some portion of the contamination pursuant to the provisions in section 376.308, F.S.
  16. The developer shall obtain water, wastewater, and reclaimed water service from Orange County Utilities subject to County rate resolutions and ordinances.
  17. Construction plans within this PD shall be consistent with an approved and up-to-date Master Utility Plan (MUP) for Village I. MUP updates shall be submitted to Orange County Utilities at least thirty (30) days prior to the corresponding construction plan submittal. The updated MUP must be approved prior to construction plan approval.
  18. At least thirty (30) days prior to construction plan submittal, the applicant shall submit a Master Utility Plan (MUP) for the PSP, including hydraulically dependent parcels outside the PSP boundaries; such MUP shall include supporting calculations showing that the PSP-level MUP is consistent with the approved and up-to-date MUP for the Village, or shall include an update to the Village MUP to incorporate any revisions. The MUP(s) must be approved prior to construction plan approval.
  19. The developer shall be responsible for building master utilities transmission and collection infrastructure adequate to serve the project to accommodate the ultimate flows for the entire Village (SAP). Utilities infrastructure shall be built connecting to the build-out points of connection approved in the Master Utilities Plan (MUP).
  20. Prior to construction plan approval, all property owners within the Village I, excluding public entities, shall be required to sign an agreement between the parties addressing their proportionate share of funds for the costs of the offsite and onsite master utilities

- sized to Village requirements. Property owners may elect to use alternate financing in lieu of the private proportionate cost share agreement provided master utilities sized for Village requirements are constructed.
21. A 5-year interim Master Utility Plan (MUP) for Village I must be approved prior to Construction Plan approval within this PD.
  22. Pole signs and billboards shall be prohibited. Ground and Fascia signs shall comply per Chapter 31.5 and Section 38-1755(o) of the School Siting Regulations.
  23. Tree removal/Earthwork shall not occur unless and until construction plans for the first Preliminary Subdivision and/or Development Plan with a tree removal and mitigation plan have been approved by Orange County.
  24. A current Phase One Environmental Site Assessment (ESA) and current title opinion shall be submitted to the County for review as part of any Preliminary Subdivision Plan (PSP) and /or Development Plan (DP) submittal and must be approved prior to Preliminary Subdivision Plan (PSP) and /or Development Plan (DP) approval for any streets and/or tracts anticipated to be dedicated to the County and/or to the perpetual use of the public.
  25. The following waivers from Orange County Code are granted:
    - a. A waiver from Section 34-152(c), for PD Parcels 4, 5, 11, 12, and 17, to allow lots to front a mews, park, open space, etc. and have access via a tract or easement, in lieu of the requirement that each lot shall have a minimum access width of twenty (20) feet to a dedicated public paved street.
    - b. A waiver from Section 38-1382(h)(4), for PD Parcels 4, 5, 11, 12, and 17, to allow alleys to be designed as a tract, in lieu of the requirement that they shall be designed as a private easement.
    - c. A waiver from Section 38-1384(g)(1), for PD Parcels 4, 5, 11, 12, and 17, to allow garage access to be setback from an alley tract, in lieu of an easement
    - d. A waiver from Section 38-1384(i)(2), for PD Parcels 4, 5, 11, 12, and 17, to allow vehicular access to garages or other off-street parking to be from a rear alley tract, in lieu of an easement.
    - e. A waiver from Section 38-1384(g)(2), for PD Parcels 4, 5, 11, 12, and 17, to allow detached garages without access to a rear alley tract, including garages with an accessory dwelling unit, shall be located a minimum of five (5) feet from side and rear property lines, and shall be no closer than ten (10) feet to any other detached structure on the same lot, in lieu of detached garages without access to a rear alley easement, including garages with an accessory dwelling unit, shall be located a minimum of five (5) feet from side and rear property lines, and shall be no closer than ten (10) feet to any other detached structure on the same lot.

- f. A waiver from Section 30-714(c) to allow the project to proceed beyond 5% of the approved PD entitlements, which 5% threshold is identified in the APF Agreement as 40 dwelling units (attached or detached); provided, however, that prior to said 5% threshold being reached or exceeded: (A) the approximately 5.81 acres of Future APF Right-of-Way have been conveyed to the County or to an escrow agent who is obligated to release a deed conveying such right-of-way to the County, in accordance with that certain Hartzog Road Right-of-Way Agreement recorded at ORB 9712/4850, as amended, and as affected by that certain First Amendment to Agreement Concerning Hartzog Road Right-of-Way Agreement recorded at ORB 11021/4154, as amended; (B) the approximately 0.98 acres of APF ROW have been conveyed to the County or placed into escrow, pursuant to an escrow agreement acceptable to the County; and (C) the approximately 5.0 acre APF Park has been conveyed to the County or placed into escrow, pursuant to an escrow agreement acceptable to the County.