

**CASE # CDR-18-07-240**

Commission District: # 2

**GENERAL INFORMATION**

**APPLICANT** Thomas Sullivan, Gray Robinson, P.A.

**OWNER** ECP Grassmere, LLC

**PROJECT NAME** Grassmere Reserve Planned Development

**PARCEL ID NUMBER** 26-20-27-0000-00-020

**TRACT SIZE** 129.08 gross acres (*overall PD*)

**LOCATION** 2523 Junction Road; or generally located east of Junction Road, north of N. Orange Blossom Trail, and south of W. Ponkan Road

**REQUEST** A Change Determination Request (CDR) to reduce the minimum lot size from 95'x150' to 70'x120' in order to allow for compliance with Wekiva open space requirements. No net change in the number of units is proposed.

In addition, the applicant has requested the following waivers from Orange County Code:

1. A waiver from Section 38-556(a) to allow a minimum lot size of 70' by 120' lot size (8,400 square feet lot area), in lieu of code required minimum lot width of 100' and 1/3 acre (14,520 square feet lot area) for lots with central water service.

***Applicant Justification:*** To maintain the overall density of the previously approved PD, while complying with current open space standards.

2. A waiver from Section 38-556(b) to allow for a front setback of 25 feet, in lieu of 30 feet.

***Applicant Justification:*** To maintain the overall density of the previously approved PD, while complying with current open space standards.

**PUBLIC NOTIFICATION** A notification area extending beyond five hundred (500) feet was used for this application [Chapter 30-40(c)(3a) of the Orange County Code requires 300 feet]. Eight hundred sixty-eight (868) notices were mailed to those property owners in the notification buffer area. A community meeting was not required for this application.

## **IMPACT ANALYSIS**

### **Special Information**

The Grassmere Reserve PD was originally approved on July 13, 2006 and has a development program of 103 single-family detached dwellings with a minimum lot size of 95'x150'.

Through this PD Change Determination Request (CDR), the applicant is seeking to reduce the minimum lot size from 95'x150' to 70'x120' in order to allow for compliance with Wekiva open space requirements, which require 50% of the site to be preserved as open space. This request does not change the number of approved units. Additionally, a waiver from Orange County Code is requested to allow the reduction in the lot with to 70 feet in lieu of 95 feet, and a second waiver is requested to allow the reduction from the front setback to 25 feet in lieu of 30 feet.

### **Land Use Compatibility**

The proposed PD substantial change would not adversely impact any adjacent properties or result in an incompatible land use pattern.

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

The subject property has an underlying Future Land Use Map (FLUM) designation of Rural Settlement 1/1 (RS 1/1). The proposed Change Determination Request (CDR) is consistent with the designation and all applicable CP provisions; therefore, a CP amendment is not necessary.

### **Overlay Ordinance**

The subject property is not located within an Overlay District.

### **Rural Settlement**

The subject property is located within the Zellwood Rural Settlement.

### **Joint Planning Area (JPA)**

The subject property is not located within a JPA.

### **Environmental**

The Mid-Florida Materials and Golden Gem Road Landfill are located approximately 0.5 miles north of this development. The applicant/owner has an affirmative obligation to expressly notify potential purchasers, builders, and/or tenants of this development, through the appropriate mechanism, including a conspicuous note on the plat and/or a recorded restrictive covenant, as applicable, of the proximity of solid waste management facilities. This notification is required since the County shall not support the siting of developments at urban residential densities that would be adversely impacted by existing solid waste management activities.

The Lake Apopka Restoration Area is located approximately 0.5 miles west. The applicant / owner has an affirmative obligation to expressly notify potential purchasers, builders, and/or tenants of this development, through an appropriate mechanism, including a conspicuous note on the plat and/or a recorded restrictive covenant, as applicable, that the adjacent land use includes publicly managed property. The notice shall indicate that the adjacent property will require the use of resource management

practices that may result in periodic temporary conditions that may limit outdoor activities. These practices will include, but not be limited to, ecological burning, pesticide and herbicide usage, exotic plant and animal removal, usage of heavy equipment and machinery, and other practices as may be deemed necessary for proper resource management.

Development of the subject property shall comply with all state and federal regulations regarding wildlife and plants listed as endangered, threatened, or species of special concern. The applicant is responsible to determine the presence of listed species and obtain any required habitat permits from the U.S. Fish and Wildlife Service (USFWS) and/or the Florida Fish & Wildlife Conservation Commission (FWC). Gopher tortoises have been located on site.

**Transportation / Concurrency**

Based on the concurrency management system database, there are no failing roadways within a one mile radius of the project. This information is dated and subject to change.

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.

**Community Meeting Summary**

A community meeting was not required for this request.

**Schools**

Orange County Public Schools (OCPS) reviewed the request and determined that it will not impact public school capacity.

**Parks and Recreation**

Orange County Parks and Recreation staff reviewed the Change Determination Request but did not identify any issues or concerns.

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

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

**ACTION REQUESTED**

**Development Review Committee (DRC) Recommendation – (November 21, 2018)**

**Make a finding of consistency with the Comprehensive Plan and recommend APPROVAL of the Grassmere Reserve Planned Development / Land Use Plan (PD/LUP), dated “October 15, 2018”, subject to the following conditions:**

1. Development shall conform to the Grassmere Reserve PD Land Use Plan (LUP) dated "Received October 15, 2018," 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 October 15, 2018," 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. 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.
  7. Lake Grassmere shall be limited to non-motorized watercrafts.
  8. 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.
  9. 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.
  10. 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).
  11. The applicant / owner has an affirmative obligation to expressly notify potential purchasers, builders, and/or tenants of this development, through an appropriate mechanism, including a conspicuous note on the plat and/or a recorded restrictive covenant, as applicable, that the adjacent land use includes publicly managed property. The notice shall indicate that the adjacent property will require the use of resource management practices that may result in periodic temporary conditions that

- may limit outdoor activities. These practices will include, but not be limited to, ecological burning, pesticide and herbicide usage, exotic plant and animal removal, usage of heavy equipment and machinery, and other practices as may be deemed necessary for proper resource management.
12. The applicant/owner has an affirmative obligation to expressly notify potential purchasers, builders, and/or tenants of this development, through the appropriate mechanism, including a conspicuous note on the plat and/or a recorded restrictive covenant, as applicable, of the proximity of solid waste management facilities.
  13. Approval of this plan does not constitute approval of a permit for the construction or alteration 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. Tree removal/earthwork shall not occur unless and until construction plans for the first Preliminary Subdivision Plan and/or Development Plan with a tree removal and mitigation plan have been approved by Orange County.
  15. Pole signs and billboards shall be prohibited. Ground and fascia signs shall comply with Chapter 31.5 of the Orange County Code.
  16. The developer shall obtain water and wastewater service from the City of Apopka.
  17. The following waivers from Orange County Code are granted:
    - a. A waiver from Section 38-556(a) to allow a minimum lot size of 70' by 120' lot size (8,400 square feet lot area), in lieu of code required minimum lot width of 100' and 1/3 acre (14,520 square feet lot area) for lots with central water service.
    - b. A waiver from Orange County Code Section 38-556(b) to allow for a front setback of 25 feet, in lieu of 30 feet.
  18. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated June 13, 2006 shall apply:
    - a. Developer shall comply with all provisions of the Public Education Agreement entered into with the Orange County School Board as of April 12, 2005. The developer has a signed Capacity Enhancement Agreement with Orange County Public Schools dated September 28, 2005 (executed on October 12, 2005), and is on file with the Orange County Planning Division.

Upon the County's receipt of written notice from Orange County Public Schools that the developer is in default or breach of the Public Education Agreement, the County shall immediately cease issuing building permits for any residential units in excess of the 10 (ten) residential units allowed under the zoning existing prior

to the approval of the PD zoning. The County shall 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 Public Education Agreement. The developer and its successor or assign under the Public Education 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.

Developer, or its successor or assign under the Public Education 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 property rights.

Orange County shall be held harmless by the developer and its assigns under the Public Education Agreement, in any dispute between the developer and Orange County Public Schools over any interpretation or provision of the Public Education Agreement.

- b. At the Preliminary Subdivision Plan (PSP) stage, the applicant shall propose a 5-acre park. The density for the park shall be relocated within the project and shall count towards the applicant's recreation requirements.
- c. At the PSP stage, the need for a 6-foot masonry wall along U.S. 441 shall be evaluated.

**PREVIOUS BOARD OF COUNTY COMMISSIONERS ACTION (June 13, 2006)**

Upon a motion by Commissioner Sindler, seconded by Commissioner Segal, and carried with all present members voting AYE by voice vote; Commissioner Fernandez and Stewart were absent; the Board approved the request by Thomas Daly, Grassmere Reserve Planned Development (PD), to rezone from Citrus Rural District (A-1) (1957) to PD District, subject to DRC recommended conditions.