

**CASE # CDR-18-12-418**

Commission District: # 2

**GENERAL INFORMATION**

**APPLICANT** David Evans, Evans Engineering, Inc.

**OWNER** Silvestri Investments of Florida, Inc.

**PROJECT NAME** Zellwood Station Planned Development

**PARCEL ID NUMBER(S)** 25-20-27-0000-00-001 (affected parcel only)

**TRACT SIZE** 843.00 gross acres (overall PD)  
71.34 gross acres (affected parcel only)

**LOCATION** 2600 Fairbluff Road, or generally located south of W. Ponkan Road and west of State Road 429

**REQUEST** A PD substantial change to remove the age-restriction on the northwest 71.34 gross acres of the PD to allow for the development of 277 single-family dwelling units with school-aged children. No waivers from Orange County Code are proposed with this request.

**PUBLIC NOTIFICATION** A notification area extending beyond one thousand (1,000) feet was used for this application [Chapter 30-40(c)(3a) of the Orange County Code requires 300 feet]. Four hundred forty-five (445) 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 existing Zellwood Station PD contains 843 gross acres, and was originally approved by the Board of County Commissioners on October 30, 1973 with a general development program consisting of residential, parks and recreation, commercial, and institutional land uses. To date, the project has been partially developed with 1,998 residential lots, including both single-family homes and mobile homes.

Through this PD substantial change, the applicant is seeking to remove the age-restriction on the northwest 71.34 gross acres of the PD to allow for the development of 277 single-family dwelling units with school-aged children. No waivers from Orange County Code are proposed with this request.

**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 Low Density Residential (LDR) and Parks and Recreation / Open Space (PR/OS). The proposed PD substantial change 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 Station Rural Settlement.

**Joint Planning Area (JPA)**

The subject property is not located within a JPA.

**Environmental**

Orange County Conservation Area Determination CAD-18-10-159 delineated a 0.28-acre Class III wetland on the subject area. This determination was approved on December 27, 2018 and expires in 5 years. Additionally, Orange County Conservation Area Impact Permit CAI-19-01-000 has been submitted for review in order to impact the identified 0.28-acre of wetlands.

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

The H. Fields and G. Robinson inactive Class III solid waste disposal facility is located 0.3 miles south, the Mid-Florida Materials active Class III solid waste disposal facility is located 0.5 miles north-northwest, and the Golden Gem inactive Class III solid waste disposal facility is located 0.7 miles northwest. 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. Reference Orange County Comprehensive Plan, Solid Waste Element, Policy SW1.7.4.

Density and Floor Area Ratio (FAR) calculation is determined by dividing the total number of units/square footage by the net developable land area. The net developable land area is defined as the gross land area, less surface waters and wetland areas. In order to include Class I, II and III conservation areas in the density and FAR calculations, the parcels shall have an approved Conservation Area Determination (CAD) and an approved Conservation Area Impact (CAI) permit from the Orange County

Environmental Protection Division. Reference Orange County Comprehensive Plan Policy FLU1.1.2 C.

This site is located within the geographical limits of the Wekiva Study Area, as established by the Wekiva Parkway and Protection Act, Section 369.316 F.S. Special area regulations may apply. In addition to the state regulations, local policies are included in Orange County Comprehensive Plan 2010-2030, Future Land Use Element (but not limited to) Objective FLU6.6 Wekiva.

**Transportation / Concurrency**

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 issuance of the initial certificate of occupancy. 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.

Based on the Concurrency Management System database dated January 22, 2019, capacity is available to be encumbered for this project. This information is dated and is subject to change.

**Community Meeting Summary**

A community meeting was not required for this request.

**Schools**

The applicant submitted an application for a Capacity Enhancement Agreement (CEA) to Orange County Public Schools (OCPS). This agreement (CEA #OC-18-055) was reviewed by OCPS and was approved by the Orange County School Board on September 10, 2019.

**Parks and Recreation**

Orange County Parks and Recreation reviewed the 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 – (June 26, 2019)**

**Make a finding of consistency with the Comprehensive Plan and recommend APPROVAL of the Zellwood Station Planned Development / Land Use Plan (PD/LUP), dated “May 24, 2019”, subject to the following conditions:**

1. Development shall conform to the Zellwood Station PD Land Use Plan (LUP) dated "Received May 24, 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 May 24, 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 shall only apply to Parcel ID: 25-20-27-0000-00-001:
  - a. Developer shall comply with all provisions of the Capacity Enhancement Agreement entered into with the Orange County School Board as of September 10, 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 zero (0) 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.
  
  - e. 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. 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.
8. 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. The H. Fields and G. Robinson inactive Class III solid waste disposal facility is located 0.3 miles south, the Mid-Florida Materials active Class III solid waste disposal facility is located 0.5 miles north-northwest, and the Golden Gem inactive Class III solid waste disposal facility is located 0.7 miles northwest.
9. 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).
10. The developer shall obtain water and wastewater service from City of Apopka.
11. 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.
12. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated, September 22, 2015, shall apply:
  - a. 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.
  - b. The substation shall provide a Type B buffer adjacent to residential boundaries.
13. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated, August 5, 2008, shall apply:
  - a. Except for the units approved pursuant to CDR-18-12-418, no permanent school-aged children shall be generated as a result of any development on this development plan. Any proposal to add permanent school-aged children will be deemed a substantial change and shall require BCC approval.

14. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated, January 10, 1996, shall apply:
  - a. Since a positive outfall is not available, the stormwater management system shall be designed to retain the 100-year/24-hour storm on-site.
  - b. Approval of this plan will constitute approval of a development plan.
  - c. Developer shall build a five-foot sidewalk along Ponkan Road or contribute fifteen dollars (\$15) per foot toward construction of sidewalks in Orange County.
  
15. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated, October 30, 1973, shall apply:
  - a. Density approval of 2.6 dwelling units per gross residential acre should apply as a maximum to the entire project; maximum density of 1.5 dwelling units per residential acre should apply along the northern 600 feet measured from the planned highway right-of-way line of Ponkan Road; total number of lots not to exceed 1,960.
  - b. Provision that the area west of Lake Grassmere and east of loop facility be retained in greenbelt.
  - c. The northwesterly 1/3 of the north commercial area to be limited to professional office use.
  - d. Provision and approval of an adequate pedestrian-bicycle circulation prior to Final Development approval.
  - e. Installation of a six-foot screen wall and a 70-foot wide landscaped buffer along the proposed development and the Ponkan Road right-of-way shall be provided by developer.
  - f. Golf course may be open to membership from outside the project.

**PREVIOUS BOARD OF COUNTY COMMISSIONERS ACTION (September 22, 2015)**

Upon a motion by Nelson, seconded by Commissioner Clarke, and all present commissioners voting AYE by voice vote; the Board approved the request by Carmen Hunter with Duke Energy, for Zellwood Station Planned Development to expand an existing 2.21-acre institutional tract owned by Duke Energy Florida, Inc., by aggregating an adjacent 0.23-acre PD tract, resulting in the 2.44-acre tract allowing for the development of a Duke Energy electrical substation; which constitutes a substantial change to the development on the described property; subject to conditions.