



Interoffice Memorandum

DATE: October 3, 2022

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

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

CONTACT PERSON: Joe Kunkel, P.E., DRC Chairman
Development Review Committee
Public Works Department
(407) 836-7971

SUBJECT: October 25, 2022 – Public Hearing
Lance Bennett, Poulos & Bennett, LLC
Horizon West Village H Parcels 12A & 12B Planned
Development
Case # CDR-22-04-151 / District 1

The Horizon West Village H Parcels 12A & 12B Planned Development (PD) is located generally located south of Hartzog Road, and east of County Road 545. The existing PD development program allows for 439 residential multi-family and single-family attached dwelling units.

Through this PD substantial change, the applicant is seeking to allow for a Cell Tower use within the Upland Greenbelt. In addition, one waiver is requested to Orange County Code to allow a monopole between 80-feet and 140-feet in height to be within zero feet (0') of vacant, un-platted, residentially-zoned lands in lieu of the distance requirement of 280-feet.

On September 7, 2022, the Development Review Committee (DRC) recommended approval of the request, subject to conditions. A community meeting was not required for this request.

Finally, the required Specific Project Expenditure Report and Relationship Disclosure Forms have been completed in accordance with the requirements of Article X, Chapter 2, Orange County Code, as may be amended from time to time, and copies of these and the PD/LUP may be found in the Planning Division for further reference.

CASE # CDR-22-04-151

Commission District: # 1

GENERAL INFORMATION

APPLICANT Lance Bennett, Poulos & Bennett, LLC

OWNER M/I Homes of Orlando, LLC

PROJECT NAME Horizon West Village H Parcels 12A & 12B Planned Development

PARCEL ID NUMBER(S) 08-24-27-0000-00-006 (portion of)

TRACT SIZE 34.6 gross acres (overall PD)
0.23 gross acres (affected parcel only)

LOCATION Generally located South of Hartzog / East of County Road 545

REQUEST A PD substantial change to A Change Determination Request (CDR) to amend Parcels 12A & 12B PD to allow for a Cell Tower use within the Upland Greenbelt. In addition, the applicant has requested the following waiver from Orange County Code:

1. A waiver from Section A waiver 38-1427 (d) (2) (d) to allow a allow a monopole between 80-feet and 140-feet in height to be within zero feet (0') of vacant, un-platted, residentially-zoned lands in lieu of the distance requirement of 280-feet.

Applicant Justification: The proposed communication tower location is within the Upland Greenbelt, where it is sited in the southeastern corner of the Planned Development. Communication towers are necessary in this area to provide service to the significant residential and commercial development that is planned. This waiver specifically addresses the distance to the future Townhome development within the Townhome District.

PUBLIC NOTIFICATION A notification area extending beyond one thousand five hundred (1,500) feet was used for this application [Chapter 30-40(c)(3a) of the Orange County Code requires 300 feet]. Nineteen (19) 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 Horizon West Village H Parcels 12A & 12B Planned Development (PD) contains 34.6 gross acres and is generally located south of Hartzog Road, east of Avalon Road, west of State Road 429. The overall PD has existing development entitlements for 439 residential multi-family and single-family attached dwelling units.

Through this PD Change Determination Request (CDR), the applicant is seeking to allow for a Cell Tower use within the Upland Greenbelt. In addition, one waiver is requested to Orange County Code to allow a monopole between 80-feet and 140-feet in height to be within zero feet (0') of vacant, un-platted, residentially-zoned lands in lieu of the distance requirement of 280-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 Village (V) and is designated Apartment District (APT) and Townhome District (TH) on the Special Planning Area map. 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 not located within a Rural Settlement.

Joint Planning Area (JPA)

The subject property is not located within a JPA.

Environmental

Environmental Protection Division (EPD) staff has reviewed the proposed request, but and not identify any issues or concerns.

Transportation Planning

Transportation Planning staff has reviewed the proposed request, but and not identify any issues or concerns.

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 and 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 – (September 7, 2022)

Make a finding of consistency with the Comprehensive Plan and recommend APPROVAL of the Horizon West Parcels 12A & 12B Planned Development / Land Use Plan (PD/LUP), dated “August 5, 2022”, subject to the following conditions:

1. Development shall conform to the Horizon West Village H Parcels 12A & 12B Planned Development dated "Received August 5, 2022," 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 August 5, 2022," 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, or any other development order, 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 project shall comply with the terms and conditions of that certain Village H Horizon West Road Network Agreement approved on February 12, 2013, and recorded at OR Book/Page 10525/6172, Public Records of Orange County, Florida, as may be amended.
7. This communication tower shall be designed and constructed to accommodate at least two (2) service providers. The applicant shall provide a notarized letter acknowledging that the communication tower is designed and will be constructed to accommodate at least two (2) service providers, prior to issuance of a building permit.

8. A waiver from Orange County Code Section 38-1427 (d) (2) d., is granted to allow a monopole between 80-feet and 140-feet in height to be within zero feet (0') of vacant, un-platted, residentially-zoned lands in lieu of the distance requirement of 280-feet.
9. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated June 8, 2021 shall apply:
 - a. A waiver from Orange County Code Section 38-1387.1(a)(10) is granted to allow a fourteen (14) foot building separation between interior townhome buildings, in lieu of twenty (20) feet.
10. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, Dated April 9, 2019, shall apply:
 - a. The project contains 429 unvested units that are subject to the County's school capacity policy (a/k/a the "Martinez Doctrine".) The developer has acquired from D.R. Horton school capacity credits established under the Capacity Enhancement Agreement by and between D.R. Horton and the School Board dated August 18, 2006 (CEA #05-030). The Developer shall comply with all provisions of CEA #05-030. Upon the County's receipt of written notice from OCPS that the developer is in default or breach of the Capacity Enhancement Agreement, the County shall immediately cease issuing building permits for any unvested units. 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 cessation of the County's issuance of residential building permits resulting from such notification from OCPS. 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. 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 OCPS 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.
 - b. As proof of satisfaction of the project's transportation concurrency obligations, and in compliance with that certain Village H Road Network Agreement recorded at O.R. Book 10525, Page 6172, Public Records of Orange County, Florida, the developer must provide a valid Assignment of Vested Trips document together with the applicable Confirmation Letter issued by Orange County, concurrently with or prior to Preliminary

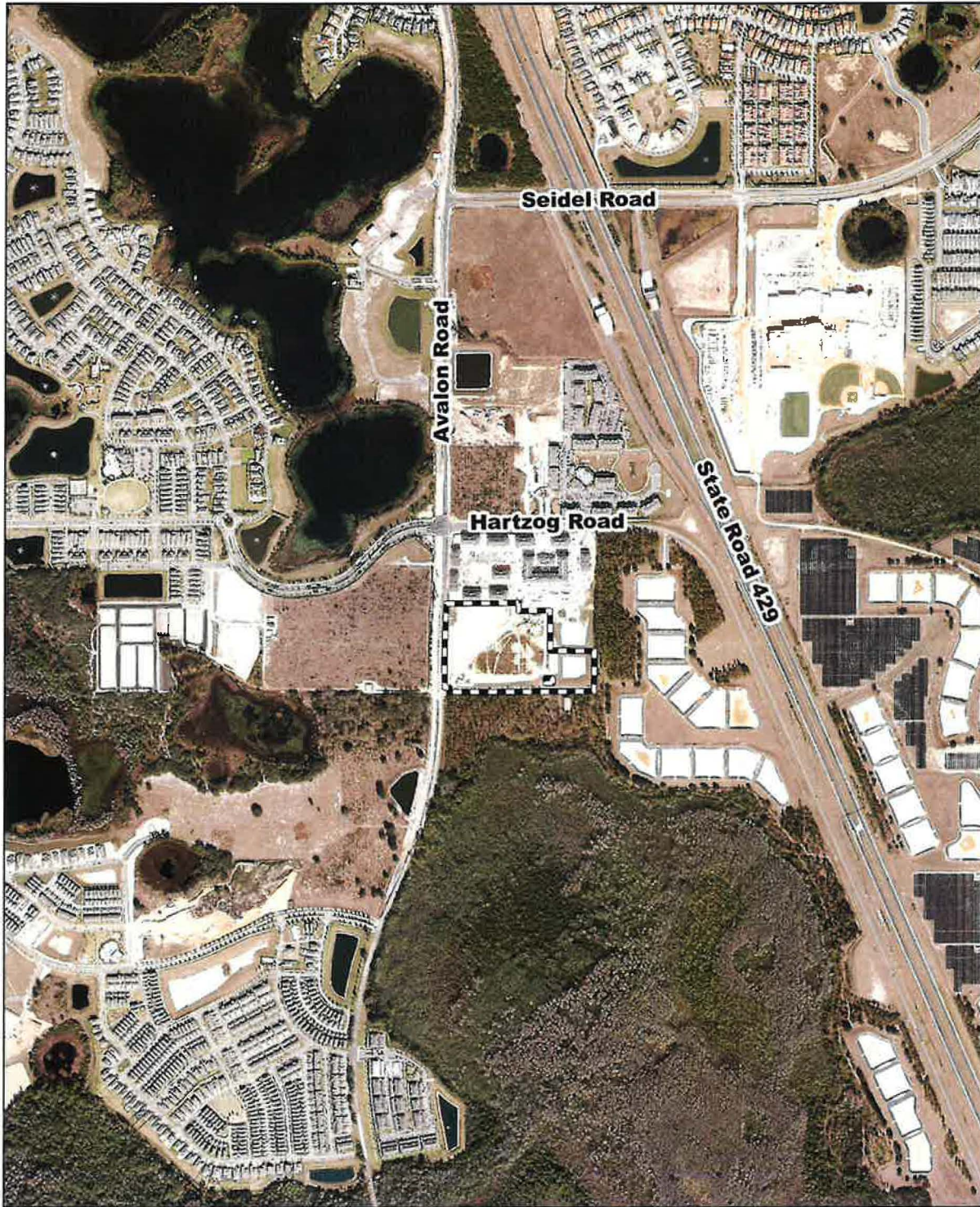
Subdivision Plan/Development Plan submittal. In addition, the Preliminary Subdivision Plan and each subsequent Development Plan must show a legend with trip allocations by parcel identification number and phase of the development.

- c. 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.
- d. Prior to construction plan approval, all property owners within Village H, 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.
- e. Construction plans within this PD shall be consistent with approved and up-to-date Master Utility Plans (MUPs) for the PD and the Village. The MUP and amendments to the approved PD-level and Village MUPs shall be submitted to Orange County Utilities at least thirty (30) days prior to construction plan submittal and must be approved prior to construction plan approval.
- f. The developer shall obtain water, wastewater, and reclaimed water service from Orange County Utilities subject to rate resolutions and ordinances.
- g. The developer shall be responsible for building master utilities transmission and collection infrastructure adequate to serve the PD and 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 Village F & H Master Utility Plan (MUP).
- h. Pole signs and billboards shall be prohibited. All other signage shall comply with Chapter 31.5 of the Orange County Code.
- i. 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.
- j. Short term/transient rental is prohibited. Length of stay shall be for 180 consecutive days or greater.

- k. 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).
- l. 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.
- m. The following waivers from Orange County Code are granted:
 - 1) A waiver from Section 38-1382(h)(4) to allow alleys to be designed as a tract, in lieu of the requirement that they shall be designed as a private easement.
 - 2) A waiver from Section 38-1384(g)(1) to allow garage access to be setback from an alley tract, in lieu of an easement.
 - 3) A waiver from Section 38-1384(i)(2) to allow vehicular access to garages or other off-street parking to be from a rear alley tract, in lieu of an easement.
 - 4) A waiver from Section 38-1258(a), for Parcel 12A, to allow multi-family residential buildings located within ten (10) feet of single-family zoned property to be constructed up to five-stories and 65 feet in height, in lieu of the requirement that multi-family buildings within one hundred (100) feet of a single-family zoned property be restricted to a single-story height.
 - 5) A waiver from Section 38-1258(c), for Parcel 12A, to allow multi-family buildings located within ten (10) feet of a single-family zoned property to be constructed up to five-stories and 65 feet in height, in lieu of the requirement that multi-family buildings located within one hundred and fifty (150) feet of single-family zoned property shall not exceed three (3) stories (forty (40) feet) in height.

PREVIOUS BOARD OF COUNTY COMMISSIONERS ACTION (June 8, 2021)

Upon a motion by Commissioner Wilson, seconded by Commissioner Uribe, and carried by all members present voting AYE by voice vote, the Board approved the substantial change request to increase the number of townhome units from 89 to 99 and add an Upland Greenbelt Parcel, and to grant one waiver from Orange County Code to allow a fourteen (14) foot building separation between interior townhome buildings in lieu of twenty (20) feet.

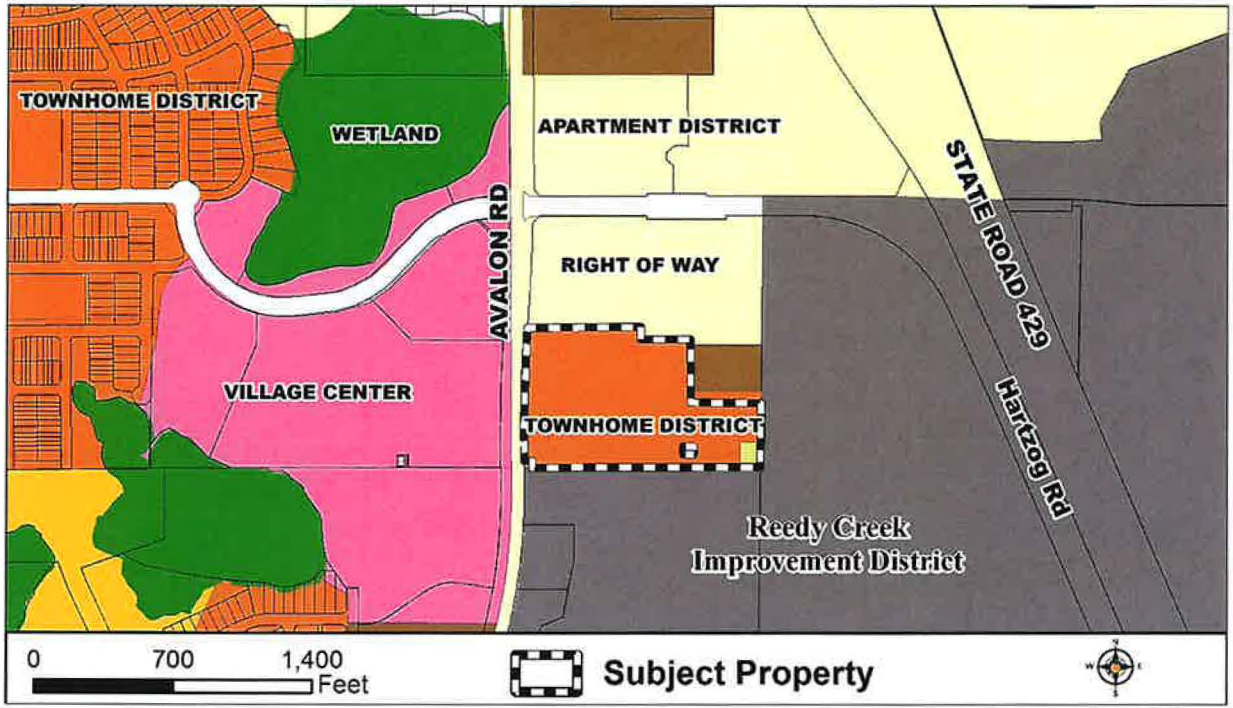


Subject Property

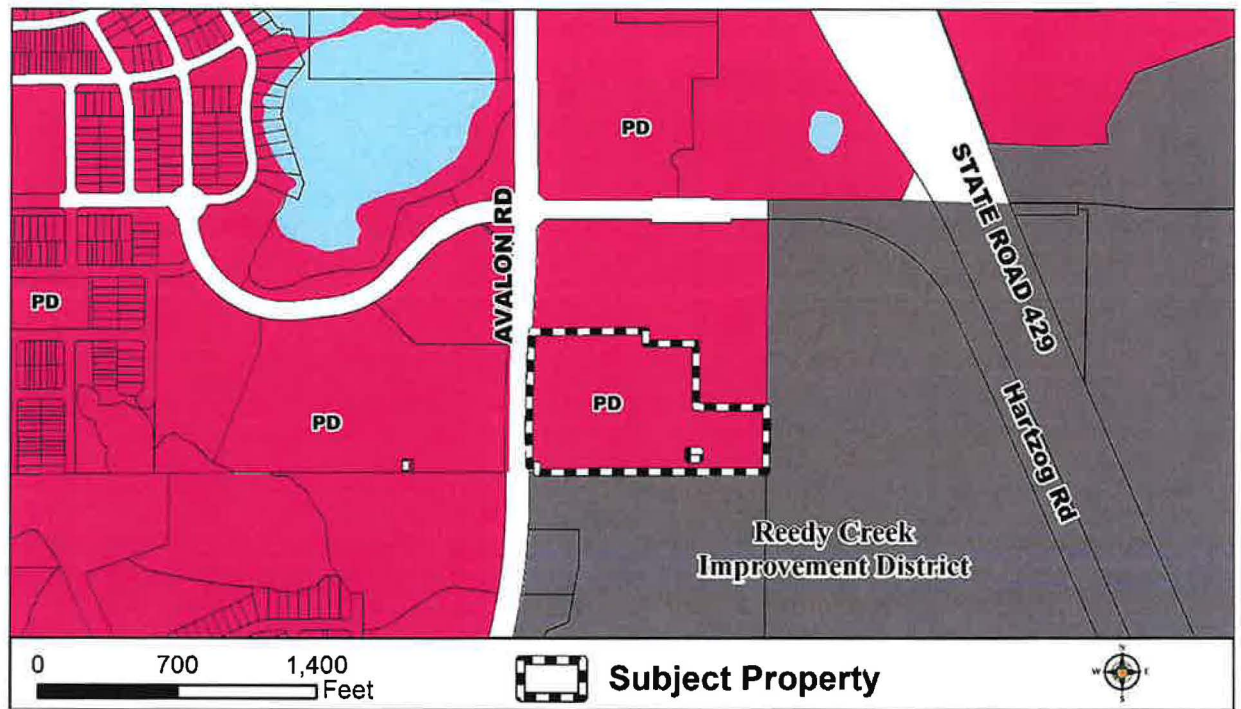


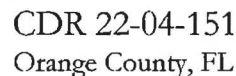
1 inch = 1,000 feet

Horizon West – Village H Special Planning Area Map
Townhome District



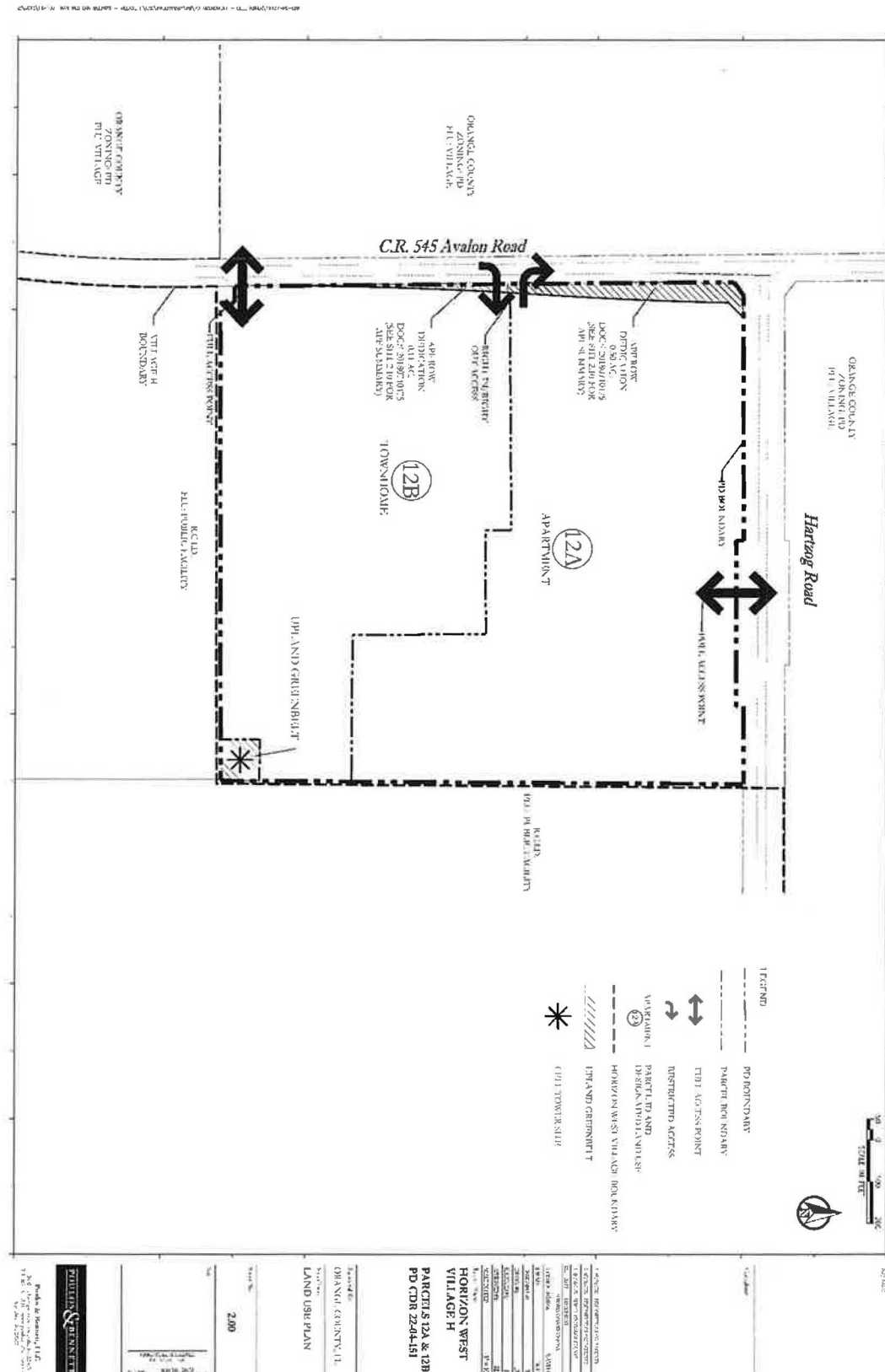
ZONING – CURRENT
PD (Planned Development District)

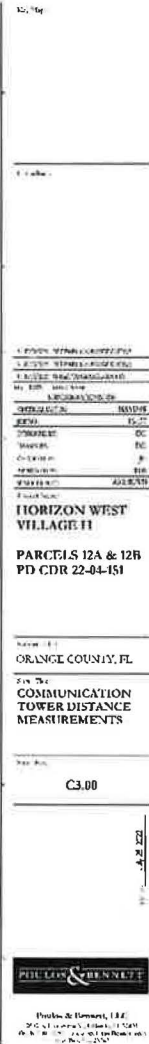




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Horizon West Village H Parcels 12A & 12B PD / LUP



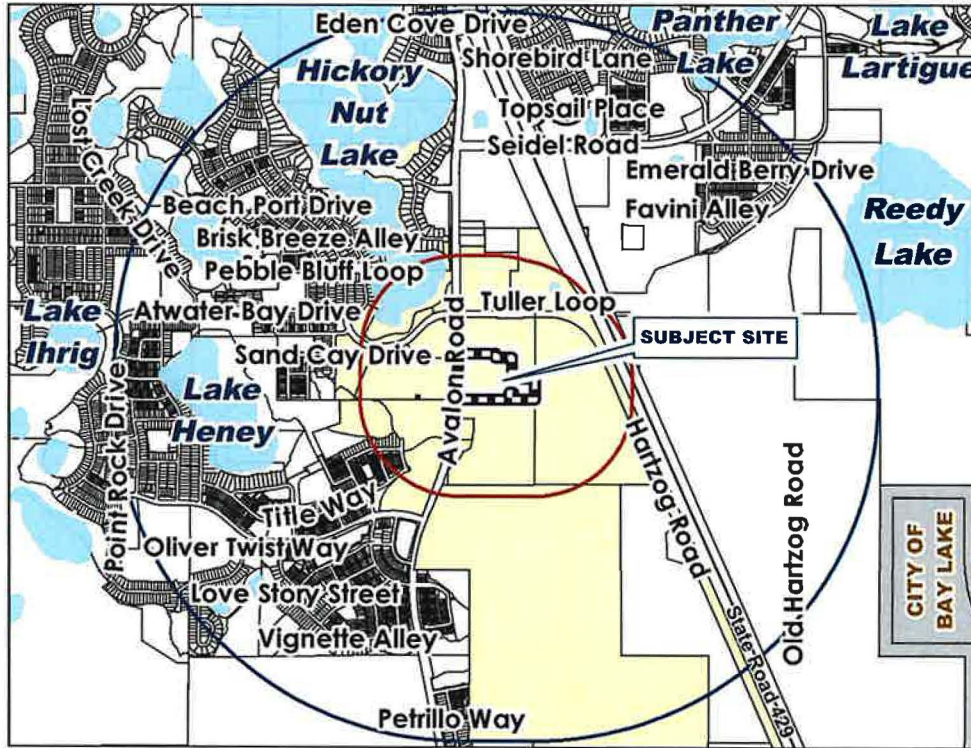


Notification Map

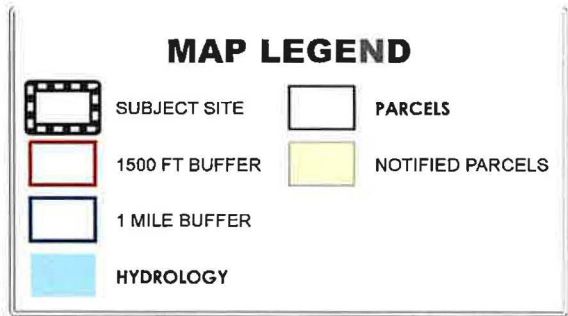
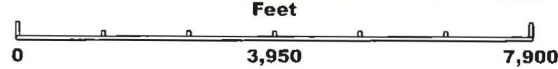


Public Notification Map

Horizon West Village H Parcels 12A & 12B PD_CDR-22-04-151



SUBJECT SITE



BUFFER DISTANCE: 1500
OF NOTICES: 19

