

CASE # CDR-17-12-386

Commission District: # 2

GENERAL INFORMATION

APPLICANT	Robert Paymayesh, PE Group, LLC
OWNER	Bargrove, LLP
PROJECT NAME	Bargrove Property Planned Development
PARCEL ID NUMBERS	09-20-27-0000-00-023 and 09-20-27-0000-00-086
TRACT SIZE	191.92 gross acres (<i>overall PD</i>)
LOCATION	5131 N. Orange Blossom Trail and 4950 Cemetery Road; or generally located east of N. Orange Blossom Trail and approximately 1,300 feet north of Sadler Road
REQUEST	A PD substantial change to relocate a 15-acre Orange County Public Schools (OCPS) elementary school site across Cemetery Road and add an access point from N. Orange Blossom Trail.
PUBLIC NOTIFICATION	A notification area extending beyond 800 hundred (800) feet was used for this application [<i>Chapter 30-40(c)(3a) of the Orange County Code requires 300 feet</i>]. Two hundred and six (206) notices were mailed to those property owners in the notification buffer area. A community meeting was held on February 26, 2018 at Zellwood Elementary School as summarized in this report below.

IMPACT ANALYSIS

Special Information

The Bargrove Property PD was originally approved by the Board of County Commissioners on August 19, 2008. This PD is approved for 188 single-family detached dwelling units with a minimum lot area of 1/3 acre, as well as a 15-acre OCPS elementary school site.

Through this PD Change Determination Request (CDR), the applicant is seeking to relocate the identified 15 acre OCPS school site across Cemetery Road in order to avoid impacts to a small karst geological area. Additionally, this request increases the proposed open space and buffering from 63.2 acres to 70.0 acres, a net increase of 6.8 acres. The applicant has also requested an additional access point to the residential property from N. Orange Blossom Trail.

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 underlying Future Land Use Map (FLUM) designation of Rural Settlement 1/1 (RS 1/1). The proposed PD Change Determination Request (CDR) is consistent with the underlying FLUM designation and all other applicable CP provisions.

Overlay District Ordinance

The subject property is not located within an Overlay District.

Rural Settlement

The subject property is located within the Tangerine Rural Settlement.

Joint Planning Area (JPA)

The subject property is not located within a JPA.

Environmental

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).

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.

This property is located within a Florida Department of Environmental Protection (FDEP) ethylene dibromide delineation zone (EDB is a soil fumigant). Any new potable water wells will require special permitting per Florida Administrative Code FAC 62-524.

This site discharges into the Wolf Branch stream, a body of water designated as impaired by the Florida Department of Environmental Protection (FDEP impairment: mercury in fish). The Impaired Waters Rule, Chapter 62-303 of the Florida Administrative Code may increase the requirements for pollution abatement treatment of stormwater as part of the adopted Wekiva/Upper Ocklawaha Management Action Plans (BMAP).

No construction, clearing, filling, alteration or grading is allowed within or immediately adjacent to a conservation area without first obtaining permission from EPD. Reference Orange County Code Chapter 15, Article X, Section 15-376. Approval of this request does not authorize any direct or indirect impacts to conservation areas or protective buffers.

Transportation / Concurrency

As this request does not impact the number of approved units, there are no increases in trips associated with this request.

An operational analysis will be required once the development of the school site is initiated.

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 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 held on February 26, 2018 at Zellwood Elementary School for the request. There were nineteen (19) residents in attendance. There were concerns expressed regarding the protection of open space, compatibility of the proposed school location with the adjacent nursery, and access points.

Schools

Orange County Public Schools (OCPS) reviewed the request and does not object to the relocation of the elementary school site.

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 – (April 11, 2018)

Make a finding of consistency with the Comprehensive Plan (CP) and approve the substantial change to the Bargrove Property Planned Development / Land Use Plan (PD/LUP) dated "Received March 23, 2018", subject to the following conditions:

1. Development shall conform to the Bargrove Property Planned Development (PD) dated "Received March 23, 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 March 23, 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. 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 June 12, 2006.
 - 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 18 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. 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 for an Orange County Dock Construction Permit. Application shall be made to the Orange County Environmental Protection Division

as specified in Orange County Code Chapter 15 Environmental Control, Article IX Dock Construction prior to installation.

8. 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.
9. Pole signs and billboards shall be prohibited. Ground and fascia signs shall comply with Chapter 31.5 of the Orange County Code. An Electronic Message Center for the school site shall comply with Orange County Code Section 38-1755 (o).
10. The Bargrove property is the subject of a site specific policy in the County's Comprehensive Policy Plan (FLU Policy 6.3.13 fka 2.4.13) that was adopted by the Board of County Commissioners as a remedial amendment on Sept. 11, 2007, by Ordinance No. 2007-10, pursuant to a Stipulated Settlement Agreement in the case known as Department of Community Affairs vs. Orange County and Bargrove, LLP, DOAH Case No. 06-1-N01-4301. Accordingly, the Wekiva Study Area amendments to the CPP that were subsequently adopted by the BCC on Dec. 18, 2007, and any land development regulations adopted pursuant to those Wekiva Study Area amendments, shall not apply against the Bargrove property to the extent that the Wekiva Study Area amendments and/or land development regulations adopted pursuant thereto directly conflict with the requirements in FLUE Policy 6.3.13 (fka 2.4.13). In all other respects, the Wekiva Study Area amendments and land development regulations adopted pursuant thereto shall apply to the Bargrove property.
11. The school site shall comply with the Orange County School Siting Ordinance.
12. 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.
13. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated August 19, 2008 shall apply:
 - a) 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.
 - b) The applicant must apply for and obtain a capacity encumbrance letter prior to construction plan submittal and must apply for and obtain a capacity reservation certificate prior to platting. However, nothing in this condition and nothing in the decision to approve this land use plan shall be construed to mean that the applicant will be able to satisfy the requirements for obtaining a capacity encumbrance letter or a capacity reservation certificate.

PREVIOUS BOARD OF COUNTY COMMISSIONERS ACTION *(August 19, 2008)*

Upon a motion by Commissioner Brummer, seconded by Commissioner Fernandez, and carried with all Commissioners voting AYE; the Board made a finding of consistency with the Comprehensive Policy Plan; and further, approved a request by Randy Woodruff for Bargrove Property PD; to rezone from A-1 (Citrus Rural District) to PD (Planned Development District); subject to the conditions listed in the staff report.