

CASE # CDR-18-08-258
Commission District: # 1

GENERAL INFORMATION

APPLICANT James H. McNeil Jr., Akerman, LLP

OWNER Toll FL L P

PROJECT NAME Ivey Groves Planned Development (PD)

PARCEL ID NUMBER 08-24-28-7760-00-590 (affected parcel only)

TRACT SIZE 117.36 gross acres (overall PD)
0.26 gross acres (affected parcel only)

LOCATION 10110 Royal Island Court, generally located west of Winter Garden Vineland Road and north of Vista Boulevard.

REQUEST A PD substantial change to allow the ability for the developer to allow for one single-family residence on Platted Lot 59 / Lot 201 of the Ivey Groves Subdivision Preliminary Subdivision Plan (PSP) to be used by the developer, Toll Brothers Inc., as a corporate guest house for a period of 3 years from the date of Board of County Commissioners approval or sixty (60) days after the developer sells the last land / home in the subdivision, whichever is sooner.

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]. One hundred ten (110) notices were mailed to those property owners in the notification buffer area. A community meeting was held on January 16, 2019, at Sunset Park Elementary school.

IMPACT ANALYSIS

Special Information

The Ivey Groves PD was originally approved on August 6, 2013, and is currently approved for two hundred ten (210) single-family residential dwelling units.

Through this PD Change Determination Request (CDR), the applicant is seeking to allow for one single-family residence on Platted Lot 59 / Lot 201 of the Ivey Groves Preliminary Subdivision Plan (PSP) to be used by the developer, Toll Brothers Inc., as a corporate guest house for a period of 3 years from the date of Board of County Commissioners approval or sixty (60) days after the developer sells the last land / home in the subdivision, whichever is sooner.

Land Use Compatibility

The PD Change Determination Request has the potential to adversely impact adjacent properties. The proposed corporate guest house use will function similar to short-term, transient rental. The interests and activities of the short-term guests occupying these residences may conflict with the long-term interest of the residents of the single-family residences in the remainder of the gated neighborhood.

Comprehensive Plan (CP) Consistency

The Ivey Groves PD has an underlying Future Land Use Map (FLUM) designation of Medium Density Residential (MDR). If the corporate guest house use is determined to be a residential use then the request is consistent with the FLUM designation. If the corporate guest house use is determined to be a short-term rental use, which constitutes a commercial use, then the request is not consistent with the FLUM designation.

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 did not identify any issues or concerns.

Transportation Concurrency

Unless the property is otherwise vested or exempt, 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 approval of the plat. Nothing in this condition, and nothing in the decision to approve this land use plan / preliminary subdivision plan, shall be construed as a guarantee that the applicant will be able to satisfy the requirements for obtaining a capacity encumbrance letter or a capacity reservation certificate.

Community Meeting Summary

A community meeting was held on January 16, 2019, at Sunset Park Elementary school, which was attended by twenty-three (23) area residents. At the meeting, the applicant stated that the proposed use is not a short-term rental use, but rather is a use that has not been defined by the County and does not have specific identified standards. The applicant further clarified that the proposed corporate guest houses were not rented out to anyone, but provided as an incentive/reward to employees of the company. It was also noted that Toll Brothers had held a separate meeting with the neighborhood residents and was continuing to negotiate additional concessions such as improving the guard house and paying for a gate guard in return for residents supporting the requested use.

The result of the meeting was mixed with several residents expressing support for the proposed guest house use, stating that the concessions offered by Toll Brothers would benefit the community, and noting that they had all signed documents upon purchasing their homes acknowledging the temporary corporate guest house use. In addition, a petition was submitted for approval of the two lots in exchange for the agreed upon concessions, which was signed by forty-eight (48) area residents.

The majority of the residents in attendance were in opposition to the request. Concerns cited by residents at the community meeting, and in commentaries submitted afterwards, included worries that the proposed use is transient in nature and not compatible with the single-family residential use and that the temporary occupants staying in the guest house would not respect the neighborhood or the rules of the single-family community. Several examples were cited regarding past temporary occupants having transported additional guests into the neighborhood, harassing residents, and using common areas without permission.

Additional concerns raised by those in attendance included disruption of the community, safety, and setting a precedent for future short-term rental uses. A petition opposing the request was submitted, with thirty (30) names, but no signatures.

Schools

Orange County Public Schools (OCPS) did not comment on this case, as it does not involve an increase in residential units or density.

Parks and Recreation

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

Code Enforcement

Orange County Code Enforcement (Incident # 499697) cited the property owner, Toll FL L P, for allowing employees and guests to stay in one of the single-family homes in the subdivision on a week to week basis. The corrective action identified was to cease short term/transient rental on the property. The violation has been placed on hold while the property owner is pursuing this PD amendment to permit the use.

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 24, 2019)

Make a finding of inconsistency with the Comprehensive Plan (CP) and DENY the substantial change to the Ivey Groves Planned Development / Land Use Plan (PD/LUP) dated “Received March 14, 2019”.

ALTERNATIVE ACTION

Make a finding of consistency with the Comprehensive Plan and APPROVE the Ivey Groves Planned Development / Land Use Plan (PD/LUP), dated "Received March 14, 2019", subject to the following conditions:

1. Development shall conform to the Ivey Groves PD Land Use Plan (LUP) dated "Received March 14, 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 March 14, 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. Short term/transient rental is prohibited. Length of stay shall be for 180 consecutive days or greater. The foregoing notwithstanding, platted Lot 59/ Lot 201 of the Ivey Groves PSP, may continue to be used for short term rental until no later than April 24, 2020, and at such time shall cease any and all short term or transient use.
7. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated August 6, 2013 shall apply:
 - a. 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. Nothing in this condition, and nothing in the decision to approve this preliminary subdivision plan, shall be construed as a guarantee that the applicant will be able to satisfy the requirements for obtaining a capacity encumbrance letter or a capacity reservation certificate.
 - b. All acreages regarding 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.
 - c. The Developer shall obtain water, wastewater and reclaimed water service from Orange County Utilities.
 - d. A Master Utility Plan (MUP) shall be submitted to Orange County Utilities prior to approval of the first PSP/DP. The MUP must be approved prior to Construction Plan approval.

- e. 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.
- f. Prior to or concurrent with PSP approval, a Developer's Agreement shall be executed by the Developer that addresses the retention pond relocation / reconfiguration, the maintenance responsibilities, and necessary easements.
- g. The following Education Condition of Approval shall apply:
 - 1. Developer shall comply with all provisions of the Capacity Enhancement Agreement entered into with the Orange County School Board [and Orange County] as of June 11, 2013.
 - 2. 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 sixty five (65) residential units allowed under the zoning existing prior to the approval of the PO 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 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.
 - 3. Developer, or 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.
 - 4. 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. At the time of platting, documentation shall be provided from Orange County Public Schools that this project is in compliance with the Capacity Enhancement Agreement.

PREVIOUS BOARD OF COUNTY COMMISSIONERS ACTION (August 6, 2013)

Upon a motion by Commissioner Boyd, seconded by Commissioner Clarke, and carried by all members present voting Aye by voice vote, the Board made a finding of consistency with the Comprehensive Plan and approved the request to rezone 117.36 acres from R-CE (Country Estate District) to PD (Planned Development District) to allow for the development of 210 single-family detached residential dwelling units.