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Planning Analysis for SE-19-03-198 Orange County, Florida

Introduction

The following planning analysis of Application SE-19-03-198 was conducted at the request of The Willows at Lake Rhea Homeowners Association, Inc., and property owners in The Willows at Lake Rhea subdivision, who are impacted by the proposed special exception for a 15,000 square foot child day care center for up to 200 children. In preparation of this analysis, I examined:

- Orange County Future Land Use Element and Future Land Use Map Series, Urban Design Element, Neighborhood Element, and Transportation Element
- Orange County Code of Ordinances, Part II Orange County Code, Chapter 9 Building and Construction Regulations, Chapter 30 Planning and Development, and Chapter 38 Zoning
- The documents related to SE-19-03-198, including the application, the special exception site plan package, the traffic impact analysis, and the BZA Staff Report dated February 7, 2019, and the Staff Report dated March 28, 2019, for the April 9, 2019 BCC public hearing.

My resume is attached as part of this planning analysis. I have a Ph.D. in Urban and Regional Planning and a Masters in Urban and Regional Planning from the University of Florida ("UF"). I have been a practicing planner in the State of Florida since 1997. From 1997 to 2005, I held a variety of planning positions in regional, county, and city government. From 2001 to 2005, I was the Planning & Community Development Director for the City of Alachua, Florida. In 2005, I began a sole proprietor planning consultant business – Dedenbach Planning Associates. I have been a member of the American Institute of Certified Planners since 2001. I am certified as a LEED Green Associate. During my career, I have prepared eleven (11) Evaluation & Appraisal Reports, thirteen (13) Comprehensive Plans, and three (3) Land Development Codes, in addition to numerous comprehensive plan amendments, rezonings, land development regulations amendments, variances, special use permits, special exceptions, and annexations. I have been admitted as an expert witness in public hearings across the State of Florida representing local governments and private clients,

April 5, 2019

Public Hearing D.10 Exhibit 03 - Brent Spain

including in Orange County. I also served as the Chair of the Alachua County Board of Adjustment.

Application SE-19-03-198

Background

The proposed Application SE-19-03-198 was submitted in December 2018 by Bryan Potts, PE, as agent for Certi Fine Fruit Co., Inc., for a child day care center located on 25.62 acres at 1841 Windermere Road, Windermere, Florida. According to the submitted boundary surveys, the site contains 6.78 acres of uplands and 18.84 acres of wetland. The proposed location of the child day care center is on a +/- 3-acre upland portion of the northern parcel that constitutes the subject property.

The proposed child day care center facility will consist of a 15,000 square-foot building, 2,000 square foot pavilion, 15,000 square foot playground, 72-space parking lot, and two (2) stormwater basins on approximately +/- 3 acres. The applicant states that the child day care center enrollment will be 200 students with 30 teachers and 4 administrators. The proposed hours of operation are 8:00 a.m. to 6:00 p.m. However, the applicant's materials state that early pick-up begins at 7:30 a.m. The proposed days of operation are Monday through Friday, with four (4) special events allowed until 9:00 p.m. on any day.

For buffering and transition, the applicant proposes to build an 8-foot wall on the south school site boundary and to plat a 1-acre lot to the north of the school site and plat a 1-acre lot to the south of the school site. This will place one residential dwelling unit on either of the proposed child care center facility site.

According to the Staff Report, the site of the proposed child day care center facility is within the West Windermere Rural Settlement. However, the Future Land Use Map and Zoning Map obtained from the Orange County Interactive Mapping website appears to contain a discrepancy and depicts the property as outside of the West Windermere Rural Settlement. Further, the area is not shown on the Rural Settlement Study Map in the 2000 Rural Settlement Study. Nonetheless, the Future Land Use designation is Rural Settlement 1/1 (RS1/1) and Rural/Agriculture (R). The zoning designation is Country Estate (R-CE).

This special exception was approved by the Orange County BZA by a vote of 6-1 on February 7, 2019.

Special Exception Criteria and Analysis

The Orange County Land Development Code (LDC), Section 38-77, lists child day care centers as a special exception in R-CE, Country Estate District. The LDC, Section 38-1, defines child day care centers as "a structure in which the owner or operator, for compensation, provides supervision

and temporary care for more than ten (10) persons, who are not related by blood or marriage and not the legal wards or foster children of the owner or operator.” The criteria for special exceptions are listed in Section 38-78 as follows:

Sec. 38-78. Special exception criteria.

Subject to section 38-43 and section 30-43 of this Code, in reviewing any request for a special exception, the following criteria shall be met:

- (1) *The use shall be consistent with the comprehensive policy plan.*
- (2) *The use shall be similar and compatible with the surrounding area and shall be consistent with the pattern of surrounding development.*
- (3) *The use shall not act as a detrimental intrusion into a surrounding area.*
- (4) *The use shall meet the performance standards of the district in which the use is permitted.*
- (5) *The use shall be similar in noise, vibration, dust, odor, glare, heat producing and other characteristics that are associated with the majority of uses currently permitted in the zoning district.*
- (6) *Landscape buffer yards shall be in accordance with section 24-5 of the Orange County Code. Buffer yard types shall track the district in which the use is permitted.*

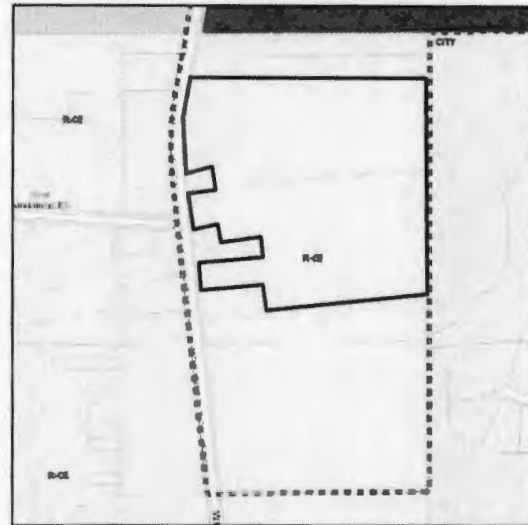
SE-19-03-198 does ***not*** meet the special exception criteria found in Section 38-78(1), (2), (3), (5), and (6). Each of these deficiencies is outlined in detail below.

A. Section 38-78(1): The use shall be consistent with the comprehensive policy plan

1. Future Land Use and Zoning Designations

The Future Land Use Map designation for the portion of the subject property upon which the child day care center will be located is Rural Settlement 1/1 (RS 1/1), which “recognizes and preserves existing development patterns, provides for a rural residential lifestyle, and manages the transition of rural areas near the Urban Services Area” at a density of 1 dwelling unit (DU) per acre. The surrounding properties to the north are Rural 1/10, and RS 1/1 to the west and south. Properties to the east are City of Windermere. The subject property is zoned R-CE, Country Estate District. The R-CE district is a primarily residential district that allows for very low residential densities. The minimum lot size is 1 acre. Surrounding properties to the north, west, and south are R-CE. Properties to the east are City of Windermere. The Future Land Use and Zoning Map for the subject and surrounding properties are shown below.

Future Land Use & Zoning Maps with West Windermere Rural Settlement Boundaries



Source: Orange County InfoMap. Created April 5, 2019.

2. *Comprehensive Plan Policy Analysis*

The child day care center, as defined by Section 38-1, LDC, is a commercial business. The subject property is an inappropriate location for commercial development. FLU 1.4.3 states that “the location of commercial development shall be concentrated at major intersections and within Activity Centers and Neighborhood Activity Nodes within the Urban Services Area.” The subject property is located on the edge of the West Windermere Rural Settlement. Approximately 25 percent of the subject property is located in the West Windermere Rural Settlement, with the remaining 75 percent of the property located in the Rural Service Area.

The subject property is located approximately one (1) mile from the intersection of Stoneybrook West Parkway and Windermere Road, where Lake Whitney Elementary School and Bailey Park are located. These are public facilities and subject to land use regulations for institutional, not commercial, uses. Placement of a commercial use on the subject property will set a precedent, which would open the door to an isolated commercial development on Windermere Road in a rural residential area.

FLU 1.4.15 states that commercial uses in Rural Settlements must be consistent with FLU 6.2.9 and FLU 6.2.10. FLU 6.2.9 states that neighborhood commercial uses in Rural Settlements may only be located in areas designated as such on the Future Land Use Map. Further, FLU 6.2.9 states that only neighborhood commercial uses are allowed in Rural Settlements, and that the scale and intensity of commercial uses “must be compatible with the development pattern of the existing Rural Settlement.” FLU 6.2.10 defines neighborhood commercial as retail and personal services to serve the immediate population, which does not include child day care centers as defined by the LDC.

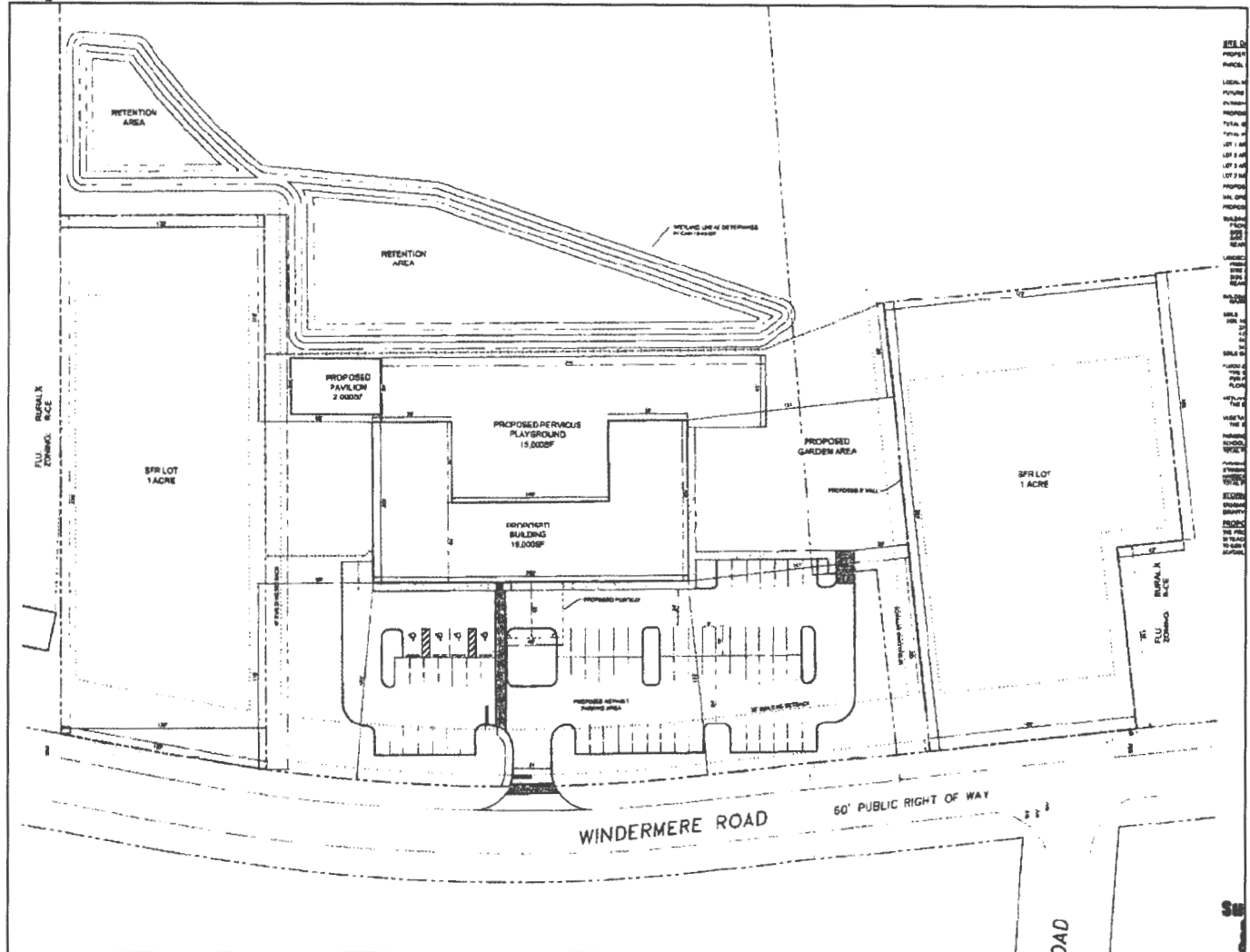
The development of commercial uses within Rural Settlements is limited to neighborhood commercial uses that serve the residents of the Rural Settlement. Further, neighborhood commercial uses within Rural Settlements must be compatible with the scale and intensity of the existing development pattern. The adjacent and surrounding uses are residential and rural in nature. Although the total acreage of the subject property is approximately 25 acres, the applicant states that the child day care center facility and accessory uses will be located on 3 upland acres immediately adjacent to Windermere Road. The intensity of a 78-space parking lot (which encroaches into the front building setback) and the massing of a 15,000 square foot building facing the road will make the proposed child day care center facility the largest massed structure in the surrounding area.

The proposed child day care center on the subject property is ***not*** consistent with the Rural Settlement Future Land Use designation.

3. Compatibility with Surrounding Uses

As shown on the Future Land Use and Zoning Maps above, the character of the surrounding area is one of predominantly single-family, low-density residential uses. The subject property is located on Windermere Road at the edge of the West Windermere Rural Settlement. The current use of the property is vacant. A survey of the Orange County Property Appraiser's GIS mapping information shows that the average size of the six (6) houses closest to the subject property is 2,721 square feet. The proposed child day care center building at 15,000 square feet is nearly six (6) times larger.

Proposed Site Plan



Source: Tannath Design, Inc., provided in Applicant's Submittal. Stamp dated December 13, 2018.

Neither the Orange County Comprehensive Plan nor the LDC provides a definition of compatibility. Therefore, the definition of compatibility in the Florida Statutes is utilized for the purposes of this report. Compatibility is defined in Section 163.3164(9), *Florida Statutes*, as follows

A condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition.

The County's Comprehensive Plan provides several relevant policies related to compatibility. FLU 1.4.2 requires land use changes to be compatible with and serve existing neighborhoods. FLU 8.2 states that compatibility is the fundamental, or first, consideration in all land use and zoning

decisions, which would include this special exception application. Recognizing that compatibility does not mean that a proposed use has to be identical to surrounding uses, FLU 8.2.11 states that other considerations such as design, urban form, and physical integration into the surrounding area should be considered in determining compatibility. As shown in the analysis on FLU 2.3.6 below, the proposed site plan does not use design or physical integration to fit into the form of the residential neighborhood in which the applicant desires to locate.

Further, the application is not conditioned to include adequate conditions that would address compatibility. There are four (4) special events allowed by the special exception; the events can occur from 8:00 a.m. to 9:00 p.m. without restriction as to which days they occur. Buffers are only required on the north and south property lines, while the biggest visual impact will occur on the west property line along Windermere Road. The landscape plan shows the 78-space parking lot and 15,000 square foot building being screened by crepe myrtles and deciduous parking lot trees, which will lose their leaves in the fall and winter. There is no landscaping proposed along the east property line between the building and playground and properties to the east.

FLU1.4.2	Orange County shall ensure that land use changes are compatible with and serve existing neighborhoods.
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OBJ FLU8.2	COMPATIBILITY. Compatibility will continue to be the fundamental consideration in all land use and zoning decisions. For purposes of this objective, the following polices shall guide regulatory decisions that involve differing land uses.
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POLICIES

FLU8.2.1	Land use changes shall be required to be compatible with the existing development and development trend in the area. Performance restrictions and/or conditions may be placed on property through the appropriate development order to ensure compatibility. No restrictions or conditions shall be placed on a Future Land Use Map change. (Policy 3.2.25)
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FLU8.2.11	Compatibility may not necessarily be determined to be a land use that is identical to those uses that surround it. Other factors may be considered, such as the design attributes of the project, its urban form, the physical integration of a project and its function in the broader community, as well its contribution toward the Goals and Objectives in the CP. The CP shall specifically allow for such a balance of considerations to occur.
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FLU 1.4.4 specifically targets the issue of encroachment of commercial activities into residential areas. In previous special exception applications, Orange County staff has interpreted the activities of a child day care center use to be similar to commercial activities.

FLU1.4.4	The disruption of residential areas by poorly located and designed commercial activities shall be avoided. Primary access to single-family residential development through a multi-family development shall be avoided. (Added 12/00, Ord. 00-25, Policy 3.2.12-r).
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UD 2.2.2 requires building form to be compatible with surrounding buildings in size, shape, and scale. The proposed building is nearly six (6) times larger than the surrounding houses.

UD2.2.2	Building form should be compatible with surrounding buildings in size, shape, and scale and may be regulated by form-based land development codes.
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B. Section 38-78(2): The use shall be similar and compatible with the surrounding area and shall be consistent with the pattern of surrounding development

Section 38-78(2), LDC, requires “the use to be similar and compatible with the surrounding area and shall be consistent with the pattern of surrounding development.” The proposed child day care center use is not similar to or consistent with the surrounding area and surrounding development patterns. The child day care center use is a 15,000 square-foot building on a 3-acre portion of the subject property. Since the applicant is proposing to split off two 1-acre lots from the frontage parcel, we must not consider the impact of the view in the context of the existing parcel’s frontage. While the intent of the residential lots is to provide a transition for properties to the north and south, the effect is an intensification of the visual impact to the properties to the west.

The proposed building, the length of which faces Windermere Road, is nearly six (6) times larger than the average size of surrounding single-family residences. The scale and location of the proposed building contribute to the incompatibility of the use to the surrounding area. This building would be the largest structure in the surrounding area.

Also, the hours of operation and the size of the student population intensify the proposed use. The applicant estimates that the enrollment will be 200 students in addition to staff. The applicant proposes hours of operation Monday through Friday from 8:00 a.m. to 6:00 p.m. (with early drop-off beginning at 7:30 a.m.), with four (4) special events allowed until 9:00 p.m. on any day throughout the year.

C. Section 38-78(3): The use shall not act as a detrimental intrusion into a surrounding area

Section 38-78(3), LDC, requires that “the use shall not act as a detrimental intrusion into a surrounding area.” The proposed commercial child day care center would locate a 15,000 square-foot building, 2,000 square-foot pavilion, 15,000 square-foot playground, 78-space parking lot with lighting, and two retention basins on a 3-acre lot at the edge of the West Windermere Rural Settlement in an area that is rural residential.

According to the applicant’s traffic impact study, the proposed child day care facility will generate an additional 822 trips on Windermere Road, which is a County-maintained, rural 2-lane road. It is likely that the 78-space parking lot with one driveway access point will become congested during peak pick-up and drop-off times in the morning and afternoon.

There is no provision for overflow parking on the proposed site for daily activity and special events, particularly when the two residential lots to the north and south are platted and built. With a student population of 200 with family members, 30 employees, and 4 administrators, special events are likely to become overcrowded and may push parking onto the shoulders of Windermere Road.

The applicant's proposed sound mitigation plan consists of a fencing system, a large organic garden as the playground, 20-acres of wetlands behind the school, and 1-acre of buffer on either side of the property. The site plan contains a call-out for a wall along the south property line. A condition of the special exception requires an 8-foot high vinyl fence and landscaping along the proposed playground. The site plan shows a proposed garden area to the south of the proposed building. Also a 2,000 square foot pavilion is proposed to the east of the proposed building adjacent to the side building setback. Neither of these areas is proposed for fencing or buffering. The 1-acre "buffers" are actually proposed lots for single-family residences, which may be impacted by the activities of the proposed child day care facility.

Signage will be allowed either on the building or at the driveway entrance per Condition #8. The location of commercial signage along this residential section of Windermere Road would be inappropriate.

For the reasons of size, scale, intensity, number of trips, and commercial signage, the proposed child day care facility constitutes a detrimental intrusion into the surrounding rural residential area.

D. Section 38-78(4): The use shall meet the performance standards of the district in which the use is permitted

There are no performance standards established for the R-CE zoning district.

E. Section 38-78(5): The use shall be similar in noise, vibration, dust, odor, glare, heat producing and other characteristics that are associated with the majority of uses currently permitted in the zoning district

The majority of uses currently permitted in the zoning district are single-family residential homes. Of concern with the proposed commercial child day care center use would be noise, activity, lighting, and traffic that is not consistent with the surrounding uses in that the child day care center use would operating five (5) days a week, with hours as early as 8:00 a.m. to 6:00 p.m., with special events until 9:00 p.m. These issues have been discussed in more detail elsewhere in the report.

F. Section 38-78(6): Landscape buffer yards shall be in accordance with section 24-5 of the Orange County Code. Buffer yard types shall track the district in which the use is permitted

There is an 8-foot masonry wall with a 10-foot landscape buffer consisting of trees proposed along the northern and southern sides of the property. There are no proposed buffers along the east property line, and only crepe myrtles and deciduous trees along the east property line and in the parking lot, which is where the lighting will be located. There are two houses immediately across Windermere Road from the subject location. Section 24-5, LDC, describes the types of buffers required between uses. It is clear that special exceptions may be conditioned to address issues of compatibility through the use of buffers (FLU 8.2.10). It would seem that with the minimal buffers provided along the north and south property lines and with no buffers along the east and west property lines, little is being done to protect surrounding residential properties from light and noise intrusions.

Previous Special Exception Denials

The Neighborhood Element of the Comprehensive Plan lists as a goal the maintenance of residential character.

GOAL N1 Maintain the residential character of neighborhoods through land use regulations.

Part of that maintenance of residential character requires that the Board of Zoning Adjustment (BZA) be consistent with the enforcement and implementation of the County's codes and regulations. To that end, several similar special exceptions for child day care centers, which were denied by the BZA, are referenced below as additional support for the recommendation of denial of SE-19-03-198. Denial of this special exception would be consistent with the County's decisions in these prior cases.

<p>N3.1.7 The Board of Zoning Adjustment shall continue to strive to be consistent in the enforcement of codes and regulations.</p>

SE-09-07-004: Casanova Child Day Care Center

The special exception for the Casanova child day care center was filed in 2009 for the conversion of a single-family residence into a child day care center for 100 students on 4.56 acres located in an A-2 zoning district on Whispering Pines Road. The BZA found that the application did not meet the requirements of Section 38-78 (1), (2), and (3) for approval of special exceptions. The Orange County Board of County Commissioners (BCC) affirmed the denial.

SE-11-11-089: Preston Child Day Care Center

The special exception for the Preston child day care center was filed in 2011 for a 50-student facility on 0.5-acres located in an R-1A zoning district on E. Cleveland Street. The BZA found that the application did not meet the requirements of Section 38-78 for approval of special exceptions. The BCC affirmed the denial.

SE-14-03-003: Faith Center Ministries Child Day Care Center

The Faith Center Ministries special exception was filed in 2014 and sought to convert an existing residence into a religious use and an educational facility for 63 students. The subject property was located in an A-1 zoning district on Hiawassee Road. The BZA found that the approval of the application would create a detrimental intrusion into the neighborhood and create a traffic-safety issue in accessing the proposed school. The BCC affirmed the denial.

Conclusion

As discussed in this Report, the requested special exception is *not* consistent with the special exception criteria found in Section 38-78, LDC, including consistency with the Comprehensive Plan; consistency and compatibility with the surrounding area; intrusion into the residential area; being of similar characteristics and impacts as the surrounding residential area; and buffering. Further, the County has previously denied special exceptions for child day care center uses seeking to locate in established neighborhoods and residential areas, even child day care centers of less intensity and with lower child enrollment than the current project. Simply put, the approval of this child day care center use inside the West Windermere Rural Settlement would allow a non-residential use within a stable residential neighborhood, which is currently free from encroachment of non-residential uses.

LAURA J. DEDENBACH, Ph.D., AICP

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EDUCATION

Ph.D. in Urban and Regional Planning	2016
University of Florida, College of Design, Construction, and Planning Minor: Anthropology	
Master in Urban and Regional Planning	1999
University of Florida, Department of Urban and Regional Planning	
B.A. in Political Science	1996
University of Florida	

PROFESSIONAL EXPERIENCE

Owner and Principle, Dedenbach Planning Associates, LLC, Gainesville, FL	2005 - present
Planning & Community Development Director, City of Alachua, FL	2001 – 2005
Senior Planner, Department of Growth Management, Alachua County, FL	1997 – 2001

RELEVANT TEACHING EXPERIENCE

University of Florida, Department of Urban and Regional Planning

Preview of Urban and Regional Planning (Spring/Fall 2016; Spring/Fall 2017)
Housing and Urban Development (Spring 2016; Spring 2017)
Housing, Public Policy, and Planning (Spring 2017)

SELECTED PUBLICATIONS & REPORTS

In review:

Dedenbach, L., K. Frank, K. Larsen, T. Redden. 2019. Building the foundation for Arnstein's ladder: community empowerment through a Participatory Neighborhood Narrative process. In *Learning from Arnstein's Ladder: From Citizen Participation to Public Engagement*, Eds. Lauria and Slotterback. Routledge Press: RTPi Library Series.

Technical Reports:

Dedenbach, L.J. 2019. "A Report on UF-Gainesville Collaborative Engagement Initiatives."

Frank, K., **Dedenbach, L.**, Larsen, K., Redden, T. 2018. "Neighborhoods as Community Assets."

Steiner, R., **Dedenbach, L.**, Brown, L., Smith, J. 2016. "Implementing Safe Routes to School Programs in Rural Florida Communities." Prepared for the Florida Department of Transportation Safe Routes to School Office.

ADVISING & MENTORING

University of Florida, MURP, Special Committee Member	2018 – 2019
University of Florida Sustainability and the Built Environment Capstone Mentor	2016 – 2019

SERVICE

Chair, Executive Cabinet, Community Partnership School	2018 – present
Chair, Alachua County Board of Adjustment	2012 – 2014
At-large Member, San Felasco Section, APA-FL	2010 – 2013

PROFESSIONAL CERTIFICATIONS

Florida Crime Prevention through Environmental Design Practitioner	2012
LEED Green Associate, No. 10274595	2011
Florida Master Naturalist, Coastal Systems and Upland Systems	2011
American Institute of Certified Planners, No. 016819	2001

AFFILIATIONS

Member, Phi Kappa Phi Honor Society	2016 – present
Member, Urban Land Institute	2015 – present
Member, Association of Collegiate Schools of Planning	2012 – present
Member, U.S. Green Building Council	2011 – present
Member, American Planning Association	1996 – present