

CASE # CDR-17-04-114

Commission District: # 4

GENERAL INFORMATION

APPLICANT	Tom Delahanty
OWNER	Blue Sphere Deerfield Plaza, Ltd.
PROJECT NAME	Deerfield Planned Development
PARCEL ID NUMBER	22-24-29-2011-00-005 (affected parcel only)
TRACT SIZE	470.10 gross acres (<i>overall PD</i>) 10.12 gross acres (<i>affected parcel only</i>)
LOCATION	West of S. Orange Blossom Trail and north of Deerfield Boulevard.
REQUEST	A PD substantial change to add certain C-2 (General Commercial) and C-3 (Wholesale Commercial) uses to PD Tract 1, Parcel 22-24-29-2011-00-005.
PUBLIC NOTIFICATION	A notification area extending beyond eight 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 forty-six (246) notices were mailed to those property owners in the notification buffer area. A community meeting was held on January 24, 2018 at Endeavor Elementary School as summarized in this report.

IMPACT ANALYSIS

Special Information

The Deerfield (aka Westin) PD was originally approved in 1985 and currently allows for 390,000 square feet of C-1 commercial uses, 740 residential low-medium density units, 1,030 medium density units, and 720 high density units.

Through this PD Change Determination Request (CDR), the applicant is seeking to add certain C-2 (General Commercial District) and C-3 (Wholesale Commercial District) uses to PD Tract 1, Parcel 22-24-29-2011-00-005, as follows:

- A. Animal Shelters, boarding kennels, animal pounds, training of animals, with no outdoor runs or outdoor compounds.
- B. Warehousing and storage (indoor only)
- C. Wholesale bakeries
- D. Wholesale distribution of frozen food

- E. Wholesale distribution of meat
- F. Wholesale distribution of bakery products, bottled water, canned goods, soft drinks, and fruits, beverage distributors.
- G. Golf cart sales and service (indoor display only)
- H. Boat dealerships, boat supplies (indoor display only)
- I. Recreational vehicle dealers (indoor display only and no on-site service)
- ~~J. Motorcycle dealers (indoor display only) *~~
- K. Caterers
- L. Dying, dry cleaning plant
- M. Furniture stripping and repair, furniture refinishing
- N. Locksmiths, lawnmowers repair, bicycle repair, camera repair, gunsmith, taxidermists, sharpening services

All of these uses are proposed to be located in the existing commercial building and would not be allowed to have any outdoor display or storage areas, roll-up service bay doors (i.e., no vehicle repair bays), or other outdoor or noise generating activities associated with said uses.

*Since the community meeting on January 24, 2018, the applicant has changed the plan due to feedback and has eliminated the proposed Motorcycle Dealers (indoor display only).

Land Use Compatibility

The proposed uses are C-2 and C-3 uses which, per Section 38-876, should not be permitted adjacent to single-family residential uses. The current uses allowed include C-1 uses which are appropriate for the site. Per Section 38-876, the PD Change Determination Request *would* adversely impact adjacent properties and is not compatible with adjacent single-family uses.

Comprehensive Plan (CP) Consistency

The subject property has an underlying Future Land Use Map (FLUM) designation of Commercial (C).

Overlay District 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

This project is vested from transportation concurrency under vested rights certificate 92-041. A copy of vested rights certificate is required with application for building permit.

Community Meeting Summary

A community meeting was held on January 24, 2018 at Endeavor Elementary School with eight (8) residents in attendance. Residents expressed concern with the proposed motorcycle showroom use, but otherwise were generally in support of the proposal. The applicant has since removed the Motorcycle Dealers (indoor display only) from the proposed list of uses.

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 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 – (November 1, 2017)

Make a recommendation of DENIAL for the Change Determination Request to the Deerfield PD to add certain C-2 and C-3 uses to PD Tract 1, with plan date “October 24, 2017”, subject to a community meeting being held prior to scheduling a public hearing with the BCC:

If the Board chooses to overturn staff’s recommendation, the following conditions of approval shall apply:

1. Development shall conform to the Deerfield Planned Development / Land Use Plan (PD/LUP) dated "Received February 22, 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 February 22, 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. Outside sales, storage, and display shall be prohibited.
7. New pole signs and billboards shall be prohibited. Ground and fascia signs shall comply with Chapter 31.5 of the Orange County Code.
8. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated June 3, 1997 shall apply:
 - a. The monopole communication tower shall be designed and constructed as a co-location facility.
 - b. The condition of co-location shall be satisfied when the applicant provides a recorded memorandum of the lease signed by the co-location service providers subject to Conditions 3 and 4 herein.
 - c. The applicant shall cooperate in good faith with other service providers to accomplish co-location of additional antennas on the approved communication tower, where feasible. Technical requirements, site constraints, and reasonable terms and conditions are relevant factors to determine if co-location is feasible. The applicant shall respond in writing to any written request for co-location within 45 days of receipt of the request by:
 - 1) Granting the terms of co-location as mutually agreed upon by the parties;
 - 2) Denying said request if said denial clearly explains the reasons for denial which shall include, but not be limited to:
 - i. Refusal to accept or offer rent or capital contributions within market rates for comparable sites;
 - ii. Availability of space on tower;
 - iii. Technical reasons such as, but not limited to, interference; or
 - 3) Extending the 45-day time limit by mutual agreement of the parties, not to exceed a total of 120 days for the request to be either granted or denied from the date of the receipt of the original request. The service provider shall submit a second notice to the applicant seven (7) days prior to the expiration of the response period.
 - d. If the procedures set forth in Condition 3 above are adhered to by the requesting service provider and the applicant fails to comply with Condition 3 either within the time frame set forth therein or by not providing adequate evidence to substantiate its reason to deny the co-location request, the service provider seeking to co-locate may initiate actions at the County to revoke the substantial

change approval permitting the communication tower. The matter shall be forwarded to a hearing officer and a date scheduled for a hearing in accordance with the following procedures:

- 1) The request to initiate action before a hearing officer shall be made within thirty (30) days from the date of response by the applicant or the date such response would be due.
 - 2) In the utilization of the hearing officer (s) under this section, Orange County Code Section 30-387, subsection (b), (c), (d), (e), and (g), pertaining, respectively, to term and compensation, ex parte communication, hearing officer prohibition from acting as an agent or attorney for subject matter, hearing procedures, and filing of a decision, shall generally be applicable.
 - 3) At the hearing, the hearing officer shall allow the Zoning manager or his designee(s), the service provider seeking co-location, and the applicant an opportunity to present evidence and to examine and cross-examine witnesses. After considering the evidence and testimony, the hearing officer shall make a factual determination as to whether the applicant violated Condition 3 above and issue an order. If the hearing officer makes a factual determination that the applicant has not acted in good faith, and is in violation of Condition 3, the order shall state what those violations are and provide a recommendation for final action to the Board of County Commissioners. The hearing officer's recommendation shall be forwarded to the Board of County Commissioners and upon confirmation shall become final unless appealed to the Board or called for review by the Board.
 - 4) Any appeal from a hearing officer's decision shall first go to the Board of County Commissioners and then may proceed to circuit court. Such an appeal shall generally follow the procedures set forth in Orange County Code Section 30-388, with references to "an application for a vested rights certificate" in this instance interpreted to mean "a hearing officer's decision on a co-location request." Further, the last sentence of subsection 30-388(a) (3) is specifically not applicable to proceedings under this section. An appeal from a hearing officer's decision shall stay all actions directed by such decision until the appeal is fully resolved.
 - 5) If at any time during this process the applicant submits to the Zoning manager a recorded memorandum of lease with any other service provider, further proceedings hereunder shall be canceled since the tower will in fact be a co-located facility. Prior to canceling the hearing, the Zoning manager will verify the memorandum of lease. The Zoning manager shall notify the parties and the hearing officer of the cancellation of the proceedings. Upon termination of the co-location lease, Conditions 3 and 4 herein shall apply.
- e. This approval is contingent upon the confirmation of the approval of the settlement agreement modification being received by the County before June 6, 1997, at 5 p.m.

9. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated October 21, 1985 shall apply:
- a. A minimum of 25 percent of the site shall be provided as open space, excluding all Conservation Areas.
 - b. The development rights over all Conservation Areas will be required to be dedicated to Orange County, except for modifications to some areas as allowed, as shown on Master Drainage Map – Map F, dated “Received” August 22, 1985 (received at DRC). The Stormwater Management Plan shall be designed to provide natural hydroperiods within those wetlands incorporated into the stormwater system.
 - c. The Developer shall dedicate, at no cost to Orange County, the right-of-way needed for the proposed John Young Parkway extension. Additional right-of-way needed for improvements to Orange Blossom Trail shall also be dedicated at no cost to the County.
 - d. The maximum height shall be 50 feet or four stories.
 - e. Sidewalks shall be provided along all external streets and internal streets of the project.
 - f. Access rights to John Young Parkway, U.S. 441 and the internal road shall be dedicated to Orange County, except at the approved locations.
 - g. In accordance with the County Subdivision Regulations criteria, one elementary school site shall be provided within this project. A letter shall be submitted from the School Boards confirming one school site.
 - h. The number of access points for the project shall be as approved by the County Engineer.
 - i. Commercial uses shall be limited to those allowed under the C-1 Zoning District.
 - j. There shall be two access points onto U.S. 441 with full turning capability, plus one right turn-in and out only access point.
 - k. Wastewater service by Orange County, Florida. Prior to Development Plan approval the Developer shall execute an Orange county / South Central Wastewater Utilities Service Area Agreement.
 - l. Water service by Orange County and Orlando Utilities Commission. Modifications to Orange County / Orlando Utilities Commission Territorial Boundaries may be required subject to Developer’s water needs.
 - m. A Master Plan for water and wastewater plan shall be submitted prior to Development Plan approval.

- n. Wherever the project proposed multi-family development adjacent to single family zoning, the following setbacks shall apply:
 - 1) Single-story only within 100' of property line
 - 2) One and two story only between 100' and 150' of property line
 - 3) 50' maximum height more than 150' from property line.

PREVIOUS BOARD OF COUNTY COMMISSIONERS ACTION *(June 3, 1997)*

Upon a motion by Commissioner Edwards, seconded by Commissioner Butler, and carried by with Vice-chairman Hoenstine and Commissioners Edwards and Butler voting AYE by voice vote; Commissioners Freeman and Staley voting NO by voice vote; County Chairman Chapin and Commissioner Johnson were absent; the Board approved the request by Ted Kruchten on behalf of American Portable Telecom (APT), for approval of a substantial change to the Westin (Deerfield) Planned Development / Land Use Plan (PD/LUP) to allow a 132-foot monopole communication tower; which constitutes a substantial change to the development on the above-described property; subject to conditions.