

CASE # CDR-16-03-092

Commission District: # 1

GENERAL INFORMATION

APPLICANT	Jeff W. Banker, Highland Engineering, Inc.
OWNER	Lake Buena Vista Investments
PROJECT NAME	Delores Development Planned Development / Land Use Plan (PD/LUP)
PARCEL ID NUMBERS	21-24-28-0000-00-006; 21-24-28-0000-00-020; and 21-24-28-5844-00-320
TRACT SIZE	10.8 gross acres (<i>overall PD</i>)
LOCATION	North of Winter Garden Vineland Road / West of Apopka Vineland Road
REQUEST	<p>A substantial change request to convert a mixture of uses into 279 hotel rooms, while adding access locations (full access, right-in/right-out), and modifying gross and net land areas, conservation areas, proposed conservation encroachment areas, and total buildable areas. In addition, the following waiver from Orange County Code has been requested:</p> <p>1) A waiver from Section 38-1272(a)(5) to allow a maximum building height of ninety (90) feet, in lieu of fifty (50) feet, and in lieu of thirty-five (35) feet within one hundred (100) feet of residential.</p>
PUBLIC NOTIFICATION	<p>A notification area extending beyond one thousand five hundred (1,500) feet was used for this application [<i>Chapter 30-40(c)(3a) of the Orange County Code requires 300 feet</i>]. Ninety-one (91) notices were mailed to those property owners in the notification buffer area.</p>

IMPACT ANALYSIS

Special Information

The Delores Development PD contains 10.8 acres and was originally approved on June 11, 1980, and now includes a development program consisting of 13,800 square feet of commercial uses (7,600 square feet of restaurant use and 6,200 square feet of convenience store with gas).

With this substantial change request, and through the use of an existing trip conversion matrix, the applicant is requesting to convert a mixture of uses into 279 hotel rooms. In addition, access locations (*full access, right-in/right-out*), and modifications to gross

area *(a reduction of 0.38 acre after ROW dedication)*; total net area *(an increase of 0.32 acre)*; net area conservation area *(a reduction of 0.28 acre per the Conservation Area Impact permit)*; conservation encroachment area *(an increase of 0.10 acre)*; and total buildable area *(an increase of 0.42 acre)* are proposed.

Finally, the applicant is seeking a waiver from Orange County Code to allow for a maximum building height of 90 feet, in lieu of fifty (50) feet, and in lieu of thirty-five (35) feet when within one hundred (100) feet of residentially zoned land.

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 PD has underlying Future Land Use Map (FLUM) designations of Commercial (C) and Rural (R). The PD was originally approved in 1980. Per Comprehensive Plan Policy FLU8.1.5, PDs approved prior to adoption of the CP in 1991 are considered to be consistent with the Comprehensive Plan.

Community Meeting Summary

A community meeting was not required for this request.

Overlay District Ordinance

The subject property is located within the Tourist Commercial 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

This project site was included in Orange County Conservation Area Determination CAD 90-029 and Impact Permit CAI 06-074. A conservation easement was recorded in book 9196, pages 3039 through 3048.

This plan proposes additional Class I wetland impacts. Submit a conservation area impact permit application as soon as possible to the Orange County EPD. The impact permit will need to be approved by the Board of County Commissioners (BCC) prior to approval of a Development Plan (DP) for the proposed resort hotel.

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).

Transportation / Concurrency

Based on the concurrency management system database dated 04-06-16, there are multiple failing roadways within a one mile radius of this project. This information is dated and is subject to change. Therefore, the applicant will be required to provide a traffic study for review and approval by Transportation Planning prior to obtaining a building permit.

Schools

This request would not result in any impacts to Orange County Public Schools.

Parks and Recreation

This request would not result in any impacts to Orange County Parks.

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 21, 2016)

Make a finding of consistency with the Comprehensive Plan (CP) and approve the substantial change to the Delores Development Planned Development / Land Use Plan (PD/LUP) dated "Received October 11, 2016", subject to the following conditions:

1. Development shall conform to the Delores Development Planned Development / Land Use Plan (PD/LUP) dated "Received October 11, 2016," 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 of this land use plan and the land use plan dated "Received October 11, 2016," 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 stormwater management system shall be designed to retain the 100-year/24-hour storm event onsite, unless documentation with supporting calculations is

submitted which demonstrates that a positive outfall is available. If the applicant can show the existence of a positive outfall for the subject basin, then in lieu of designing for the 100-year/24-hour storm event, the developer shall comply with all applicable state and local stormwater requirements and regulations. An emergency high water relief outfall shall be provided to assure overflow does not cause flooding of surrounding areas.

7. Prior to the issuance of any vertical building permits, the property shall be re-platted.
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. Prior to construction plan approval, hydraulic calculations shall be submitted to Orange County Utilities demonstrating that proposed and existing water, wastewater and reclaimed water systems have been designed to support all development within the PD.
10. The developer shall obtain water, wastewater and reclaimed service from Orange County Utilities.
11. Outside sales, storage, and display shall be prohibited.
12. Pole signs and billboards shall be prohibited. Ground and fascia signs shall comply with Chapter 31.5 of the Orange County Code.
13. A waiver from Section 38-1272(a)(5) is granted to allow a maximum building height of ninety (90) feet, in lieu of fifty (50) feet, and in lieu of thirty-five (35) feet when within one hundred (100) feet of residential.
14. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated November 15, 1994, and June 11, 1980, shall apply:
 - a. The developer shall utilize reclaimed water for landscape and green area irrigation when available.
 - b. Orange County shall not own, operate, or maintain the on-site water and wastewater systems.
 - c. A minimum 25' building setback shall be provided where adjacent to residentially-zoned property.
 - d. With respect to the 45-foot right-of-way reservation, in connection with any taking or condemnation thereof, the applicant agrees not to seek severance damages or file any claims for compensation, except as provided below (See page 483** of minutes of January 24, 1995, Board meeting for clarification).
 - e. When the road widening occurs, the following shall be applicable:

- 1) Sanitary sewer and potable water mains currently located in the existing right-of-way will either remain in place and available for the applicant's use, or as part of the road construction, will be relocated so as to make the mains and stubouts associated therewith available to the applicant.
 - 2) To the extent that applicant has incurred engineering and redesign costs associated with the modifications of the Final Development Plan necessary to accommodate the future road widening, the applicant may seek compensation for such redesign costs as provided by and in accordance with applicable law.
 - 3) To the extent that the applicant, in order to accommodate the County's desire to widen the road, incurs additional mitigation costs imposed by the Army Corp of Engineers, Department of Environmental Regulations, South Florida Water Management District, or other regulatory agencies, the applicant may seek compensation for such additional costs as provided by and in accordance with applicable law.
 - 4) With respect to the compensating storage required to accommodate the Revised Final Development Plan, the compensating storage criteria of the Water Management District shall be applicable criteria, as opposed to County criteria.
- f. The determination of building elevations will be above the 100 year flood elevation and approved by the Orange County Public Works Director. Stormwater management proposals will be submitted by the consulting engineer and verified by the Public Works Director to determine the level of the 100 year storm and water storage capacity of the subject property.
- g. That a retention berm for stormwater be constructed if determined necessary by the Public Works and Pollution Control Directors following receipt of the consulting engineer's calculations of the level and water storage requirements for the 25 year, 24 hour storm.
- h. Parking spaces for commercial development should be calculated based on 5.5 spaces per 1,000 square feet of gross leasable area or the provisions of Article XIX of the County Zoning Resolution. The figure requiring the least number of parking spaces may be used by the Developer.
- i. The Developer shall provide a detailed soil content analysis by a certified engineer for those areas containing Freshwater Swamp (Fs) and Rutledge Mucky Fine Sand (Rc) soils. Moreover, a detailed vegetative analysis shall be performed to determine the extent of wetland vegetative areas occurring within the designated site. In the event the soils and vegetative analysis demonstrates no conservation areas are preset, the development may proceed under the prevailing land regulations in force at the time. However, if conservation areas are determined to exist on the site, then the permitted uses on the designated conservation areas will be those as outlined in policy 3.0.1 of the Conservation Section of the Future Land Use Element.

- j. Development shall be in accordance with development plan dated February, 1980, and submitted at the June 11, 1980 public hearing by the Board of County Commissioners.
- k. Approval of this development is subject to all applicable provisions of the County Planned Development Zoning District and all County Subdivision Regulations, unless specifically waived.
- l. Uses permitted in the area designated as commercial shall comply with the C-1 zoning district and shall be limited to those uses which are retail commercial in nature. A final determination on the specific retail commercial uses which shall be permitted to be made at time the final development plan is approved.

PREVIOUS BOARD OF COUNTY COMMISSIONERS ACTION *(November 15, 1994)*

Upon a motion by Commissioner Freeman, seconded by Commissioner Butler, and carried with Vice-chairman Staley and all present commissioners voting AYE by voice vote; County Chairman Chapin and Commissioner Johnson were absent; the Board approved the request by B.C. Muszynski and C.M. Dowda for Delores Development Planned Development Land Use Plan to convert the land use from 26,800 square feet of commercial and 56 multi-family units to a 279-unit resort hotel, subject to conditions.