

CASE # CDR-16-03-105

Commission District: # 1

GENERAL INFORMATION

APPLICANT Scott M. Gentry, Kelly, Collins & Gentry, Inc.

OWNER Amprop Corp

PROJECT NAME The Vinings at Cypress Pointe Planned Development / Land Use Plan (PD/LUP)

PARCEL ID NUMBERS 22-24-28-8895-00-060; 22-24-28-0000-00-061; and 22-24-28-8895-00-080 (*affected parcels*)

TRACT SIZE 69.93 gross acres (*overall PD*)
7.40 gross acres (*affected parcels*)

LOCATION South of Vinings Way Boulevard and east of South Apopka Vineland Road

REQUEST A substantial change request to incorporate the following modifications to the PD/LUP, concurrently with a request to rescind The Vinings at Cypress Pointe Development of Regional Impact (DRI):

1. Aggregate PD Lot 8 (Tourist Commercial) into PD Lot 6 (Tourist Commercial), and add Hotel use to Lot 6;
2. Add a trip equivalency matrix; and,
3. Convert 23,018 square feet of tourist commercial entitlements into 170 hotel rooms using the trip equivalency matrix.

A comparison of existing and proposed development entitlements are shown in the following table:

Development Program Comparison Table

Use	Existing	Proposed
Multi-Family / Timeshare	1,000 units	1,000 units
Tourist Commercial	109,026 sq. ft.	86,008 sq. ft.
Hotel	150 rooms	320 rooms

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*]. Two hundred eighty-five (285) notices were mailed to those property owners in the notification buffer area.

IMPACT ANALYSIS

Special Information

The Vinings at Cypress Pointe PD/DRI contains 69.93 acres and was originally approved on December 22, 1992 and now includes a development program consisting of 1,000 multi-family / timeshare units, 109,026 square feet of tourist commercial uses, and 150 hotel rooms.

Through this substantial change request, and concurrent with a separate request to rescind the DRI, the applicant is proposing to amend the PD/LUP by aggregating PD Lot 8 (Tourist Commercial) into PD Lot 6 (Tourist Commercial); adding a trip equivalency matrix; and converting 23,018 square feet of commercial entitlements into 170 hotel rooms. All existing DRI / Development Order (DO) conditions were previously added as PD conditions of approval by the BCC on December 22, 1992.

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 an underlying Future Land Use Map (FLUM) designation of Activity Center Mixed Use (ACMU). The proposed PD substantial change request is consistent with this FLUM designation and all other applicable provisions of 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

Environmental Protection Division (EPD) staff reviewed the PD Change Determination Request (CDR), but did not identify any issues or concerns.

Transportation / Concurrency

This project is vested from transportation concurrency under vested rights certificate #92-014. The applicant must provide a copy of this certificate prior to obtaining a building permit.

This project shall comply with the County's International Drive Activity Center Comprehensive Plan requirement for a 15-foot transit easement and a separate 20-foot landscape, pedestrian and utility easement needed for future roadway improvements. The easement areas required shall be shown on the plan as a revised plan and conveyed concurrently at time of platting or dedicated to the County via separate instrument prior to Development Plan Approval.

Upon rescission of the DRI, final permitting of any development on this site will be subject to review and approval under capacity constraints of the County's Transportation Concurrency Management System and such approval will not exclude the possibility of a proportionate share payment in order to mitigate any transportation deficiencies.

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 – (August 24, 2016)

Make a finding of consistency with the Comprehensive Plan (CP) and approve the substantial change to The Vinings at Cypress Pointe Planned Development / Land Use Plan (PD/LUP) dated "Received July 6, 2016", subject to the following conditions:

1. Development shall conform to The Vinings at Cypress Pointe Planned Development / Land Use Plan (PD/LUP) dated "Received July 6, 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 and the land use plan dated "Received July 6, 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 developer shall obtain water and wastewater service from Orange County Utilities.
7. Prior to construction plan approval, hydraulic calculations shall be submitted to Orange County Utilities demonstrating that proposed and existing water and wastewater systems have been designed to support all development within the PD.
8. Outside sales, storage, and display shall be prohibited.
9. Pole signs and billboards shall be prohibited. Ground signs shall be per the Master Sign Plan and fascia signs shall comply with Chapter 31.5 (T-C) of the Orange County Code.
10. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated December 22, 1992 and November 17, 1987, shall apply:
 - a. To compensate for the loss of 12.43 acres of gopher tortoise habitat, the developer shall have undertaken through the Florida Game and Freshwater Fish Commission (FGFWFC) permit to "take" process, one of the following prior to additional development on the site:
 - 1) Acquire a minimum of 1.9 acres of gopher tortoise habitat in a location contiguous with existing public lands and approved by the FGFWFC, and restrict its development uses by conveying fee simple title to the game commission. The developer shall also develop a management plan for this property which includes, at a minimum, measures that will promote the continued protection of the gopher tortoise population and provide financing mechanisms sufficient to implement the plan; or
 - 2) Contribute to the FGFWFC Wildlife Habitat Trust Fund the amount \$10,910.33 (1.9 acres \$5,742.33 per acre) designated to acquire and manage the requisite acreage within the Commission Mitigation Park Facility located within the boundaries of the ECFRPC. This contribution includes a percentage for management needs for the parcel.
 - b. Except as otherwise allowable by this Development Order, site development related activities shall not result in the harming, pursuit, or harassment of wildlife species classified as endangered, threatened, or a species of special concern by either the state or federal government in contravention of applicable state or federal laws. Should such species be determined to be residing on, or be otherwise significantly dependent upon the project site, the developer shall cease

all activities which might negatively affect that individual or population and immediately notify the FGFWFC, the U.S. Fish and Wildlife Service and Orange County. Proper protection and habitat management, to the satisfaction of the above agencies, shall be provided by the developer.

“Harming” and “harassment” as used in this recommendation shall be defined in the same manner as “harm” and “harass” respectively are defined on 50 CFR Section 17.3.

- c. To minimize dependence on ground irrigation and to promote retention of wildlife habitat, Xeriscape principles of landscaping (as defined in subsection 373.185, Florida Statutes) shall be utilized in areas not planned to be served by reclaimed water irrigation. Ecologically viable portions of natural upland plant communities shall be preserved in their original state to the extent reasonably possible, taking into account customary site design and natural conditions.
- d. To meet the non-potable water use demands of the project, the development shall use all treated wastewater made available to the site by Orange County, up to the entire non-potable water demand.
- e. A 100-foot building setback shall be provided on the north property line for the proposed hotel site, limited to three stories or 40 feet in height.
- f. A 25-foot building setback for residential parcels from the internal spine road shall be provided.

PREVIOUS BOARD OF COUNTY COMMISSIONERS ACTION (April 28, 1998)

Upon a motion by Commissioner Freeman, seconded by Commissioner Johnson, and carried with all members present and voting AYE by voice vote, the Board approved the request by James E. Kelly, Jr.; The Vinings at Cypress Pointe Planned Development/Land Use Plan (PD/LUP); to amend the LUP to change the LUP height maximum from 60 feet to 75 feet on Lots 4 and 5 (existing Blue Tree Resort); which constitutes a substantial change to the development on the above-described property; and further, made a finding of consistency with the Comprehensive Policy Plan.