

CASE # CDR-16-09-339

Commission District: # 1

GENERAL INFORMATION

APPLICANT	Jamie T. Poulos, Poulos & Bennett, LLC
OWNER	DCS Real Estate Capital Investments IV, LLC
PROJECT NAME	National Spa and Resort Planned Development / Land Use Plan (PD/LUP)
PARCEL ID NUMBERS	02-24-28-0000-00-005; 02-24-28-0000-00-030; and 02-24-28-0000-00-031
TRACT SIZE	64.89 gross acres (<i>overall PD</i>)
LOCATION	Generally located west of Turkey Lake Road and south of Sand Lake Road.
REQUEST	<p>A PD substantial change to incorporate the following waiver from Orange County Code:</p> <ol style="list-style-type: none">1. A waiver from Section 38-1272(a)(5) to allow for a maximum building height of 55 feet for self-storage uses only, in lieu of a maximum building height of 50 feet.
PUBLIC NOTIFICATION	A notification area extending beyond five hundred (500) feet was used for this application [<i>Chapter 30-40(c)(3a) of the Orange County Code requires 300 feet</i>]. Five hundred sixty-nine (569) notices were mailed to those property owners in the notification buffer area.

IMPACT ANALYSIS

Special Information

The National Spa and Resort Planned Development (PD) was originally approved in 1977 as the Yogi Bear Campground PD, but has an existing development program consisting of 148,600 square feet of commercial, 120 hotel rooms, 60,000 square feet of spa and recreation, and 286 multi-family residential units. Self-storage is also an approved use, with the number of allowed self-storage units based on an approved trip matrix conversion table.

Through this PD substantial change, the applicant is seeking a waiver from Orange County Code Section 38-1272(a)(5) in order to allow for a maximum building height of 55 feet for self-storage uses only, in lieu of a maximum building height of 50 feet.

Land Use Compatibility

The proposed substantial change request 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 Commercial (C), High Density Residential (HDR) and Water Body (WB). The proposed request is consistent with this designation and all applicable CP provisions.

Community Meeting Summary

A community meeting was not required for this application.

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

Transportation staff has reviewed the proposed request, but did not identify any issues or concerns.

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 substantial change 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 – (December 7, 2016)

Make a finding of consistency with the Comprehensive Plan (CP) and approve the substantial change to the National Spa and Resort Planned Development / Land Use Plan (PD/LUP) dated "Received November 4, 2016", subject to the following conditions:

1. Development shall conform to the National Spa and Resort Planned Development / Land Use Plan (PD/LUP) dated "Received November 4, 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 November 4, 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. 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.
7. Self-storage facilities shall comply with Orange County Code Section 38-79(30) & (60).
8. Pole signs and new billboards shall be prohibited. Ground and fascia signs shall comply with Chapter 31.5 of the Orange County Code.
9. A waiver from Orange County Code Section 38-1272(a)(5) is granted to allow a maximum building height of fifty-five (55) feet for self-storage uses only, in lieu of a maximum building height of fifty (50) feet.
10. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated September 13, 2016, shall apply:
 - a. Short term rental shall be prohibited within the multi-family portion of the PD. Residential length of stay shall be for 180 days or greater.

- b. Outside sales, storage, and display shall be prohibited.
- c. 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 as of June 28, 2016.
 - 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 0 residential units allowed under the zoning existing prior to the approval of the PD zoning. The County may 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, and 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.
 - 5) Prior to or concurrently with the County's approval of the plat, documentation shall be provided from Orange County Public Schools that this project is in compliance with the Capacity Enhancement Agreement.
- d. Prior to mass grading, clearing, grubbing or construction, the applicant is hereby noticed that this site must comply with habitat protection regulations of the U.S. Fish and Wildlife Service (USFWS) and the Florida Fish & Wildlife Conservation Commission (FWC).
- e. Approval of this plan does not constitute approval of a permit for the construction of a boat dock, boardwalk, observation pier, fishing pier, community pier or other similar permanently fixed or floating structures. Any person desiring to construct any of these structures shall apply for an Orange County Dock Construction Permit. Application shall be made to the Orange County Environmental Protection Division as specified in Orange County Code Chapter 15 Environmental Control, Article IX Dock Construction prior to installation.
- f. A waiver from Orange County Code Section 38-1258(d) is granted to allow for a maximum multi-family residential building height of six (6) stories / eighty-seven

(87) feet, in lieu of a maximum multi-family building height of three (3) stories / forty (40) feet.

- g. A current Level One Environmental Site Assessment (ESA) and current title opinion shall be submitted to the County for review as part of any Construction Plan submittal and must be approved prior to Construction Plan approval for any streets and / or tracts anticipated to be dedicated to the County and / or to the perpetual use of the public.
11. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated October 14, 2014, shall apply:
- a. Prior to construction plan approval, hydraulic calculations shall be submitted to Orange County Utilities demonstrating that proposed waste water and reclaimed water systems have been designed to support the PD.
 - b. 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.
 - c. The Developer shall obtain wastewater and reclaimed water service from Orange County Utilities.
 - d. A waiver from Orange County Section 38-1501 is granted to allow for a zero (0) foot building setback from the normal high water elevation contour of "Boo Boo Lake" in lieu of a required minimum fifty (50) foot building setback from the normal high water elevation.
 - e. A twenty (20) foot wide transit easement shall be required for Turkey Lake Road.
 - f. Project shall fully comply with the Orange County "Big Box" Ordinance, #2007-01.
12. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated August 19, 1997, shall apply:
- a. Use of motorized craft (i.e., power boats, jet skis, etc.) shall be prohibited on Big Sand Lake. Motorized vessels shall not be launched from the property.
 - b. An access at the southern boundary is approved; however, the details of this access will be reviewed at the development plan submittal.

PREVIOUS BOARD OF COUNTY COMMISSIONERS ACTION *(September 13, 2016)*

Upon a motion by Commissioner Boyd, seconded by Commissioner Thompson, and carried with all present members voting AYE by voice vote, the Board made a finding of consistency with the Comprehensive Plan; and further, approved the request by Miranda Fitzgerald, Lowndes Drosdick Doster Kantor & Reed, P.A., National Spa and Resort Planned Development / Land Use Plan (PD/LUP) – Case # CDR-16-04-117; to amend the National Spa and Resort Land Use Plan in order to add multi-family residential as a permitted use; further, added multi-family residential development standards; further, added multi-family residential and personal self-storage uses to the land use conversion table; further, amended the existing development program by using the land use conversion table to convert 329 timeshare units into 286 multi-family residential dwelling units; and further, approved the following waiver from Orange County Code, subject to conditions:

- (1) A waiver from Section 38-1258(d) to allow for a maximum multi-family residential building height of six (6) stories / eighty-seven (87) feet, in lieu of a maximum multi-family building height of three (3) stories / forty (40) feet.*