

**CASE # CDR-17-03-081**

Commission District # 1

## **1. REQUEST**

This public hearing is to consider a recommendation from the Development Review Committee's (DRC) meeting of March 22, 2017, to approve a substantial change to the Olde Town Center Planned Development (PD) / Kailey's Ridge Preliminary Subdivision Plan (PSP) to modify existing Board of County Commissioners condition of approval #16 to transfer ownership and maintenance responsibilities for stormwater Tracts H and I from Orange County to the Hunter's Creek Community Association.

## **2. PROJECT ANALYSIS**

- A. Location: South of State Road 417 / West of Town Center Boulevard
- B. Parcel ID: 36-24-28-7195-00-008; 36-24-28-7195-00-009  
(pond tracts H and I only); property platted as the Pointe at Hunter's Creek (OR BK 84 / PG 78)
- C. Total Acres: 11.58 acres (pond tracts H and I only); 53.40 (gross PSP)
- D. Water Supply: Orange County Utilities
- E. Sewer System: Orange County Utilities
- F. Schools: West Creek ES - Capacity: 658 / Enrolled: 895  
Hunter's Creek MS - Capacity: 969 / Enrolled: 1,326  
Freedom HS - Capacity: 2,671 / Enrolled: 3,124
- G. School Population: 60
- H. Parks: Bear Creek – 6.3 Miles
- I. Proposed Use: 139 Single-Family Residential Dwelling Units
- J. Site Data: Maximum Building Height: 35' (2-stories)  
Minimum Living Area: 1,500 Square Feet  
Building Setbacks:
  - 20' Front
  - 20' Rear
  - 5' Side
  - 25' PD Boundary
  - 75' Expressway
  - 15' Corner
- K. Fire Station: 56 – 13303 International Drive

- L. Transportation: The current request does not result in additional vehicular trips. A capacity encumbrance letter (CEL#12-074) has been obtained for the proposed project.

### **3. COMPREHENSIVE PLAN**

The property's Future Land Use Map (FLUM) designation is Low Density Residential (LDR). The request is consistent with the Comprehensive Plan.

### **4. ZONING**

PD (Planned Development) (Olde Town Center PD)

### **5. REQUESTED ACTION:**

Approval subject to the following conditions:

1. Development shall conform to the Olde Town Center Planned Development; Orange County Board of County Commissioners (BCC) approvals; Kailey's Ridge Preliminary Subdivision Plan dated "Received March 27, 2013," and to the following conditions of approval. Development based upon this approval shall comply with all applicable federal, state and county laws, ordinances and regulations, which are incorporated herein by reference, except to the extent any applicable county laws, ordinances and regulations are expressly waived or modified by these conditions, or by action approved by the BCC, or by action of the BCC. In the event of a conflict or inconsistency between a condition of approval of this preliminary subdivision plan and the actual preliminary subdivision plan dated "Received March 27, 2013," 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 at the public hearing where this development was approved, 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. 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 or approved.
3. Prior to construction plan approval, a master stormwater management plan including a drainage study to establish the 100-year flood elevation of the adjacent wetland, if none exists, shall be submitted to the Development Engineering Division for review and approval.

4. 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 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.
5. Due to the elevation of the Greenway (S.R. 417), a waiver of Section 34-209 of the Orange County Code is granted to eliminate the wall requirement along the Greenway. Oak trees shall be provided as an alternative at 1 tree every 40 feet.
6. The following Education Condition of Approval shall apply:
  - a) Developer shall comply with all provisions of the Capacity Enhancement Agreement entered into with the Orange County School Board as of 12/19/2003.
  - b) 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 shall 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.
  - c) Developer, or 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.
  - d) 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. At the time of platting, documentation shall be provided from Orange County Public Schools that this project is in compliance with the Capacity Enhancement Agreement.
7. Prior to construction plan approval, certification with supporting calculations shall be submitted, which states that this project is consistent with an approved Master Utility Plan (MUP) for the PD.

8. Signage shall comply with Section 31.5-73.
9. All acreages regarding 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
10. Unless a Conservation Area Impact (CAI) permit is approved by Orange County consistent with Chapter 15 prior to Construction Plan approval, no conservation area or buffer encroachments shall be permitted.
11. Prior to earthwork or construction, the developer shall provide a copy of the completed National Pollutant Discharge Elimination System (NPDES) Notice of Intent (NOI) form for stormwater discharge from construction activities to the Orange County Environmental Protection Division, NPDES Administrator. The original NOI form shall be sent to the Florida Department of Environmental Protection.
12. The site shall be stabilized following grubbing, clearing, earth work or mass grading to establish a dense stand of grass, or shall incorporate other approved Best Management Practices, on all disturbed areas if development does not begin within 7 days. Final stabilization shall achieve a minimum of 70% coverage of the disturbed land area and shall include a maintenance program to ensure minimum coverage survival and overall site stabilization until site development. Prior to clearing or grubbing, approval of mass grading or construction plans, a letter of credit or cash escrow shall be submitted to the County to guarantee the required site stabilization and maintenance of all disturbed areas. The County Engineer shall establish the amount of the letter of credit.
13. Prior to platting, Olde Town Center Property shall be included in the Hunter's Creek Homeowners' Association and be subject to the covenants, conditions and restrictions (CC&R's) governing Hunter's Creek, provided the Hunter's Creek Homeowners' Associations legally accept the inclusion of the Olde Town property (according to the procedures set forth in the CC&Rs governing Hunter's Creek) within 90 days of a written request from the owner of the Olde Town Center property."
14. 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 platting.
15. A Municipal Service Benefit Unit (MSBU) shall be established for the standard operation and maintenance of street lighting inventory including leasing, fuel and energy costs for this project. Street lighting fixtures, poles, and luminaries used in this project shall be selected from the approved inventory list supplied by the Orange County Comptroller. Street lighting fixtures, poles, and luminaries used in this project shall be supplied and installed by the utility company that services the area of the project, as authorized by law or agreement, and thereafter

maintains the street lighting inventory. The developer shall obtain approval of the street lighting fixtures, poles, and luminaries from the Orange County Comptroller Special Assessments Department via a "Letter of Commitment" prior to the installation of the street lighting fixtures, poles, and luminaries and prior to the plat being recorded by Orange County Comptroller Official Records section. All installation costs and street lighting operational costs prior to the effective date of the MSBU approval by the Orange County Board of County Commissioners shall be the sole responsibility of the developer.

- ~~16. Roads and drainage system, including the retention pond, will be owned and maintained by Orange County with A Municipal Service Benefit Unit (MSBU) established for stormwater system functionality. Routine maintenance, including mowing, beyond that provided by the County, shall be the responsibility of the Home Owners' Association.~~

The streets will be owned and maintained by Orange County, and the two retention ponds (Tracts H and I, as reflected in Plat Book 84, Page 78) will be owned and maintained by the Hunter's Creek Community Association, Inc. (HCCA), pursuant to the Amendment to the Supplemental Declaration of Master Covenants, Conditions and Restrictions of Hunter's Creek, subject to a right of emergency access by Orange County. Tracts H and I shall be deemed to include not only the ponds themselves but also the infrastructure for the ponds, such as the outfall control structure, the outfall pipe, the outfall spreader swale, cross culverts / equalizer pipes between Tracts H and I, and drainage inflow pipes (starting from the upstream street inlets). The HCCA's responsibilities for the two ponds include routine maintenance, mowing, spraying, repairs to underdrains, repairs to fences (if fences exist), dredging, erosion control, plus all other items that are typically maintained by the County under an MSBU for the maintenance of retention ponds. Also, the County's responsibilities under the South Florida Water Management Permit and associated stipulations / requirements shall be transferred to the HCCA. The Amendment to the Supplemental Declaration may not be amended or revised without the Orange County Board of County Commissioners' prior approval, which approval may be withheld at the BCC's sole discretion. The County hereby assigns to HCCA all construction defect claims and rights the County may have relating to the items being assumed hereunder. Accordingly, the HCCA, not the County, shall be solely responsible for enforcing or pursuing any defect claims, latent or otherwise, against the developer.