PZC Recommendation Staff Report
Commission District: # 3

GENERAL INFORMATION

APPLICANT	Jim Hall, VHB, Inc.
OWNER	Richard J. Kurtyka
PROJECT NAME	Kurtyka Planned Developmment (PD)
HEARING TYPE	Planned Development / Land Use Plan (PD / LUP)
REQUEST	**A-2** (Farmland Rural District) ***to*** **PD** (Planned Development District) *A request to rezone one (1) parcel containing 17.59 gross acres from A-2 to PD with a development program consisting of 45 conventional single-family detached residential dwelling units. No waivers from the Orange County Code have been requested.*
LOCATION	2004 Gregory Road; or generally located on the west side of Gregory Road, approximately 1,300 feet south of Berry Dease Road
PARCEL ID NUMBER	06-23-31-0000-00-008
TRACT SIZE	17.59 gross acres
PUBLIC NOTIFICATION	The notification area for this public hearing extended well beyond 1,100 feet [Chapter 30-40(c)(3a) of the Orange County Code requires 300 feet]. Six hundred thirty-three (633) notices were mailed to those property owners in the mailing area. Two (2) community meetings were also held for this request on Wednesday, June 4, 2014 and Monday, February 23, 2015 (see community meeting summary below).
PROPOSED USE	Forty-five (45) lots with conventional single-family detached residential dwelling units.

STAFF RECOMMENDATION

Development Review Committee – (December 2, 2015)

Make a finding of consistency with the Comprehensive Plan and recommend APPROVAL of the Kurtyka Planned Development / Land Use Plan (PD/LUP), dated "Received December 3, 2015", subject to the following conditions:

1. Development shall conform to the Kurtyka Planned Development / Land Use Plan (PD/LUP) dated "Received December 3, 2015," 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 December 3, 2015," 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. 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. Unless the property is otherwise vested or exempt, the applicant must apply for and obtain a Capacity Encumbrance Letter (CEL) prior to construction plan submittal and must apply for and obtain a Capacity Reservation Certificate (CRC) prior to approval of the plat. Nothing in this condition and nothing in the decision to approve this land use plan shall be construed as a guarantee that the applicant will be able to satisfy the requirements for obtaining a CEL or a CRC.

5. All acreages identified as conservation areas and wetland buffers are considered approximate until finalized by a Conservation Area Determination and a Conservation Area Impact Permit. Approval of this plan does not permit any proposed conservation impacts.

6. There shall be no access to the site from Gregory Road.

7. 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 September 9, 2014.

   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 zero (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.

   e. 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.

8. The Developer shall obtain water and wastewater service from Orange County Utilities.

9. A Master Utility Plan (MUP) shall be submitted to Orange County Utilities at least 30 days prior to submittal of the first set of construction plans. The MUP must be approved prior to Construction Plan approval.

10. A current Level One Environmental Site Assessment (ESA) and current title opinion shall be submitted to the County for review and approval as part of any Preliminary Subdivision Plan (PSP) and /or Development Plan (DP) submittal.

IMPACT ANALYSIS

Land Use Compatibility

The applicant is requesting to rezone the 17.59-acre subject property from A-2 (Farmland Rural District) to PD (Planned Development District) in order to develop 45 conventional single-family detached residential dwelling units. In an effort to ensure compatibility with the adjacent Berry Dease Road neighborhood which primarily consists of large lots and scattered agricultural uses, the Kurtyka PD features a 50' wide perimeter buffer along the east and north property lines, with abutting minimum 1/2-acre lot with minimum 75' rear yard setbacks. All remaining lots would have a minimum size of 4,800 square feet (40' x 120'), but would be separated from the existing Berry Dease Road neighborhood by the larger perimeter lots and buffer. Finally, vehicular access from Gregory Road is prohibited, with all access to the project extending from Curry Ford Road to the south, and through the adjacent Econ Landings Planned Development (PD).

Despite the proposed perimeter buffer and lot size transition, the PD is inconsistent with the pending Rural Residential Enclaves Study Area development standards as drafted for the Berry Dease South Study Area. The purpose of the Rural Residential Enclaves Study was to evaluate alternative planning and development techniques aimed at balancing reasonable growth demands with appropriate neighborhood compatibility measures (*refer to Page 6 of this report*).

Comprehensive Plan (CP) Consistency

The subject property has an underlying Future Land Use Map (FLUM) designation of Low Density Residential (LDR), which allows for a maximum of four (4) dwelling units per acre. The proposed PD zoning district and development program of 45 dwelling units on 17.59 acres (2.6 du/acre) is consistent with the FLUM designation and the following CP provisions:

OBJ FLU8.2 - Compatibility will continue to be the fundamental consideration in all land use and zoning decisions.

FLU8.2.1 – Land use changes shall be required to be compatible with the existing development and development trend in the area. Performance restrictions and/or conditions may be placed on property through appropriate development order to ensure compatibility.

FLU8.2.11 – Compatibility may not necessarily be determined to be a land use that is identical to those that surround it. Other factors may be considered, such as the design attributes of the project, its urban form, the physical integration of a project and its function in the broader community, as well as its contribution toward the Goals and Objectives in the CP.

Community Meeting Summaries

Aside from the numerous meetings held for the Rural Residential Enclaves Small Area Study and the Berry Dease Road neighborhood, two (2) project-specific community meetings were held for this application. The first meeting was held at the Legacy Middle School Cafeteria on Wednesday, June 4, 2014, without Orange County planning staff. District 3 Commissioner Pete Clarke, and applicant representatives, and approximately

seventy (70) property owners were present with attendees adamantly opposing the project, raising concerns regarding density, lot size, impacts to the existing rural character/agricultural uses, and traffic impacts. The follow-up community meeting was held on Monday, February 23, 2015, at Deerwood Elementary School. Attendees continued to express opposition the project because it is incompatible with the existing large lot/rural development pattern of the area.

SITE DATA

Existing Use	Undeveloped Land	
Adjacent Zoning	N:	A-2 (Farmland Rural District) (*1957*)
	E:	A-2 (Farmland Rural District) (*1957*)
	W:	A-2 (Farmland Rural District) (*1957*)
	S:	PD (Planned Development District) (*2004*) (*Econ Landing PD*)
Adjacent Land Uses	N:	Undeveloped Land
	E:	Undeveloped Land / Manufacture Homes / Single Family Homes
	W:	Central Florida Greeneway (State Road 417)
	S:	210 Townhome Units (*under construction*)

APPLICABLE PD DEVELOPMENT STANDARDS

Minimum Living Area:	1,200 square feet
Maximum Building Height:	35 feet / 2 stories
Minimum Lot Size:	21,780 square feet *(north and east perimeter lots)* 4,800 square feet *(other lots)*
Minimum Lot Width:	100 feet *(north and east perimeter lots)* 40 feet *(other lots)*
Minimum Lot Depth:	230 feet *(north and east perimeter lots)* *120 feet (other lots)*
Minimum Building Setbacks	
Front:	20 feet
Rear:	75 feet *(north and east perimeter lots)* 20 feet *(other lots)*

Side:	5 feet
Street side:	15 feet
PD perimeter:	25 feet
SR 417:	75 feet

SPECIAL INFORMATION

Comprehensive Plan (CP) Amendment

The proposed PD zoning provides for the development of 45 conventional single-family detached residential dwelling units. This proposed PD is consistent with the property's underlying Low Density Residential (LDR) Future Land Use Map (FLUM) designation. As a result, a CP amendment is not required.

Rural Residential Enclaves Small Area Study

Prompted in part by applications to rezone properties within four (4) rural residential enclaves located inside or near the County's Urban Service Area (USA), the Orange County Planning Division initiated a Small Area Study in 2015 for the identified enclaves to evaluate alternative planning strategies aimed at balancing reasonable growth demands with appropriate neighborhood compatibility measures. One of the rural enclaves is recognized as the Berry Dease Study Area, and generally includes lands bounded by S.R. 417 to the west, the Little Econ River to the east, Lake Underhill Road to the north and Curry Ford Road to the south.

Despite being located within the County's USA and designated LDR (up to 4 dwelling units per net acre) on the Future Land Use, the existing development pattern of larger rural lots has been historically maintained within the Berry Dease Study Area. Consistent with A-2 zoning standards, existing lots generally range in size from one (1) acre to twenty (20) acres, and continue to provide for a variety of agricultural and equestrian activities. However, beginning in 2012 with the approval of the Econ Landing Planned Development (PD) located immediately north of Curry Ford Road and west of S.R. 417, the County has received rezoning applications for more urbanized projects.

The subject Kurtyka PD, located within the Berry Dease Study Area, was initially submitted on March 20, 2014, with a request to construct up to sixty-eight (68) single-family residential units on 17.69 acres (a density of 3.87 units per acre). The initial request also reflected a minimum lot size requirement of 4,800 square feet and a standard 25' PD perimeter setback.

In addition to two (2) community meetings held specifically for the proposed Kurtyka PD, Orange County staff also facilitated four (4) community workshops for the Berry Dease Study Area. The workshops were held on January 13, 2015, February 5, 2015, June 29, 2015, and October 29, 2015. Throughout the workshop process, staff strived to build community consensus on reasonable and equitable development opportunities.

At the 1st workshop, staff presented the purpose of the Rural Residential Enclaves Small Area Study effort and discussed existing site conditions. Residents also provided information concerning important community characteristics.

During the 2nd workshop, staff presented a summary of the previously collected workshop information, along with a preliminary Berry Dease Study Area boundary. At the request of residents, staff also provided an overview of the wetland and conservation determination process. Workshop attendees generally consisted of property owners seeking maximize their development opportunities, or those wanting to retain existing rural densities and large lot development patterns (*e.g., 1 or 2-acre minimums*). At the conclusion of the workshop, no compromise between the two factions was achieved.

At the request of Commissioner Clarke, a 3rd unscheduled community workshop was held on June 29, 2015. During this special meeting, staff presented various design options with specific design standards aimed at retaining existing rural character and ensuring development compatibility through the use of transitional land use and buffering techniques. The options included the establishment of 1) "Like-to-like" lot sizes along the perimeter with smaller lots located internally; 2) a minimum 25' wide landscaped perimeter buffer adjacent to minimum one-acre lots, with smaller lots located internally or along S.R. 417; and 3) a minimum 50' wide landscaped perimeter buffer adjacent to minimum half-acre lots, with smaller lots located internally or along S.R. 417. In addition to transitional techniques, staff also presented the following examples of rural design standards for the community's consideration:

1) *Providing a maximum lot coverage within perimeter lots;*

2) *Allowing rural-style fencing only along project perimeters (no walls);*

3) *Prohibiting gated communities; and*

4) *Requiring all residential lots less than a ½-acre in size to be located within internal project areas, excluding adjacent rights-of-way along S.R 417.*

Notwithstanding staff efforts to build community consensus, a majority of the ~30 residents in attendance continued to express the need to limit all new residential development to minimum one-acre lots. During the 4th and final Small Area Study workshop, various other rural design standard options were presented, but no consensus was reached.

Following the 3rd Berry Dease Study Area community workshop, the applicant submitted a revised Kurtyka PD/LUP, which reduced the original amount of proposed lots from 68 to 45, and maximum residential density from 3.87 units per net acre to 2.6 units per net acre. The applicant also agreed to the rural design standards presented by staff at the June 29, 2015, community workshop.

Most recently, on March 7, 2017, the preliminary findings and recommendations of the Rural Residential Enclaves Small Area Study, including specific recommendations for each of the four (4) targeted areas were presented to the Board of County Commissioners. At that time, the proposed development standards for the Berry Dease South Area (including the Kurtyka parcel) allowed smaller lots (less than a 1/4-acre) to be placed within the internal portions of a project when a minimum 100' wide perimeter buffer was established, and when minimum 1/2-acre lots were placed along the interior side of the buffer. The Kurtyka PD/LUP, as recommended for approval by the DRC on

December 2, 2015, met the draft development standards for the Berry Dease Road South Area as presented to the BCC on March 7, 2017.

However, during the March 7, 2017 BCC work session, and in order to further address compatibility, the BCC directed staff to modify the Berry Dease South Area development standards by requiring minimum 1/2-acre interior project lots and a range of 1/2-acre to 2.0-acre lots along perimeter buffers ranging from 25' to 40' in width (dependent upon perimeter lot size). As a result, both the DRC-recommended Kurtyka PD/LUP dated "Received December 3, 2015" and the alternative Kurtyka PD/LUP dated "Received April 5, 2016" and submitted by the applicant after the January 21, 2016 PZC public hearing, are now inconsistent with the pending Rural Residential Enclaves Study Area development standards.

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.

Overlay District Ordinance

The subject property is not located within an Overlay District.

Airport Noise Zone

The subject property is not located within an Airport Noise Zone.

Environmental

The subject property contains Class III wetlands, as determined by approved Conservation Area Determination CAD-14-03-016. A Conservation Area Impact (CAI) permit is required for any proposed conservation area encroachments, and shall be approved by the BCC prior to, or concurrently with, a public hearing for the Preliminary Subdivision Plan (PSP).

Development of the subject property shall also comply with all state and federal regulations regarding endangered, threatened, or species of special concern. The Environmental Assessment report dated December 26, 2013, indicated that gopher tortoise burrows were observed on site. The property is also within the sand skink consultation area. The applicant is responsible for obtaining and required habitat permits from the U.S. Fish and Wildlife Service and/or the Florida Fish and Wildlife Conservation Commission.

Transportation / Concurrency

Based on the 9th Edition of the ITE Trip Generation Manual, the proposed development of 45 single family detached residential dwelling units will generate 51 pm peak hour trips. Data from the Concurrency Management System database dated February 20, 2017, indicates that Dean Road from Curry Ford Road to Lake Underhill Road is operating at Level of Service F and capacity is currently not available along this roadway segment. The applicant will be required to submit a traffic study for review and approval by the Transportation Planning Division prior to obtaining an approved Capacity Encumbrance Letter (CEL) and building permit. This information is dated and is subject to change.

In addition, unless the property is otherwise vested or exempt, the applicant must apply for and obtain a Capacity Encumbrance Letter (CEL) prior to construction plan submittal and must apply for and obtain a Capacity Reservation Certificate (CRC) prior to approval of the plat. Nothing in this condition and nothing in the decision to approve this land use plan shall be construed as a guarantee that the applicant will be able to satisfy the requirements for obtaining a CEL or a CRC.

Water / Wastewater / Reclaim

	Existing service or provider
Water:	Orange County Utilities
Wastewater:	Orange County Utilities
Reclaimed:	Unavailable

Schools

Capacity Enhancement Agreement (CEA) OC-14-015 applies to this project. The CEA has been fully executed.

Parks

Orange County Parks and Recreation staff reviewed the 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

Planning and Zoning Commission (PZC) Recommendation – (January 21, 2016)

Make a finding of inconsistency with the Comprehensive Plan and recommend **DENIAL** of the Kurtyka Planned Development / Land Use Plan (PD / LUP).

PLANNING AND ZONING COMMISSION (PZC) PUBLIC HEARING SYNOPSIS

The staff report was presented to the Planning and Zoning Commission with a recommendation that they make a finding of consistency with the Comprehensive Plan (CP) and recommend approval of the Kurtyka Planned Development / Land Use Plan (PD / LUP), subject to the 10 recommended Development Review Committee (DRC) conditions, plus the following new Condition (#11) to address specific transitional land use techniques and rural design standards aimed at achieving compatibility with the adjacent Berry Dease neighborhood:

11. The project shall incorporate the following design standards aimed at retaining existing rural character and ensuring development compatibility:

a. *All access shall be provided through the adjacent Econ Landing PD to the south only;*

b. *Minimum 50', naturally landscaped and enhanced buffer tracts, that are owned and maintained by an HOA, shall be provided along any PD perimeter that abuts existing rural properties or boundaries;*

c. *Minimum ½-acre residential lots shall be located adjacent to all HOA-owned and maintained perimeter buffer tracts;*

d. *Primary structure lot coverage within all minimum ½-acre lots shall not exceed 15%;*

e. *Rural-style fencing only (no walls) shall be permitted along residential lots abutting perimeter buffer tracts, or along the PD perimeter;*

f. *Gated development is prohibited; and*

g. *Residential development shall consist of detached single-family units only.*

Staff noted that six hundred thirty-three (633) notices were sent to property owners within an area extending beyond 1,100 feet from the subject property, and that a total of twenty-five (25) commentaries regarding the request had been received, all in opposition. Concerns of compatibility with the area's rural character and lifestyle were expressed. Staff also indicated that two (2) community meetings for the request were held on June 4, 2014, and February 23, 2015. Attendees expressed opposition to the project who feel it is incompatible with the existing rural character of the area.

Prior to the Kurtyka PD public hearing, a work session was held with the PZC to introduce a staff-initiated Rural Enclaves Small Area Study and Neighborhood Plan for four (4) rural neighborhoods in the County. The Small Area Study effort was prompted in part by previous applications to rezone properties within the enclaves, and its purpose is to evaluate alternative planning strategies and Comprehensive Plan (CP) amendments aimed at balancing reasonable growth demands and compatibility measures within each neighborhood. One of the subject rural enclaves includes the Berry Dease Neighborhood, within which the subject Kurtyka PD is located.

During the Kurtyka PD public hearing, staff reiterated that six (6) community meetings for either the broader Berry Dease neighborhood Rural Enclaves Small Area Study or the specific Kurtyka PD/LUP had been held, but that consensus among property owners in the neighborhood on an approach for achieving a balanced and compatible development framework had not been achieved. As it pertains to this request, staff also indicated that the applicant had proactively revised their application by reflecting the transitional land use techniques and rural design standards addressed by new Condition #11, and that the proposed PD was consistent with the draft Rural Enclaves Small Area Study recommendations for the Berry Dease neighborhood. Finally, the PZC was reminded by staff that CP Policy FLU8.2.11 clearly states that "*compatibility may not necessarily be determined to be a land use that is identical to those that surround it*", and that "*other*

factors may be considered, such as the design attributes of the project, its urban form, the physical integration of a project, and its function in the broader community".

The applicant, Jim Hall, was present and expressed support for the staff recommendation. Mr. Hall also restated their efforts to ensure compatibility through the use of the transitional land use techniques and rural design standards outlined by staff and the draft Rural Enclaves Small Area Study recommendations.

Following the applicant's presentation, Chairperson Demostene opened the hearing for public comment. Although a few neighborhood property owners or their representatives were present to speak in favor of the request, a majority of residents spoke in opposition. In summary, those in opposition noted and described the unique rural character of the Berry Dease neighborhood, and felt that even with a commitment by the applicant to establish a 50' landscaped perimeter buffer adjacent to minimum 1/2-acre lots, and the other rural design / access conditions, the project would be highly incompatible. Some speakers also expressed fear that approval would set a precedent for similar requests.

Following approximately two (2) hours of public testimony, lengthy discussion among PZC members ensued, with much time devoted to the question of consistency with the Comprehensive Plan and compatibility. Despite the property's underlying Low Density Residential (LDR) Future Land Use Map (FLUM) designation which allows consideration of a maximum density of 4 residential dwelling units per acre, and the applicability of Policy FLU8.2.11 which recognizes that compatibility can be achieved through project design and form, a majority of commissioners were not convinced that the request passed the compatibility test.

In support of the application, Commissioner Dunn noted the property's location within the Urban Service Area (USA) and consistency with the Low Density Residential (LDR) Future Land Use Map (FLUM) designation. He also acknowledged the applicant's compromises and felt that the plan reflected an appropriate transition between the higher densities to the south, and the lower densities within the rural enclave. Commissioner Cantero also supported the request, stating that the property was located within the USA, was not located in a Rural Settlement, and even though the Rural Enclaves Study recommendations had not been formally adopted into the CP, the applicant had agreed with the proposed compatibility measures (new Condition #11).

Commissioner Barrett strongly supported those residents in opposition, stating that the request was incompatible and that it was unfair that a developer could "come in and change the style of living" for those in the neighborhood. He further stated his personal opinion that "we sometimes have to realize what the residents in the community want, and quit leaning everything towards a developer". Commissioner Wean also expressed strong opposition, because the applicant "had not met the burden of proof" for compatibility, and because of uncertain traffic impacts. He further stated that his opinion was not based on the pending Rural Enclaves Study staff recommendations.

Although Commissioners DiVecchio and Baldocchi eventually supported a motion to deny, they found some merit to the applicant's request. More specifically, Commissioner DiVecchio recognized the "unique situation" in that the property was located within the Urban Service Area (USA) along S.R. 417, was designated Low Density Residential (LDR) on the Future Land Use Map, and was immediately adjacent to higher residential densities

to the south. He felt that the applicant "did a good job of attempting to work with neighbors", but found that the proposed density would be incompatible with adjacent rural properties. Commissioner Baldocchi noted that the subject property appeared to be under the same ownership since 1984 or beyond, and that their long-time expectations and development rights should also be considered. He also recognized that in accordance with Policy FLU8.2.11, project compatibility was not solely achieved by providing identical land uses to those that surround it. Finally, Commissioner Baldocchi noted that despite failure to reach consensus among all neighborhood residents, he felt that a compromise was close.

In her comments, Commissioner Demostene stated that "the neighbors proved beyond a shadow of a doubt" that the project was incompatible by pointing out differences in proposed lot sizes, lot widths, and residential density. She also recognized that "the developer made great efforts and reasonable compromises", but that it did not go far enough to address compatibility. As an example, Commissioner Demostene felt that providing minimum 130' wide lots along the proposed perimeter landscaped buffer was an improvement, but suggested that minimum 160' - 165' wide lots would be a better compromise. Regarding internal lots, she also believed that minimum 40' wide lots were too small and suggested minimum 1/4-acre lot sizes or 50' wide lot widths. When asked to comment on suggested modifications, the applicant indicated that the perimeter minimum lot widths could be increased to 160', but that a commitment for increased internal lot sizes could not be provided without owner/client authorization.

At the conclusion of lengthy discussion, Commissioner Wean made a motion to find the request to be inconsistent with the Comprehensive Plan and recommended **DENIAL** of the Kurtyka Planned Development / Land Use Plan (PD/LUP). The motion was seconded by Commissioner Barrett, and was then carried on a 6-2 vote, with Commissioners Dunn and Cantero voting in opposition.

Motion / Second	Paul Wean / Marvin Barrett
Voting in Favor of Motion	Paul Wean, Marvin Barrett, Tina Demostene, JaJa Wade, Rick Baldocchi, and Pat DiVecchio
Voting Against Motion	Jose Cantero and James Dunn
Absent	Yog Melwani

POST - PLANNING AND ZONING COMMISSION (PZC) PD/LUP REVISIONS

Subsequent to the January 21, 2016 PZC public hearing, and prior to requesting a final public hearing before the Board of County Commissioners (BCC), the applicant considered PD/LUP modifications to more effectively address compatibility concerns. As a result of continued plan evaluation, and subsequent discussions with District 3 Commissioner Pete Clarke, the applicant submitted a modified PD/LUP dated "Received April 5, 2016" by incorporating the following changes:

1) Reduced maximum residential yield from 45 units to 43 units;

2) Reduced residential density from 2.6 du/ac to 2.4 du/ac;

3) Increased the depth of the northern/eastern PD perimeter buffer from fifty feet (50') to one-hundred feet (100');

4) Increased the minimum width of lots adjacent to the eastern PD perimeter buffer from one-hundred feet (100') to one-hundred seventy feet (170'); and

5) Increased the minimum width of all remaining lots from 40' to 50'.

With the understanding that the revised PD/LUP is no longer consistent with the pending Rural Residential Enclaves Study Area development standards; should the BCC find the proposed rezoning and the modifications listed above to be consistent with the Comprehensive Plan, staff is recommending that it **APPROVE** the Kurtyka Planned Development / Land Use Plan (PD / LUP) dated "Received April 5, 2016", subject to the following conditions, and final review by the Development Review Committee (DRC):

1. Development shall conform to the Kurtyka Planned Development / Land Use Plan (PD/LUP) dated "Received April 5, 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 April 5, 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 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. 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. Unless the property is otherwise vested or exempt, the applicant must apply for and obtain a Capacity Encumbrance Letter (CEL) prior to construction plan submittal and must apply for and obtain a Capacity Reservation Certificate (CRC) prior to approval of the plat. Nothing in this condition and nothing in the decision to approve this land use plan shall be construed as a guarantee that the applicant will be able to satisfy the requirements for obtaining a CEL or a CRC.

5. All acreages identified as conservation areas and wetland buffers are considered approximate until finalized by a Conservation Area Determination and a Conservation Area Impact Permit. Approval of this plan does not permit any proposed conservation impacts.

6. There shall be no access to the site from Gregory Road.

7. 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 September 9, 2014.

    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 zero (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.

e. 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.

8. The Developer shall obtain water and wastewater service from Orange County Utilities.

9. A Master Utility Plan (MUP) shall be submitted to Orange County Utilities at least 30 days prior to submittal of the first set of construction plans. The MUP must be approved prior to Construction Plan approval.

10. A current Level One Environmental Site Assessment (ESA) and current title opinion shall be submitted to the County for review and approval as part of any Preliminary Subdivision Plan (PSP) and /or Development Plan (DP) submittal.

11. The project shall incorporate the following design standards aimed at retaining existing rural character and ensuring development compatibility:

    a. All access shall be provided through the adjacent Econ Landing PD to the south only;

    b. Minimum 100-foot wide, naturally landscaped and enhanced buffer tracts, that are owned and maintained by an HOA, shall be provided along any PD perimeter that abuts existing rural properties or boundaries;

    c. Minimum ½-acre residential lots shall be located adjacent to the HOA-owned and maintained perimeter buffer tract along the eastern PD boundary;

    d. Primary structure lot coverage within all minimum ½-acre lots shall not exceed 15%;

    e. Rural-style fencing only (no walls) shall be permitted along residential lots abutting perimeter buffer tracts, or along the PD perimeter;

    f. Gated development is prohibited; and

    g. Residential development shall consist of detached single-family units only.