

BCC Mtg. Date: July 18, 2017

RESOLUTION

of the

ORANGE COUNTY BOARD OF COUNTY COMMISSIONERS

Regarding

INTERIM PROCEDURES FOR CERTAIN APPROVED GATED COMMUNITIES WITH SHARED DRAINAGE FACILITIES SEEKING FINAL PLAT OR DEVELOPMENT ORDER APPROVAL FROM THE COUNTY

Resolution No. 2017 - M-24

WHEREAS, Section 34-280(a)(3), Orange County Code, currently states, in part, that gated communities may be appropriate “where the subdivision is a phase of a larger subdivision where an earlier phase or phases have already been approved as gated communities, and it would be impracticable to separate the drainage of the new subdivision...” from the drainage of the earlier approved gated community; and

WHEREAS, Section 34-280(b)(4), Orange County Code, provides that gated communities “will be specifically prohibited” where drainage is commingled with drainage from public facilities or any other private facilities not governed by the same master property owners’ association; and

WHEREAS, the aforementioned Code provisions present a conflict which is preventing the County from issuing approvals for final plat or other development order requests by developers of approved gated subdivisions that have shared drainage facilities, but that may not be subject to a master property owner’s association with all of the other developments sharing the drainage facility; and

WHEREAS, County staff is drafting an ordinance for consideration by the Board of County Commissioners to resolve the conflict in Chapter 34 with regard to shared drainage facilities in gated communities, and wishes to obtain the direction and approval of the Board for interim procedures that would permit the issuance of final plat or other development order approvals for the aforementioned approved gated communities prior to amendment of the Code.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY:

Section 1. Interim Procedures. The Board hereby adopts the following interim procedures:

An applicant for construction plan approval, final plat approval, or any other form of development order approval related to an approved gated community, where the gated community will share a stormwater detention/retention area with another subdivision, a separate development, or a County facility, shall adhere to the following criteria:

- (1) The subdivision seeking County approval shall be part of a master property owner's association which apportions the costs and responsibilities for maintenance of the shared drainage facility and makes it clear that in no event shall the County be responsible for any costs related to the shared drainage facility, or
- (2) The Developer for the subdivision shall add to its Declaration of Restrictive Covenants, Community Declaration, or similar document (hereinafter, "Declaration"), the following provision(s) under the Declaration's "Gated Community Cost Disclosure Statement," which shall be distributed to contract

purchasers of lots in the subdivision (if the subdivision's Declaration is already recorded and includes a provision that the County must approve, in writing, any amendments to the Declaration affecting the gated communities section or provisions, this Resolution shall constitute County's written approval for the Declaration to be amended in substantial compliance herewith). Where both subsection a. and b. are applicable to a subdivision's shared drainage facility, each provision shall be added to the Declaration.

- a. In the event the community shares any portion of a stormwater detention/retention area with the County, the additional Gated Community Cost Disclosure provision shall read substantially as follows:

This community is sharing a stormwater detention/retention area (the "Shared Facilities") with Orange County (the "Additional Drainage") because the commingled stormwater is a necessity for the infrastructure in this community and/or the surrounding infrastructure to function properly. This community is responsible for its own drainage as well as the Additional Drainage and is responsible for the full cost of maintenance, repair, replacement and restoration of Shared Facilities. In no event shall Orange County be

responsible for maintaining, repairing, replacing, or restoring such Shared Facilities or for any costs related thereto.

- b. In the event the community shares any portion of a stormwater detention/retention area with another subdivision or development, the additional Gated Community Cost Disclosure provision shall read substantially as follows:

This community is sharing a stormwater detention/retention area (the "Shared Facilities") with another subdivision or another development (collectively, the "Additional Drainage") because the commingled stormwater is a necessity for the infrastructure in this community and/or the surrounding infrastructure to function properly or because it would be impracticable at this point to separate the drainage from the communities. This community is responsible for its percentage of the Shared Facilities. In the event the other subdivision/development fails to perform necessary maintenance and repair for the Shared Facilities attributable to its share of the Additional Drainage or contribute its share of the cost of the maintenance and repair for the Shared Facilities, that is a private legal matter to be resolved between this community, the other subdivision or other development and the master property owner's association, if any. In no event shall Orange County be responsible for maintaining, repairing, replacing, or restoring such Shared Facilities or for any costs related thereto.

(3) In addition to complying with (1) and/or (2), above, where retained and/or detained stormwater from subdivision infrastructure is commingled with retained and/or detained stormwater from a public facility, the Developer shall also, prior to plat approval, enter into an Indemnification and Hold Harmless agreement with the County, a form of which shall be provided by the County and which shall indemnify and hold the County harmless from any and all claims or liabilities of any sort resulting from or relating to the use, maintenance, and/or repair of the stormwater retention and/or detention area(s) and drainage system(s). Such Hold Harmless and Indemnification Agreement shall be recorded in the Official Records of Orange County, shall run with the land and be binding upon all successors and assigns, shall confirm that the Hold Harmless and Indemnification agreement shall not be construed to provide a tax discount to property owners, and shall include an express statement relieving the County of any responsibility associated with or relating to the County's use of the retention and/or detention

stormwater area(s) and drainage system(s), and any costs associated therewith.

Section 2. Authority to Approve. Upon compliance with the interim procedures set forth herein, a pending application for construction plan approval, final plat approval, or other form of development order approval related to an approved gated community, as the case may be, which has been delayed due to the current conflict in the existing gated community ordinance, may be processed and approved in accordance with standard County procedures; provided, however, such application is otherwise consistent with all other County requirements and regulations. Furthermore, the Board hereby authorizes the Director of the Public Works Department, or authorized designee, to sign the Hold Harmless and Indemnification Agreement described in subsection (3) of Section 1. herein, provided such Hold Harmless and Indemnification Agreement is in a form acceptable to the County Attorney's Office.

Section 3. Effective date. This Resolution shall become effective upon adoption by the Orange County Board of County Commissioners.

[Signatures appear on following page]

ADOPTED this 18th day of July, 2017.



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Teresa Jacobs*
Teresa Jacobs
Orange County Mayor

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Craig A. Stopyna*
fol Deputy Clerk