

**CASE # CDR-17-05-142**

Commission District: # 2

**GENERAL INFORMATION**

|                            |  |
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| <b>APPLICANT</b>           | Rick Baldocchi, Avcon, Inc.  |
| <b>OWNERS</b>              | Thompson Road, LLC and Wellington Park Apartments, LTD   |
| <b>PROJECT NAME</b>        | Thompson Road Planned Development  |
| <b>PARCEL ID NUMBERS</b>   | 11-21-28-0000-00-005, 11-21-28-0000-00-007, and<br>11-21-28-0000-00-246  |
| <b>TRACT SIZE</b>          | 27.4 gross acres   |
| <b>LOCATION</b>            | Generally located east of Thompson Road, approximately<br>1,300 feet north of E. Semoran Boulevard   |
| <b>REQUEST</b>             | <p>A PD substantial change to grant the following waivers from Orange County Code by eliminating the requirement to construct a wall or fence between the designated multi-family area of the PD adjacent to (or on the opposite side of a right-of-way from) single-family zoned property:</p> <ol style="list-style-type: none"><li><i>1. A waiver from Section 38-1258(f) to allow multi-family residential buildings to be located adjacent to single-family residential zoned property without a six foot (6') high masonry, brick, or block wall; in lieu of the requirement that a six foot (6') high masonry, brick, or block wall be constructed between multi-family development that is adjacent to single-family zoned property; and</i></li><li><i>2. A waiver from Section 38-1258(i) to allow multi-family residential buildings to be located across a right-of-way from single-family zoned property without a fence adjacent to the right-of-way, in lieu of the requirement that a fence be placed adjacent to the right-of-way when multi-family development is located across the right-of-way from single-family zoned property.</i></li></ol> |
| <b>PUBLIC NOTIFICATION</b> | <p>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>]. Two hundred ninety-three (293) notices were mailed to those property owners in the notification buffer area. A community meeting was not required for this application.</p>   |

## **IMPACT ANALYSIS**

### **Special Information**

The 27.40-acre Thompson Road Planned Development was originally approved on August 3, 2004 and currently allows for the development of up to 100 single-family residential dwelling units and 120 multi-family residential dwelling units.

Through this PD substantial change, the applicant is requesting two (2) waivers from Orange County Code by eliminating the requirement to construct a wall or fence between the designated multi-family area of the PD adjacent to (or on the opposite side of a right-of-way from) single-family zoned property.

### **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 Low-Medium Density Residential (LMDR). The LMDR designation allows consideration of up to ten (10) dwelling units per developable acre. The proposed PD substantial change is consistent with the underlying FLUM designation and all applicable CP provisions; however, future development will be subject to the Wekiva Study Area provisions which require 35% dedicated open space.

### **Overlay District Ordinance**

The subject property is located within the Wekiva Study Area.

### **Rural Settlement**

The subject property is not located within a Rural Settlement.

### **Joint Planning Area (JPA)**

The subject property is located within the Apopka JPA.

### **Environmental**

Environmental Protection Division (EPD) staff has reviewed the proposed request, but did not identify any issues or concerns.

### **Transportation / Concurrency**

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

### **Community Meeting Summary**

A community meeting was not required for this request.

### **Schools**

Orange County Public Schools (OCPS) reviewed the request and determined that it will not impact public school capacity.

**Parks and Recreation**

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**

**Development Review Committee (DRC) Recommendation – (June 14, 2017)**

**Make a finding of consistency with the Comprehensive Plan (CP) and approve the substantial change to the Thompson Road Planned Development / Land Use Plan (PD/LUP) dated “Received June 1, 2017”, subject to the following conditions:**

1. Development shall conform to the Thompson Road Planed Development / Land Use Plan dated "June 1, 2017" 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 Thompson Road 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 "June 1, 2017" 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 following waivers from Orange County Code are granted:
  - a. A waiver from Section 38-1258(f) to allow multi-family residential buildings to be located adjacent to single-family residential zoned property without a six foot (6') high masonry, brick, or block wall; in lieu of the requirement that a six foot (6') high masonry, brick, or block wall be constructed between multi-family development that is adjacent to single-family zoned property.
  - b. A waiver from Section 38-1258(i) to allow multi-family residential buildings to be located across a right-of-way from single-family zoned property without a fence adjacent to the right-of-way, in lieu of the requirement that a fence be placed

adjacent to the right-of-way when multi-family development is located across the right-of-way from single-family zoned property.

7. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated August 23, 2016 shall apply:
- a. 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.
  - b. 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 07-26-2016.
    - 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 zero (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.
    - 3) 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. 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.
  - c. A waiver from Orange County Code Section 38-79(24) is granted to allow a single structure containing a maximum of one-hundred twenty (120) multi-family dwelling units, in lieu of the maximum of four (4) dwelling units contained in any combination of attached dwellings and their customary uses.
  - d. A six (6) foot high masonry wall between the single family and adjacent property on the north side of the property.

8. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated January 27, 2015, shall apply:
  - a. 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.
  - b. Tree removal / earthwork shall not occur unless and until construction plans for the first Preliminary Subdivision Plan and/or Development Plan with a tree removal and mitigation plan have been approved by Orange County.
  - c. Short term / transient rental is prohibited. Length of stay shall be for 180 days or greater.
  - d. The one-hundred (100) single family residential units are exempt from school capacity enhancement review.
  - e. A waiver from Orange County Code Section 38-1258(d) is granted to allow a maximum multi-family residential building height of three stories or fifty-five feet (55') in height, in lieu of the maximum of three stories or forty feet (40') in height.
9. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated August 3, 2004, shall apply:
  - a. If at the Preliminary Subdivision Plan (PSP) submittal Orange County determines that additional right-of-way is needed for the widening of Thompson Road, the developer shall convey a strip of right-of-way up to 30 feet in width in exchange for road impact fee credits, with the date of valuation being August 2, 2004 (pre-rezoning date).

**PREVIOUS BOARD OF COUNTY COMMISSIONERS ACTION (August 23, 2016)**

Upon a motion by Commissioner Nelson, seconded by Commissioner Clarke, and carried by all members voting AYE the board made a finding of consistency with the Comprehensive Plan; and The Board made a finding of consistency with the Comprehensive Plan; and further, approved the substantial change request by Rick Baldocchi, P.E., Thompson Road Planned Development / Land Use Plan (PD / LUP) - Case #CDR-16-04-163, to remove a previous restriction that limited development to senior adult housing only, and to grant a waiver from Orange County Code Section 38-79(24) to allow a single structure containing a maximum of one hundred twenty (120) multifamily dwelling units, in lieu of the maximum of four (4) dwelling units contained in any combination of attached dwellings and their customary uses; which constitutes a substantial change to the development on the described property; subject to conditions.