



## Interoffice Memorandum

DATE: October 12, 2018

TO: Mayor Teresa Jacobs  
-AND-  
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Director *JVW*  
Community, Environmental and Development  
Services Department

CONTACT PERSON: Eric Raasch, Interim DRC Chairman *ERR*  
Development Review Committee  
Planning Division  
(407) 836-5523

SUBJECT: October 30, 2018 – Public Hearing  
Applicant: Rick Baldocchi, AVCON, Inc.  
Butte Planned Development  
Case # CDR-17-04-127 / District 4

The Butte Planned Development (PD) is located south of Lake Underhill Road, approximately 970 feet west of Rouse Road. The existing PD development program allows for 235,000 square feet of Office and Industrial Park uses on Tract B, which is the portion of PD south of Lake Underhill Road.

Through this PD substantial change, the applicant is seeking to add a 140 foot tall communication tower as a permitted use on Tract B with one waiver from Orange County Code.

On July 25, 2018, the Development Review Committee (DRC) recommended approval of the request, subject to conditions. This request was continued from the September 18, 2018 Board of County Commissioners hearing to allow for a community meeting. That meeting was held on October 9, 2018 and is summarized in the staff report.

Finally, the required Specific Project Expenditure Report and Relationship Disclosure Forms have been completed in accordance with the requirements of Article X, Chapter 2, Orange County Code, as may be amended from time to time, and copies of these and the PD/LUP may be found in the Planning Division for further reference.

**ACTION REQUESTED: Make a finding of consistency with the Comprehensive Plan (CP) and approve the substantial change to the Butte Planned Development / Land Use Plan (PD/LUP) dated "Received July 27, 2018", subject to the conditions listed under the DRC Recommendation in the Staff Report. District 4**

Attachments  
JVW/EPR/JHS

**CASE # CDR-17-04-127**

Commission District: # 4

**GENERAL INFORMATION**

<b>APPLICANT</b>	Rick Baldocchi, AVCON, Inc.
<b>OWNER</b>	Land Owner WI, LLC
<b>PROJECT NAME</b>	Butte Planned Development
<b>PARCEL ID NUMBER</b>	28-22-31-0000-00-031 ( <i>affected parcel only</i> )
<b>TRACT SIZE</b>	14.32 gross acres ( <i>overall PD</i> ) 4.69 gross acres ( <i>affected parcel only</i> )
<b>LOCATION</b>	Generally south of Lake Underhill Road, approximately 970 feet west of Rouse Road.
<b>REQUEST</b>	<p>A PD substantial change to add a 140 foot tall communication tower as a permitted use on Tract B. The request also includes the following waiver to reduce the distance separation from the communication tower to the adjacent memory care facility, which is currently under construction:</p> <ol style="list-style-type: none"><li>1. A waiver from Orange County Code Section 38-1427(d)(2)(c) to reduce the separation distance from 700' to 580' to the nearest residential building (memory care facility).</li></ol>
<b>PUBLIC NOTIFICATION</b>	A notification area extending beyond 1 mile was used for this application [ <i>Chapter 30-40(c)(3a) of the Orange County Code requires 300 feet</i> ]. Three thousand two hundred sixty-six (3,266) notices were mailed to those property owners in the notification buffer area. A community meeting was held on October 9, 2018 and is summarized in this report.

**IMPACT ANALYSIS**

**Special Information**

The Butte PD was originally approved March 30, 1987 and currently allows for 235,000 square feet of Office and Industrial Park uses on Tract B, which is the portion of PD south of Lake Underhill Road.

Through this PD substantial change, the applicant is seeking to add a 140 foot tall communication tower within Tract B as a permitted use as well as to request a waiver to reduce the distance separation to residential uses (memory care facility) from 700' to 580'. The memory care facility is currently under construction (permit B1790432) and the owner has provided a letter of no objection to the waiver request.

**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 Industrial (IND). The proposed PD substantial change is consistent with the designation and all applicable CP provisions.

**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**

An Orange County Conservation Area Determination CAD-16-12-125 was completed that included this project site area. Wetland classifications were determined on January 24, 2017. The certified survey of the conservation area boundary was approved on February 7, 2017.

**Transportation / Concurrency**

Transportation Division staff have reviewed the proposed request and determined that no concurrency is required.

**Community Meeting Summary**

A community meeting was held on October 9, 2018 at Legacy Middle School. Ninety-seven (97) residents were in attendance and they expressed concerns of perceived health effects of a nearby cell tower and the visibility of the cell tower over the trees of the adjacent residential area.

**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 PD substantial change 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 – (July 25, 2018)**

**Make a finding of consistency with the Comprehensive Plan (CP) and approve the substantial change to the Butte Planned Development / Land Use Plan (PD/LUP) dated "Received July 27, 2018", subject to the following conditions:**

1. Development shall conform to the Butte PD Land Use Plan (LUP) dated "Received July 27, 2018," 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 July 27, 2018," 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 project shall, at no cost to the county, provide right-of-way necessary for safe and adequate ingress and egress to and from the cell tower, the memory health facility (ALF), and the county retention pond prior to or concurrently with the approval for this project, as documented by a conspicuous note on the plans.
7. 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).
8. Unless a Conservation Area Impact (CAI) permit is approved by Orange County consistent with Orange County Code Chapter 15, Article X, "Wetland Conservation Areas", prior to Construction Plan approval, no conservation area or buffer encroachments shall be permitted. Approval of this plan does not authorize any direct or indirect conservation area impacts.
9. Pole signs and billboards shall be prohibited. Ground and fascia signs shall comply with Chapter 31.5 of the Orange County Code.

10. 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.
11. Prior to construction plan approval, hydraulic calculations shall be submitted to Orange County Utilities demonstrating that proposed and existing water and wastewater systems have been designed to support all development within the PD.
12. The Developer shall obtain water and wastewater service from Orange County Utilities subject to County rate resolutions and ordinances.
13. A waiver from Orange County Code Section 38-1427(d)(2) is granted to reduce the separation distance from 700' to 580' to the nearest affected residential use (memory care facility). This condition is subject to the notice of no objection recorded as Instrument # 20180529587 in the Public Records of Orange County, Florida.
14. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated September 16, 2008 shall apply:
  - a. All previous applicable Conditions of Approval dated March 30, 1987, shall apply:
    - 1) The development rights over the conservation areas south of Lake Underhill Drive shall be dedicated to Orange County.
    - 2) Impervious area coverage shall not exceed 70%.
    - 3) Building height shall be limited to six (6) stories. However, building height may be allowed ten (10) stories if an additional 5% (five percent) open space is provided within the overall PD.
    - 4) Only that signage described and identified in the required sign plan shall be permitted to be used within this project.
    - 5) Off-site easements will be required for discharge of stormwater from this site.
    - 6) Upon submittal of the development plan, a determination will be made of access locations and requirements for reconstruction of this section of Lake Underhill Drive.
    - 7) The developer shall obtain water and wastewater service from Orange County subject to County resolutions and ordinances. The developer did participate in Phase 3 of the Eastern Service Area Wastewater System for 21,030 GPD (Permit No. 0116).
    - 8) Permitted land uses within project shall include I-2 uses, unless otherwise prohibited, as stated on the Land Use Plan, including boat manufacturing and electrical machinery/equipment manufacturing.

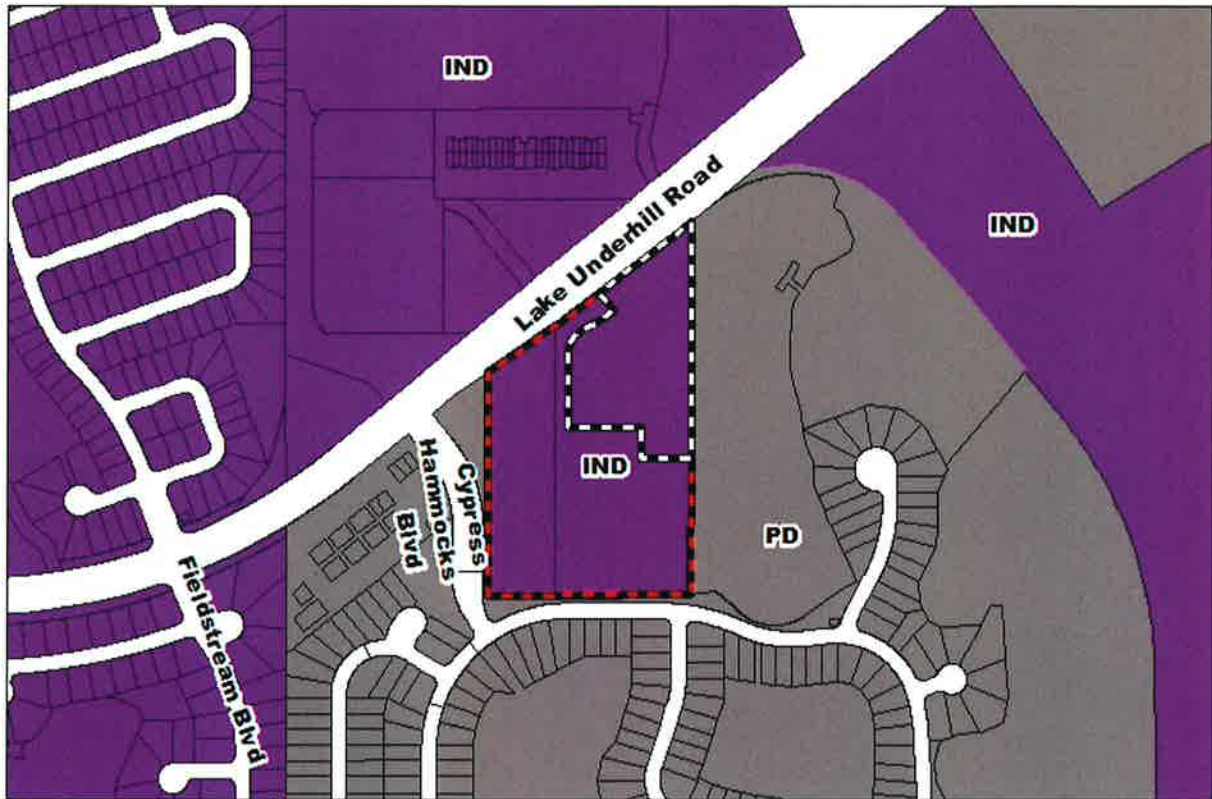
- 9) Prior to Development Plan approval, master plans for the water/wastewater systems shall be submitted to the Utilities Division. The master plan shall include preliminary calculations.

**PREVIOUS BOARD OF COUNTY COMMISSIONERS ACTION (September 16, 2008)**

Upon a motion by Commissioner Stewart, seconded by Commissioner Segal, and carried by all members, the Board made a finding of consistency with the Comprehensive Plan; and further, approved the substantial change request by "Orange County", Butte Planned Development (PD) Land Use Plan (LUP) to add an additional full access on Cypress Hammock Boulevard, and to increase the square footage to 235,000 square feet in which 35,000 square feet is allocated to the Sheriff's Office Tract.



CDR-17-04-127



 Subject Parcel  
 Existing PD



 Subject Property

### Future Land Use Map

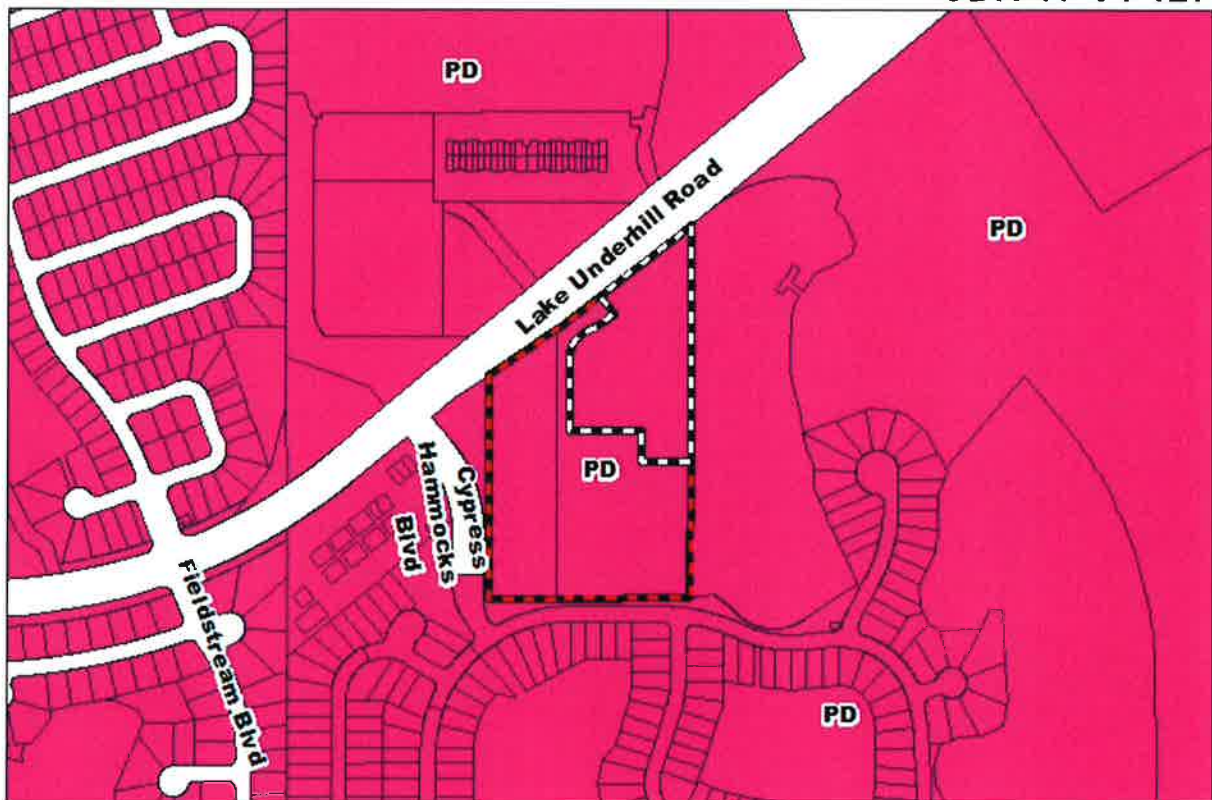
FLU: Industrial (IND)  
 APPLICANT: Rick Baldocchi, AVCON, Inc.  
 LOCATION: Generally south of Lake Underhill Road,  
 approximately 970 feet west of Rouse Road.  
 TRACT SIZE: 14.32 gross acres (overall PD)  
 4.69 gross acres (affected parcel only)  
 DISTRICT: # 4  
 S/T/R: 28/22/31

1 inch = 500 feet






CDR-17-04-127



 Subject Parcel  
 Existing PD



 Subject Property

### Zoning Map

ZONING: PD (Planned Development District)  
 APPLICANT: Rick Baldocchi, AVCON, Inc.  
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# Public Notification Map

Butte PD\_CDR-17-04-127  
 1 MILE BUFFER, 3266 NOTICES

## Notification Map

