



Interoffice Memorandum

May 24, 2019

TO: Mayor Jerry L. Demings
-AND-
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Director
Planning, Environmental, and Development
Services Department

**CONTACT PERSON: David D. Jones, P.E., CEP, Manager
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SUBJECT: June 18, 2019 – Public Hearing
Developco, Inc. Conservation Area Impact Permit #CAI-17-04-014
(Related to Case # PSP-16-12-421, CDR-15-10-293, RAG-18-02-008)

On April 10, 2017, Developco, Inc. (applicant) submitted a Conservation Area Impact (CAI) Permit requesting 3.48 acres of Class I wetland impacts and 4.15 acres of Class II wetland impacts in order to construct portions of a 74-lot residential subdivision, stormwater pond and conveyance pipe/access road.

The Parcel ID for the site is 27-23-27-0000-00-020 and the address is 7721 Ficquette Road, Windermere. The site is located east of Reams Road and Ficquette Road near the intersection of Summerlake Park Boulevard in District 1.

The project site is 306.78 acres in size and contains 231.85 acres of Class I wetlands, 4.15 acres Class II wetlands, and 0.01 acres of Class III surface waters. Two upland pockets are located on the site: one in the northern portion of the site and one in the southern portion.

In the northern upland pocket, a 3.14-acre finger (Wetland 1A) of a larger Class I wetland protrudes into the upland pocket from the north. The westernmost portion of this extension of Class I wetlands is of moderately-low quality due to off-road vehicle trails and a historic ditch and associated berm that extends through the middle of the wetland. However, the eastern portion (Wetland 1B) of this same cypress system is of moderate to moderately-high quality due to fewer trails and diminished effect of the ditch. The northern upland pocket also includes a 4.15-acre Class II wetland (Wetland 2) that is centrally located and of moderately-high quality. This cypress wetland is significantly buffered from development by forested wetlands and uplands. Hydrologic indicators are abundant throughout the system, indicating water levels are normal and support full wetland functionality. The vegetative community has an appropriate mixture of native species with very few occurrences of nuisance/exotic vegetation.

The southern upland pocket is completely surrounded by a very large Class I wetland system, a portion of which is proposed for impact for a stormwater pipe/access road. This cypress and pond-pine system is over 250 acres in size and of high quality. The system is located more than 500 feet away from any development or roads and is significantly buffered from the negative effects of these land uses. The hydrology and vegetative composition of the system is indicative of high wetland functionality, and occurrence of nuisance/exotic species is very low. This system represents an increasingly rare and important habitat corridor for wildlife in Orange County as well as a significant area for natural ecosystem services such as floodwater storage, attenuation, and filtration of pollutants.

The applicant proposes to locate the 74 residential lots within the northern upland pocket. In order to construct the lots, the applicant proposes to completely impact Wetland 1A, Wetland 1B and Wetland 2. In the southern upland pocket, the applicant proposes to construct a large stormwater pond to receive the stormwater from the northern development area. The applicant is proposing 0.34 acre of impacts to the large onsite Class I wetland for the construction of an access road and associated stormwater pipe that would traverse the Class I wetland. The separation of the portions of the wetland on the adjoining property to the west from the portion of the wetland on the applicant's property to the east would be expected to have a deleterious effect on the overall wetland function. No impacts are proposed to the Class III surface water.

Pursuant to Orange County Code, Chapter 15, Article X, the Environmental Protection Division (EPD) staff has evaluated the permit application and required documentation. The removal, alteration or encroachment of a Class I conservation area shall only be allowed in cases where no other feasible or practical alternatives exist that will permit a reasonable use of the land or where there is an overriding public benefit. The applicant must also demonstrate that impacts to all classes of wetlands have been adequately avoided or minimized.

EPD brought this application as a discussion item before the Development Review Committee (DRC) on August 9, 2017. EPD was seeking input from the DRC on whether the applicant sufficiently demonstrated adequate minimization or elimination of wetland impacts and whether the proposed Class I wetland impacts were necessary to achieve a reasonable use of the land. The DRC discussed the proposed impacts and concluded that they had no issue with the proposed wetland impacts in the northern development area; however, they would not recommend approval of the Class I wetland impacts for the stormwater pipe and access road to the south that are necessary for the stormwater pond to be placed in the southern development area.

Following the discussion at the DRC meeting, EPD sent a letter to the applicant on August 21, 2017 stating that EPD did not fully support the request for the wetland impacts. The applicant was given the following options: (1) move forward to the Board with a recommendation of approval for the impacts for the lots in the northern development area and denial of the wetland impacts for the pipe and access road; (2) revise the plans to reflect a project that DRC and EPD can support; or (3) withdraw the CAI permit application. On August 25, 2017, the applicant provided a response and selected option #1. However, the Preliminary Site Plan (PSP) was not ready to move forward to the Board. After an extended period without any progress, the CAI permit application was closed.

On July 2, 2018, the applicant submitted a new CAI permit application to move forward with the same proposed development plan that was previously reviewed by EPD. During the review process, EPD staff attended the January 9, 2019 DRC meeting where the proposed PSP was being discussed. After discussion, the DRC recommended that the applicant research alternative plans that would reduce Class I wetland impacts to access the southern development area. On January 23, 2019, EPD returned to DRC to discuss the alternative plans (primarily focused on the stormwater pipe and access road location). However, every alternative plan resulted in greater Class I wetland impacts than the original proposed plan. During the discussion, a suggestion was made to the applicant that if the number of units were reduced, a stormwater pond may fit in the northern development area without additional wetland impacts. The applicant indicated that they would not be making any changes to the site plan. Therefore, EPD moved forward with scheduling a Public Hearing.

Staff Recommendation

Based on the documentation and justifications provided, the applicant has not demonstrated to EPD or the DRC that no other feasible or practical alternatives exist that will permit a reasonable use of the land. In addition, the applicant has not demonstrated that the project has been designed so as to minimize or eliminate any impact upon the beneficial environmental productivity of the Class I wetlands. Limiting the development to the northern upland pocket would reduce direct wetland impacts and enhance the overall viability of the wetland system, which extends beyond the applicant's property.

Notification of the public hearing was sent on May 24, 2019 to the applicant and authorized agent. Notification of the adjacent property owners is not required.

There is no current enforcement action on the subject property.

ACTION REQUESTED: Denial of Conservation Area Impact Permit CAI-17-04-014 for Developco, LLC. District 1

JVW/DDJ: mg

Attachments