CASE # LUPA-18-12-393

Commission District: # 1

GENERAL INFORMATION

APPLICANT	Dan O'Keefe, Shutts & Bowen LLP
OWNER	Diamond Resorts Corporation
PROJECT NAME	Sunterra Resorts Planned Development (PD)
PARCEL ID NUMBER(S)	15-24-28-6211-17-010 (portion of), 15-24-28-6211-14-010/130, 15-24-28-6211-15-010/131, 15-24-28-6211-16-010/130/150, 15-24-28-6211-17-131, 15-24-28-6211-24-010/090/131, 15-24-28-6211-25-010/130, 15-24-28-6211-98-010/090/130, 15-24-28-6211-99-010/170, 15-24-28-6211-99-130 (added parcel)
TRACT SIZE	17.74 gross acres (overall PD) 0.325-gross acre (area to be aggregated)
LOCATION	Generally located north of Lake Street, east of Ruby Lake Road, and south of Lemon Lake Boulevard.
REQUEST	A request to rezone 0.325 acres from R-CE (Country Estate District) to PD (Planned Development District) and incorporate the property into the Sunterra Resorts PD. The request is also to change the approved uses of the Sunterra Resorts PD from 30,000 square feet of commercial uses and 420 timeshare units to 400 multi-family dwelling units. The request also includes the following waivers from Orange County Code: 1. A waiver from Section 38-1393 to allow a multifamily and/or non-residential building with a maximum height of sixty-five (65) feet to have a minimum setback of 25 feet from single family residential development within the BVN district, single family zoned land outside the BVN district, or lands outside the BVN district designated as Low-Density Residential on the Future Land Use Map, in lieu of the Code's graduated building height/setback requirements. ***Applicant Justification:*** *The waiver justification for the single family to the north is due to providing a Type C bufferyard from LDC 24-5 (3) which matches the standards for the single family to the north from within their own PD.*

2. A waiver from Section 38-1258(j) to allow a minimum building separation of twenty (20) feet in lieu of a minimum separation of thirty (30) feet for two-story buildings, and forty (40) feet for buildings three (3) stories.

Applicant Justification: *Due to the site plan and architectural plans shall meet Southern Building Code standards for safety.*

3. A waiver from Section 38-1251(b) to allow the maximum coverage of all buildings to not exceed 75% of the gross land area, in lieu of the allowable maximum coverage of 30% of the gross land area.

Applicant Justification: *To match the precedence set with neighborhood PDs (Ruby Lake and Hannah Smith) to allow a competitive balance between properties.*

4. A waiver from Section 38-1258(e) to allow (i) parking and other paved areas for multi-family development to be located no closer than 7.5 feet from any single family zoned property internal to the project only, in lieu of the requirement that parking and other paved areas for multi-family development be located no closer than 25 feet from any single family zoned property, and (ii) a minimum 7.5-foot landscape buffer consistent with Type C landscape buffer requirements, in lieu of a minimum 25-foot landscape buffer.

Applicant Justification: *The waiver justification for the single family to the north is the proposed Type C landscape buffer is sufficient buffering due to the masonry wall and Type C landscaping*

5. A waiver from section 38-830(12)(c) to allow refuse or solid waste areas to be located zero (0) feet from the north property line, wherever a wall is proposed, in lieu of the requirement that refuse or solid waste areas be located at least five (5) feet from any side or rear property line.

Applicant Justification: *To allow the perimeter wall to be a part of the dumpster screen wall for efficiency and cost effectiveness.*

PUBLIC NOTIFICATION The notification area for this public hearing was 500 feet [Chapter 30-40(c)(3a) of the Orange County Code requires 300 feet]. Ninety-nine (99) notices were mailed to those property owners in the mailing area. A community meeting for the associated Comprehensive Plan amendment (2019-1-A-1-4) was held on October 9, 2018.

PROPOSED USE 400 multi-family dwelling units

STAFF RECOMMENDATION

Development Review Committee – (May 22, 2019)

Make a finding of consistency with the Comprehensive Plan and recommend APPROVAL of the Sunterra Planned Development / Land Use Plan (PD/LUP), dated "May 30, 2019", subject to the following conditions:

1. Development shall conform to the Sunterra Resorts PD Land Use Plan (LUP) dated "Received May 30, 2019," 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 May 30, 2019," 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 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 April 23, 2019.

    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 one (1) 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. 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, 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.

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.

   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.

7. A current Phase One Environmental Site Assessment (ESA) and current title opinion shall be submitted to the County for review as part of any Preliminary Subdivision Plan (PSP) and /or Development Plan (DP) submittal and must be approved prior to Preliminary Subdivision Plan (PSP) and /or Development Plan (DP) approval for any streets and/or tracts anticipated to be dedicated to the County and/or to the perpetual use of the public.

8. Unless the property is otherwise vested or exempt, the applicant must apply for and obtain a capacity encumbrance letter prior to construction plan submittal and must apply for and obtain a capacity reservation certificate prior to approval of the plat. Nothing in this condition, and nothing in the decision to approve this land use plan / preliminary subdivision plan, shall be construed as a guarantee that the applicant will be able to satisfy the requirements for obtaining a capacity encumbrance letter or a capacity reservation certificate.

9. The Applicant shall dedicate the necessary right-of-way for Lake Street prior to or concurrently with approval of a plat for this project.

10. The developer shall obtain water, wastewater, and reclaimed water service from Orange County Utilities subject to County rate resolutions and ordinances.

11. Prior to construction plan approval, hydraulic calculations shall be submitted to Orange County Utilities demonstrating that proposed and existing water, wastewater, and reclaimed water systems have been designed to support all development within the PD.

12. The developer shall dedicate a fee simple tract that surrounds the existing Orange County Utilities pump station tract, as described on Sheet 05 of the PD, to Orange County Utilities within sixty (60) days of Board of County Commissioners approval of the PD, or prior to the Development Review Committee approval of the DP or PSP, whichever is sooner.

13. Outside sales, storage, and display shall be prohibited.

14. Pole signs and billboards shall be prohibited. Ground and fascia signs shall comply with Buena Vista North standards.

15. Short term/transient rental is prohibited. Length of stay shall be for 180 consecutive days or greater within any 12-month period.

16. The following waivers from Orange County Code are granted:

a. A waiver from Section 38-1393 to allow a multifamily and/or non-residential building with a maximum height of sixty-five (65) feet to have a minimum setback of 25 feet from single family residential development within the BVN district, single family zoned land outside the BVN district, or lands outside the BVN district designated as Low-Density Residential on the Future Land Use Map, in lieu of the Code's graduated building height/setback requirements.

b. A waiver from Section 38-1258(j) to allow a minimum building separation of twenty (20) feet in lieu of a minimum separation of thirty (30) feet for two-story buildings, and forty (40) feet for buildings three (3) stories.

c. A waiver from Section 38-1251(b) to allow the maximum coverage of all buildings to not exceed 75% of the gross land area, in lieu of the allowable maximum coverage of 30% of the gross land area.

d. A waiver from Section 38-1258(e) to allow (i) parking and other paved areas for multi-family development to be located no closer than 7.5 feet from any single family zoned property internal to the project only, in lieu of the requirement that parking and other paved areas for multi-family development be located no closer than 25 feet from any single family zoned property, and (ii) a minimum 7.5-foot landscape buffer consistent with Type C landscape buffer requirements, in lieu of a minimum 25-foot landscape buffer.

e. A waiver from section 38-830(12)(c) to allow refuse or solid waste areas to be located zero (0) feet from the north property line, wherever a wall is proposed, in lieu of the requirement that refuse or solid waste areas be located at least five (5) feet from any side or rear property line.

17. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated April 18, 2010 shall apply:

    a. To the extent required to comply with the consistency provisions of the growth management act, the following additional conditions shall be added to the conditions of approval:

        1. Permitted and prohibited uses shall be those specified in policies 1.1.3 and 1.1.6 of the international drive activity center.

        2. If the housing linkage program is in place prior to the development plan approval, the development of nonresidential development shall be conditioned upon either the development of residential units within the area designated activity center residential on the future land use map or the payment into a housing linkage fund.

        3. The development guidelines of the international drive activity center shall apply to the subject property if they are established prior to building permit submittal, including but not limited to lighting standards, building orientation, and location of parking lots.

4. The property shall be required to participate in a property owners' association upon its creation.

5. Stormwater management facilities shall be designed as an aesthetic feature, except where determined by the county engineer to be technically unfeasible.

6. The development plan shall provide for interconnection of adjacent development by either cross-access easement or public right-of-way.

7. Electrical distribution lines shall be underground.

8. Participation in a shuttle service connecting area attractions, major transportation centers, and on-site development shall be required.

b. Prior to construction plan approval, a water and wastewater master plan shall be submitted to the county for review and approval; and further, made a finding of consistency with the comprehensive policy plan.

IMPACT ANALYSIS

Special Information

The subject property is comprised of the 17.42-acre Sunterra Resorts Planned Development (PD) and a single 0.325-acre parcel with an R-CE (Country Estate District) zoning classification.

Initially approved on April 20, 1999 (Case Z-99-027), the Sunterra Resorts PD was last amended by the Orange County Development Review Committee (DRC) on June 25, 2008, as a non-substantial change to the PD Land Use Plan (LUP). The Sunterra Resorts PD is presently entitled for up to 420 timeshare units and 30,000 square feet of commercial space. Although the Orange County Development Review Committee (DRC) approved the Sunterra Resorts PD-Timeshare Resort Development Plan (DP) on April 27, 2000, allowing for the construction of 372 timeshare units and ancillary amenities, the site was never developed for timeshare resort purposes.

Through this request, the applicant is seeking to rezone 0.325 acres from R-CE (Country Estate District) to PD (Planned Development District) and incorporate the property into the Sunterra Resorts PD. The request is also to change the approved uses of the Sunterra Resorts PD from 30,000 square feet of commercial uses and 420 timeshare units to 400 multi-family dwelling units.

Located in the Lake Buena Vista area and the International Drive Activity Center, the subject site lies in the immediate vicinity of Central Florida's largest employer, Walt Disney World, and numerous resorts, hotels, tourist attractions, shopping areas, and restaurants. The property's proximity to this activity makes it ideally situated for the development of housing for employees of these tourist-oriented establishments.

The subject parcel's current ACMU future land use designation is intended to provide for a combination of tourist-related development and supporting residential activity. As established in the Orange County Comprehensive Plan, however, no more than 30

percent of an ACMU-classified site may be utilized for residential purposes. The applicant has submitted this request along with Comprehensive Plan amendment 2019-1-A-1-4, which is a request to change the Future Land Use Map (FLUM) designation of the subject property from Activity Center Mixed Use (ACMU) to Planned Development-Commercial/Medium-High Density Residential (PD-C/MHDR), and to establish a new development program of up to 400 multi-family dwelling units and 15,000 square feet of C-1 (Retail Commercial District) uses. Amendment 2019-1-A-1-4 was approved by the Board of County Commissioners on May 21, 2019.

Land Use Compatibility

The applicant is seeking to rezone 0.325 acres from R-CE (Country Estate District) to PD (Planned Development District) and incorporate the property into the Sunterra Resorts PD. The request is also to change the approved uses of the Sunterra Resorts PD from 30,000 square feet of commercial uses and 420 timeshare units to 400 multi-family dwelling units.

The applicant is also seeking approval of six waivers to Orange County Code to Reduce the minimum setback for buildings with a maximum height of sixty-five (65) feet adjacent to single-family zoned properties; to reduce the minimum building separation; to increase the maximum gross land area coverage of all buildings; to reduce the minimum parking and pavement setback from single-family zoned properties; and to allow the perimeter wall to be a part of the dumpster screen wall.

The proposed development program is compatible with existing development in the area, and would not adversely impact any adjacent properties.

Comprehensive Plan (CP) Consistency

Future Land Use Map (FLUM) amendment 2019-1-A-1-4, to change the FLUM designation of the subject property from Activity Center Mixed Use (ACMU) to Planned Development-Commercial/Medium-High Density Residential (PD-C/MHDR), and to establish the specific development program of and establish a new development program of up to 400 multi-family dwelling units and 15,000 square feet of C-1 (Retail Commercial District) uses was adopted by the Board of County Commissioners on May 21, 2019.

The proposed rezoning is consistent with the FLUM designation and all other applicable CP provisions. These provisions include, but are not limited to, the following:

Goal FLU2 – Orange County will encourage urban strategies such as infill development, coordinated land use and transportation planning, and mixed-use development, which promote efficient use of infrastructure, compact development and an urban experience with a range of choices and living options.

OBJ FLU2.2 – Orange County shall develop, adopt, and implement mixed-use strategies and incentives as part of its comprehensive plan and land development code efforts, including standards for determining consistency with the Future Land Use Map. Other objectives of mixed-use development include reducing trip lengths, providing for diverse housing types, using infrastructure efficiently and promoting a sense of community.

OBJ FLU8.2 – Compatibility will continue to be the fundamental consideration in all land use and zoning decisions. For purposes of this objective, the following policies shall guide regulatory decisions that involve differing land uses.

FLU1.1.1 – Urban uses shall be concentrated within the Urban Service Area, except as specified for the Horizon West Village and Innovation Way Overlay (Scenario 5), Growth Centers, and to a limited extent, Rural Settlements.

FLU1.1.5 – Orange County shall encourage mixed-use development, infill development and transit-oriented development to promote compact urban form and efficiently use land and infrastructure in the Urban Service Area. The County may require minimum FARs and densities in its Land Development Code to achieve the County's desired urban framework. Infill is defined as development consistent with the *Infill Master Plan* (2008).

FLU1.4.4 – The disruption of residential areas by poorly located and designed commercial activities shall be avoided. Primary access to single-family residential development through a multi-family development shall be avoided.

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 the appropriate development order to ensure compatibility. No restrictions or conditions shall be placed on a Future Land Use Map change.

FLU8.2.2– Continuous stretches of similar housing types and density of units shall be avoided. A diverse mix of uses and housing types shall be promoted.

GOAL H1 – Orange County's goal is to promote and assist in the provision of an ample housing supply, within a broad range of types and price levels, to meet current and anticipated housing needs so that all our residents have the opportunity to purchase or rent standard housing.

OBJ H1.1 – The County will continue to support private sector housing production capacity sufficient to meet the housing needs of existing and future residents.

Overlay Ordinance

The subject property is located within the Buena Vista North 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

The Environmental Protection Division reviewed this request but did not provide any comments or objections.

Transportation Concurrency

Based on the concurrency database dated January 2, 2019, there is one failing roadway within the project area, which is Vineland Avenue from Winter Garden Vineland Road to Little Lake Bryan Parkway. A valid Capacity Encumbrance Letter will be required for this project.

This project shall comply with the County's International Drive Activity Center Comprehensive Plan requirement for a 15-foot transit easement and a separate 20-foot landscape, pedestrian and utility easement needed for future roadway improvements. The easement areas required shall be shown on all plans and shall be conveyed concurrently at time of platting or dedicated to the County via separate instrument prior to Development Plan Approval.

Community Meeting Summary

A community meeting for the associated Comprehensive Plan amendment (2019-1-A-1-4) was held on October 9, 2018. The twenty-three (23) attendees of the meeting expressed concern about compatibility with neighboring single-family residential development, traffic and congestion on area roads, and a potential increase in crime.

Schools

Capacity Enhancement Agreement (CEA) #OC-18-060 was approved by the Orange County School Board on April 23, 2019.

Parks and Recreation

The Parks and Recreation Division reviewed this request but did not provide any comments or objections.

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

PLANNING AND ZONING COMMISSION (PZC) FINDINGS

The staff report was presented to the PZC with the recommendation that they make a finding of consistency with the Comprehensive Plan and recommend approval of the requested The Sunterra Resorts Planned Development (PD), subject to seventeen (17) conditions.

Staff indicated that ninety nine (99) notices were mailed to surrounding property owners within a buffer of 500 feet from the subject property, with zero (0) commentaries in support and zero (0) in opposition. No members of the public were present to speak on this request. The applicant was present for the hearing and concurred with staff's recommendation, however, the applicant requested a revision to Condition of Approval #12. The request was to allow the conveyance of the fee simple tract that surrounds the existing Orange County Utilities pump station to be prior to or concurrently with approval of a plat for the project. Staff indicated that the Orange County Utilities Division, with whom the condition has been negotiated, had reviewed and was in support of the applicant's revised language.

After limited discussion, a motion was made by Commissioner Dunn to find the request to be consistent with the Comprehensive Plan and recommend APPROVAL of the Sunterra Resorts Planned Development Land Use Plan (LUP), subject to seventeen (17) conditions, and with the revision to Condition #12. Commissioner Spears seconded the motion, which then carried on a 7-0 vote.

Motion / Second	*Jimmy Dunn / Gordon Spears*
Voting in Favor	*Jimmy Dunn, Gordon Spears, Carlos Nazario, Diane Velazquez, Jose Cantero, Yog Melwani, and Eddie Fernandez*
Voting in Opposition	*None*

PZC RECOMMENDED ACTION

Planning and Zoning Commission (PZC) Recommendation – (June 20, 2019)

Make a finding of consistency with the Comprehensive Plan and recommend APPROVAL of the Sunterra Planned Development / Land Use Plan (PD/LUP), dated “May 30, 2019”, subject to the following conditions:

1. Development shall conform to the Sunterra Resorts PD Land Use Plan (LUP) dated "Received May 30, 2019," 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 May 30, 2019," 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 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 April 23, 2019.

    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 one (1) 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. 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, 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.

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.

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.

7. A current Phase One Environmental Site Assessment (ESA) and current title opinion shall be submitted to the County for review as part of any Preliminary Subdivision Plan (PSP) and /or Development Plan (DP) submittal and must be approved prior to Preliminary Subdivision Plan (PSP) and /or Development Plan (DP) approval for any streets and/or tracts anticipated to be dedicated to the County and/or to the perpetual use of the public.

8. Unless the property is otherwise vested or exempt, the applicant must apply for and obtain a capacity encumbrance letter prior to construction plan submittal and must apply for and obtain a capacity reservation certificate prior to approval of the plat. Nothing in this condition, and nothing in the decision to approve this land use plan / preliminary subdivision plan, shall be construed as a guarantee that the applicant will be able to satisfy the requirements for obtaining a capacity encumbrance letter or a capacity reservation certificate.

9. The Applicant shall dedicate the necessary right-of-way for Lake Street prior to or concurrently with approval of a plat for this project.

10. The developer shall obtain water, wastewater, and reclaimed water service from Orange County Utilities subject to County rate resolutions and ordinances.

11. Prior to construction plan approval, hydraulic calculations shall be submitted to Orange County Utilities demonstrating that proposed and existing water, wastewater, and reclaimed water systems have been designed to support all development within the PD.

12. The developer shall dedicate a fee simple tract that surrounds the existing Orange County Utilities pump station tract, as described on Sheet 05 of the PD, prior to or concurrently with approval of a plat for this project.

13. Outside sales, storage, and display shall be prohibited.

14. Pole signs and billboards shall be prohibited. Ground and fascia signs shall comply with Buena Vista North standards.

15. Short term/transient rental is prohibited. Length of stay shall be for 180 consecutive days or greater within any 12-month period.

16. The following waivers from Orange County Code are granted:

    a. waiver from Section 38-1393 to allow a multifamily and/or non-residential building with a maximum height of sixty-five (65) feet to have a minimum setback of 25 feet from single family residential development within the BVN district, single family zoned land outside the BVN district, or lands outside the BVN district designated as Low-Density Residential on the Future Land Use Map, in lieu of the Code's graduated building height/setback requirements.

    b. A waiver from Section 38-1258(j) to allow a minimum building separation of twenty (20) feet in lieu of a minimum separation of thirty (30) feet for two-story buildings, and forty (40) feet for buildings three (3) stories.

    c. A waiver from Section 38-1251(b) to allow the maximum coverage of all buildings to not exceed 75% of the gross land area, in lieu of the allowable maximum coverage of 30% of the gross land area.

    d. A waiver from Section 38-1258(e) to allow (i) parking and other paved areas for multi-family development to be located no closer than 7.5 feet from any single family zoned property internal to the project only, in lieu of the requirement that parking and other paved areas for multi-family development be located no closer than 25 feet from any single family zoned property, and (ii) a minimum 7.5-foot landscape buffer consistent with Type C landscape buffer requirements, in lieu of a minimum 25-foot landscape buffer.

    e. A waiver from section 38-830(12)(c) to allow refuse or solid waste areas to be located zero (0) feet from the north property line, wherever a wall is proposed, in lieu of the requirement that refuse or solid waste areas be located at least five (5) feet from any side or rear property line.

17. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated April 18, 2000 shall apply:

    a. To the extent required to comply with the consistency provisions of the growth management act, the following additional conditions shall be added to the conditions of approval:

        1. Permitted and prohibited uses shall be those specified in policies 1.1.3 and 1.1.6 of the international drive activity center.

2. If the housing linkage program is in place prior to the development plan approval, the development of nonresidential development shall be conditioned upon either the development of residential units within the area designated activity center residential on the future land use map or the payment into a housing linkage fund.

3. The development guidelines of the international drive activity center shall apply to the subject property if they are established prior to building permit submittal, including but not limited to lighting standards, building orientation, and location of parking lots.

4. The property shall be required to participate in a property owners' association upon its creation.

5. Stormwater management facilities shall be designed as an aesthetic feature, except where determined by the county engineer to be technically unfeasible.

6. The development plan shall provide for interconnection of adjacent development by either cross-access easement or public right-of-way.

7. Electrical distribution lines shall be underground.

8. Participation in a shuttle service connecting area attractions, major transportation centers, and on-site development shall be required.

b. Prior to construction plan approval, a water and wastewater master plan shall be submitted to the county for review and approval; and further, made a finding of consistency with the comprehensive policy plan.

PREVIOUS BOARD OF COUNTY COMMISSIONERS ACTION *(April 18, 2000)*

Upon a motion, the Board of County Commissioners approved the request to rezone R-CE (Rural Country Estate District)) to PD (Planned Development District) subject to conditions.