DEcision of the Board of County Commissioners
Orange County, Florida

On October 16, 2012, the Board of County Commissioners considered the following Applicant's Substantial Change Public Hearing Change Request:

Applicant: Joel A. Ivey, Ivey Planning Group, LLC, Tupperware Heights Planned Development (PD) Land Use Plan (LUP) (Case #CDR-10-09-193)

Consideration: Substantial Change Request To:
1) Construct 966,975 Commercial Square Feet on 51.6 Net Developable Acres;
2) Construct 200 Age-Restricted Multi-Family Units on 10.0 Net Developable Acres; and
3) Grant a Waiver from Section 38-1272(A)(5) to allow Commercial Building(s) Height to be Eight-Five (85) Feet in Height in Lieu of Fifty (50) Feet in Height and in Lieu of Thirty-Five (35) Feet in Height Within One Hundred (100) Feet of Residential; Pursuant to Orange County Code, Chapter 30, Section 38-1207

Location:
District 4; Property Generally Located North of Osceola County Line, East of South Orange Blossom Trail; Parcel IDs 34-24-29-0000-00-004, 35-24-29-0000-00-002; S/T/R: 34 & 35/24/29; Orange County, Florida (Legal Property Description on File)

Upon a motion, the Board of County Commissioners made a finding of consistency with the Comprehensive Plan; and further, approved the Substantial Change Request by Joel A. Ivey, Ivey Planning Group, LLC, Tupperware Heights Planned Development (PD) Land Use Plan (LUP), to:

1) Construct 966,975 Commercial Square Feet on 51.6 Net Developable Acres;
2) Construct 200 Age-Restricted Multi-Family Units on 10.0 Net Developable Acres; and
3) Grant a Waiver from Section 38-1272(A)(5) to allow Commercial Building(s) Height to be Eight-Five (85) Feet in Height in Lieu of Fifty (50) Feet in Height and in Lieu of Thirty-Five (35) Feet in Height Within One Hundred (100) Feet of Residential;

Which constitutes a Substantial Change to the Development on the Described Property; Subject to the Following Conditions:
1. DEVELOPMENT SHALL CONFORM TO THE PD LAND USE PLAN DATED "RECEIVED OCTOBER 10, 2012," 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, ORDINANCE 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 OF THIS ZONING AND THE LAND USE PLAN DATED "RECEIVED OCTOBER 10, 2012," 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 AT THE PUBLIC HEARING WHERE THIS DEVELOPMENT WAS APPROVED. 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. 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 OR APPROVED.
3. **ALL ACREAGES REGARDING CONSERVATION AREAS AND WETLAND BUFFERS ARE CONSIDERED APPROXIMATE UNTIL FINALIZED BY A CONSERVATION AREA DETERMINATION (CAD) AND A CONSERVATION AREA IMPACT (CAI) PERMIT. APPROVAL OF THIS PLAN DOES NOT AUTHORIZE ANY DIRECT OR INDIRECT CONSERVATION AREA IMPACTS.**

4. **THE DEVELOPER SHALL OBTAIN WATER, WASTEWATER, AND RECLAIMED WATER SERVICE FROM ORANGE COUNTY UTILITIES.**

5. **PRIOR TO APPROVAL OF A PSP (PRELIMINARY SUBDIVISION PLAN) OR DP (DEVELOPMENT PLAN) WITHIN THIS PD, AN UPDATED MASTER UTILITY PLAN (MUP) SHALL BE SUBMITTED FOR REVIEW. THE UPDATED MUP MUST BE APPROVED PRIOR TO CONSTRUCTION PLAN APPROVAL.**

6. **OUTDOOR SALES, STORAGE, AND DISPLAY SHALL BE PROHIBITED.**

7. **TREE REMOVAL/EARTHWORK SHALL NOT OCCUR UNLESS AND UNTIL CONSTRUCTION PLANS FOR THE FIRST PRELIMINARY SUBDIVISION AND/OR DEVELOPMENT PLAN WITH A TREE REMOVAL AND MITIGATION PLAN HAVE BEEN APPROVED BY ORANGE COUNTY.**

8. **BILLBOARDS AND POLE SIGNS SHALL BE PROHIBITED. GROUND AND FASCIA SIGNS SHALL COMPLY WITH CH. 31.5.**

9. **A WAIVER IS GRANTED FROM SECTION 38-1272(A)(5) TO ALLOW FOR A MAXIMUM COMMERCIAL BUILDING HEIGHT OF EIGHTY-FIVE (85) FEET, IN LIEU OF FIFTY (50) FEET IN HEIGHT OR THIRTY-FIVE (35) FEET IN HEIGHT WHEN WITHIN ONE HUNDRED (100) FEET OF ANY RESIDENTIAL.**

10. **TRACT 3 AND TRACT 4 SHALL PROMOTE PUBLIC TRANSPORTATION AND SHALL COMPLY WITH ORANGE COUNTY TRANSPORTATION ELEMENT OBJECTIVE T2.8 AND ITS' ATTENDANT POLICIES. FUTURE PSP'S AND DP'S WITHIN TRACTS 3 AND 4 SHALL COMPLY WITH POLICIES T2.8.1 – T2.8.10.**

11. **ALL PREVIOUSLY APPLICABLE BCC (BOARD OF COUNTY COMMISSIONERS) CONDITIONS OF APPROVAL DATED JULY 31, 2007 SHALL APPLY:**
A. BECAUSE THE PROJECT INCLUDES APPROVAL FOR ELDERLY HOUSING, PRIOR TO DEVELOPMENT PLAN/PRELIMINARY SUBDIVISION PLAN APPROVAL, THE DEVELOPER SHALL SUBMIT TO THE DEVELOPMENT REVIEW COMMITTEE FOR REVIEW AND APPROVAL CONDITIONS, COVENANTS, AND/OR RESTRICTIONS (CC&RS) THAT RESTRICT OCCUPANCY TO SENIOR ADULTS AND THAT COMPLY WITH THE REQUIREMENTS OF THE FEDERAL FAIR HOUSING ACT. SUCH CC&RS SHALL BE RECORDED IN THE PUBLIC RECORDS OF ORANGE COUNTY AND SHALL RUN WITH THE LAND. ANY PROPOSED FUTURE CONVERSION OF THE ELDERLY HOUSING TO UNRESTRICTED HOUSING SHALL CONSTITUTE A SUBSTANTIAL CHANGE THAT MUST BE APPROVED BY THE BCC AT A PUBLIC HEARING. IF THE SUBSTANTIAL CHANGE IS APPROVED, SCHOOL IMPACT FEES IN EFFECT AT THE TIME SHALL BE PAID AND THE PROJECT SHALL COMPLY WITH ANY SCHOOL CAPACITY REGULATIONS IN EFFECT AT THAT TIME.

B. IN ORDER TO PROVIDE 35 PERCENT OPEN SPACE, NOT COUNTING CONSERVATION AREAS, A WAIVER FROM SECTION 38-1258(D) IS GRANTED TO ALLOW A MAXIMUM BUILDING HEIGHT OF 85 FEET IN LIEU OF 40 FEET FOR MULTI-FAMILY STRUCTURES.

C. THE DEVELOPER'S AGREEMENT FOR THE DEDICATION OF RIGHT-OF-WAY ON ORANGE BLOSSOM TRAIL SHALL BE APPROVED.

NOTE: THE PRECEDING CONDITION HAS BEEN SATISFIED; THEREFORE, IS NO LONGER APPLICABLE.

THE FOREGOING DECISION HAS BEEN FILED WITH ME THIS 24TH DAY OF OCTOBER 2012.

Katie Smith
ASSISTANT TO DEPUTY CLERK
BOARD OF COUNTY COMMISSIONERS
ORANGE COUNTY, FLORIDA

Note: This document constitutes the final decision of the Board of County Commissioners on this matter. If, upon the Board's subsequent review and approval of its minutes, an error affecting this final decision is discovered, a corrected final decision will be prepared, filed, and distributed.