

**Official Minutes of
MARION COUNTY
BOARD OF COUNTY COMMISSIONERS**

April 22, 2024

CALL TO ORDER

The Marion County Board of County Commissioners met in special session in Commission Chambers at 9:04 a.m. on Monday, April 22, 2024, at the Marion County Governmental Complex located in Ocala, Florida.

INVOCATION AND PLEDGE OF ALLEGIANCE

The meeting opened with invocation by Chairman Stone and the Pledge of Allegiance to the Flag of our Country.

ROLL CALL

Upon roll call the following members were present: Chairman Michelle Stone, District 5; Vice-Chairman Kathy Bryant, District 2; Commissioner Craig Curry, District 1; Commissioner Matthew McClain, District 3. Commissioner Carl Zalak, III, District 4 arrived shortly after the meeting commenced.

Also present were: Growth Services Director Chuck Varadin, Deputy Director Ken Weyrauch, Senior Planner Chris Rison, Transportation Planner Ken Odom; Planners Kathleen Brugnoli, Cindy Chen, Marcus Lloyd, Staff Assistant IV Darlene Pocock, Administrative Manager Sage Dick, County Attorney Matthew G. Minter, County Administrator Mounir Bouyounes and ACA Tracy Straub.

ANNOUNCEMENTS

Chairman Stone advised that we are present today to discuss the public hearing for case number 240306ZP On Top of the World (OTOW) Communities, LLC, zoning change.

1. PLANNING & ZONING AND DRC WAIVER REQUESTS - REQUEST PROOF OF PUBLICATION:

Present Cover Documents from Planning and Zoning Commission Past Public Hearing

Deputy Clerk Lewter presented Proof of Publication of Legal ad No. 10031350 entitled, "Notice of Intention to Consider Adoption of an Ordinance" published in the Star Banner newspaper on April 8, 2024. The Notice states the Board will consider approval of a Comprehensive Plan Amendment, rezoning and/or Special Use permit (SUP) applications, as well as considering adoption of an Ordinance.

Chairman Stone advised that today's public hearing is the third zoning hearing for the month, noting the 3 dates were scheduled to ensure all cases can be heard at a decent hour and to provide the public the opportunity to attend. She stated food trucks have been brought in to ensure citizens have access to food and beverages as proceedings are expected to go long today. Chairman Stone noted there will be a lunch break beginning at 11:30 a.m.

County Attorney Matthew G. Minter, Legal, noted this is a quasi-judicial proceeding. He commented on citizen concerns relating to an inability to communicate with Board members prior to the meeting. Mr. Minter advised that because this is a quasi-judicial

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proceeding, the Board was advised not to engage in communications with members of the public to avoid any conflicts of interest. He stated the Board's decision making is to be based on the testimony and evidence presented during this hearing excluding input from County staff. Mr. Minter commented on the frequency with which the Board hears rezoning applications and the varying nature of those requests, noting context is critical when dealing with these cases. He advised that the County Land Development Regulations (LDR) provide that in order for the Board to approve a rezoning, it must determine that the applied for rezoning is consistent with the Comprehensive Land Use Plan, is in the public interest, and is compatible with surrounding property. Mr. Minter stated because today's action is a quasi-judicial decision, any individual can file a lawsuit to challenge the Board's decision. He advised that generally speaking, if the decision is challenged in Circuit Court, it would be challenged in a Writ of Certiorari proceeding, where the court would also consider 3 factors: whether the Board afforded all the participants procedural due process (notice and an opportunity to be heard); whether the Board in its decision applied the correct law; and whether the Board's decision was based on competent substantial evidence (generally based on factual testimony and not opinions). Mr. Minter stated this application involved a vested Development of Regional Impact (VDRI), noting it is a master plan mixed-use project that has been in the process of development in Marion County for 50 years. He advised that as a result of Florida Statutes (FS), both the Statute that deals with DRIs and the Community Planning Act contain provisions that expressly indicate that once a developer has obtained certain vested rights under its DRI, the Board has no authority to take those rights away from that developer. Mr. Minter noted that going back to 1973 when the DRI first came into effect, the developer had B-2 zoning, which allowed multi-family residential (MFR) zoning and a density up to 20 dwelling units (du) per acre. The developer obtained vested rights to those entitlements decades ago. He commented on the maximum of 3,600 du relating to this development, noting the developer has reserved to itself the right to move some of those units around. The Board will be constrained as to those particular issues of whether they can deny MFR use or the requested density on this parcel. Mr. Minter addressed the differences between straight zoning and a PUD, noting the PUD process allows the Board to consider input as to concerns about issues such as the layout of the site, amenities and buffers. He stated if the Board were to ignore the constraints set forth in the statutes, it could expose the County to very substantial and long lasting litigation that would not be in the Board's, County's or the public's best interest. Mr. Minter provided a brief overview of the process for today's hearing.

Mr. Minter requested that everyone who will be testifying today to please stand and be sworn in en masse.

1.1. Planning and Zoning Items for Individual Consideration:

1.1.1. 240306ZP - On Top of the World Communities LLC, Zoning Change from Community Business (B-2) to Planned Unit Development, for All Permitted Uses, 22.63 Acres, Parcel Account Numbers 3530-1001-07 (portion) and 35300-100004, Site Address 8441 SW 99th Street Road, Ocala, FL 34481

Deputy Director Ken Weyrauch, Growth Services, presented the following recommendation:

Description/Background: Tillman and Associates Engineering, LLC, on behalf of the landowners, On Top of the World Communities, LLC, has filed an application

to rezone a 22.63-acre property site located at 8441 SW 99th Street Rd, Ocala, FL 34481 from Community Business (B-2) to Planned Unit Development (PUD). The request is to develop two parcels including portion of 3530-1001-07 and all of 35300-100004 for 312 multifamily/townhome units with amenities. The subject property is situated within the Urban Growth Boundary (UGB) and is located within the secondary spring's protection overlay zone. No non-residential use areas are proposed by the PUD.

Budget/Impact: None.

Recommended Action: Staff recommends Approval with conditions of the Planned Unit Development (PUD); Planning and Zoning Commission recommends Approval.

Senior Planner Cindy Chen, Growth Services, provided an overview of the request for a zoning change from Community Business (B-2) to PUD.

Senior Planner Chris Rison, Growth Services, advised that OTOW Communities, LLC, is one developer with 2 distinct projects. One project is the Circle Square Woods (SCW) subdivision, a VDRI established prior to 1973, and there is also the OTOW DRI, which was established in 1982. He stated this relates to State of Florida laws that created the DRI program, noting it recognized that projects already approved by their local governments were then vested against those provisions, any new projects would have to go through the new process.

Mr. Rison referred to the map, as seen on the overhead screens, showing the OTOW DRI and CSW VDRI areas. He provided a breakdown of the functional Comprehensive Plan designations for each of the projects' properties, noting OTOW is generally residential with points utilized for Commercial activities. Mr. Rison advised that the Colonnades area is a combination of residential, employment center activities and commercial node potential, noting along State Road (SR) 200 there are employment center areas and the general vested commercial areas, which is what is being addressed today. He stated the CSW VDRI consists of 3 major portions including a single-family residential (SFR) unit allowance of 3,282, 3,600 units of MFR, and up to 1.936 million square feet (SF) of Commercial development space. Mr. Rison advised that the request for this project is to utilize 312 of the 3,600 MFR units, noting it has yet to be fully determined where the remaining MFR units will be located.

In response to Chairman Stone, Mr. Rison stated the proposed units are located southwest of the Publix shopping center on the corner of SW 80th Avenue and SR 200. He confirmed that the vested units can be moved to any of the areas shaded on the map, noting the State of Florida gave vested rights to developers with an unspecified amount of time relating to when they had to be utilized.

Ms. Chen advised that the property is under vested rights and categorized as Vested Commercial land use. Staff has confirmed there is a Publix, a hotel, restaurants, a bank, a gas station and retail stores within 1 mile of the PUD project. The property is next to a very large multi-family neighborhood thus, the MFR use proposed on the subject parcel is compatible with the existing and future surrounding land uses. She commented on concerns from the public relating to developing MFR community adjacent to SFR and Commercial areas. Ms. Chen commented on existing transitional development patterns within Ocala and Marion County. She provided a brief overview of statistics relating to the proposed Master Plan, including proposed du, estimated population, acreage, density, open space and buffers and setbacks.

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In response to Chairman Stone, Ms. Chen stated the existing trees in the greenspace will be maintained between the proposed and current properties that will be the height of the buffer. She advised that the applicant is not proposing any additional buffering. The existing landscape is 8 feet (ft.) high.

Chairman Stone clarified that the side buffering for the sales office and the hotel is 20 ft. wide.

Ms. Chen addressed the proposed elevation of the multi-family townhouse-like buildings, noting the highest point is approximately 30 ft, with the highest point of the windows being 20 ft.

In response to Commissioner Bryant, Ms. Chen stated she is unaware if there are windows on the side.

Ms. Chen provided an overview of the amenities associated with the clubhouse.

Ms. Chen advised that access to the PUD will be from SW 99th Street Road and SW Highway 200. The paved road between the PUD and Commercial area is an unnamed spine road connecting SW 99th Street Road to the shopping center where the Publix is located. She referred to the map on the overhead screens, noting the main entrance is depicted with a red arrow and the yellow arrow is where the emergency access will be located. The proposed project includes multimodal paths for pedestrians, bike and golf cart use along SW 99th Street Road and the spine road.

Ms. Chen addressed transportation impacts, noting the project operates within the framework of the vested rights established in 1973. The number of trips generated by this multi-family development is predetermined and subject to appropriate impact fees including transportation and education. The initial Operational Traffic Study was submitted by the applicant. Preliminarily identified improvements focused on SW 99th Street Road, the spine road and the Highway 200 intersections. She advised that based on the Operational Traffic Study this multi-family development will generate 1,442 daily trips. Staff recommends the final project Operational Traffic Study be completed to the satisfaction of the Count Engineer.

Ms. Chen stated staff conducted notification by posting signs, sending mailers, and broadcasting according to the Land Development Code (LDC) requirements.

It was noted that the Growth Services Department staff and the P&Z Commission recommended approval of the Special Use Permit with the following Conditions:

1. The PUD is restricted to a total maximum of 312 dwellings units (2-story attached multifamily buildings) and accompanying accessory amenities consistent with the Marion County Land Development Code, the PUD Application, and PUD Concept Plan.
2. The applicant shall provide detailed information and calculation regarding the number of residential dwelling units from the VDRI vested rights assigned for this development.
3. Buffers shall be provided as shown on the submitted conceptual plan.
4. The final project Traffic Operational Study shall be completed at the Major Site Plan phase to the satisfaction of the County Engineer and Planning Director, adequate provision shall be made for the coordination of improvements with the PUD.
5. All access point locations will be worked out to the satisfaction of the Development Review Committee during the time of Development Review.
6. Multimodal path for pedestrian, bikes, golf carts, and vehicles shall be provided as shown on the submitted conceptual plan.

7. The PUD shall connect to Bay Laurel Utilities.
8. A Major Site Plan submittal will need to be reviewed and approved through DRC for the proposed development of the site.
9. Stormwater review during the Development Review phase will evaluate and determine whether the off-site DRA on the subject property can meet the size and depth requirement to serve the development to ensure LDC 6.13 is met with the Major Site Plan.
10. Provide a typical illustrations showing all setbacks.
11. Overhangs such as building pop-outs, cantilevers, and/or other extensions that project outward from the principal structure shall be reviewed similar to the Multiple Family Dwelling (R-3) zoning classification of the LDC.
12. Multifamily buildings shall be a maximum of 50' in height, consistent with the conceptual plan. Any clubhouse buildings heights shall be a maximum of 40' and accessory structures shall be limited to 20'.

Jessica Icerman, Stearns Weaver Miller, East Jackson Street, Tampa, attorney on behalf of the applicant, presented a 294 page handout entitled, "240306ZP - On Top of the World Communities LLC, Zoning Change from Community Business (B-2) to Planned Unit Development". She provided an overview relating to the request for a zoning change from Vested B-2 to the PUD.

Development Director Cameron Miller, Continental Properties, Executive Parkway, Menomonie, WI, addressed the operational sides of Continental Properties, noting they are a privately held national multi-family, retail, and hospitality developer that develops, owns and manages its branded apartment communities across 20 states. He advised that Continental Properties handles all day-to-day leasing operations, maintenance and overall management of the property. Mr. Miller noted there is a dedicated onsite team with 24-hour maintenance. He provided an overview of the developments proposed appearance, amenities, and a breakdown of anticipated residents relating to income, age, gender, percentage of pre-school age children, and children aged 5 through 18.

In response to Chairman Stone, Mr. Miller advised that the Hernando County facility referenced in his presentation contains roughly 288 du, including roughly 10% studio apartments (500 sq to 600 sf), 1 and 2 bedrooms units making up approximately 40% each, and the remaining 10% represents 3 bedroom units ranging from 1,200 to 1,500 sf. Ms. Icerman stated the Board is being presented with a handout relating to the side elevation and windows as requested earlier.

Director of Planning and Development Services Ken Metcalf, Stearns Weaver Miller, East College Avenue, Tallahassee, elaborated on his professional experience, noting in his capacity as a Regional Administrator for the Florida Department of Community Affairs he ran the DRI program for South Florida. In that role there were approximately 125 DRIs that he evaluated, as well as drafting the Vested Rights Determinations for the Southeast Florida Region.

Commissioner Zalak requested clarification relating to how vested rights become a part of the law.

Mr. Metcalf stated as of today the vested rights program is located under FS 380.06(3). He provided an overview of the history and process relating to vested rights.

In response to Chairman Stone, Mr. Metcalf confirmed that the intent of a Binding Letter of Interpretation of Vested Rights (BLVR) and a Binding Letter of Interpretation of Modification of Vested Rights (BLIM) is to maintain the rights of the developer where these units are concerned.

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Mr. Metcalf commented on a slide on the overhead screens, noting it shows a portion of the 1973 Marion County Code indicating multi-family was a permitted use in B-2. He stated the vested B-2 zoning classification did not provide for a specific density limitation for multi-family, but the R-3 at that time established a maximum of 20 du per acre. Mr. Metcalf advised that the vested B-2 zoning did not establish setbacks, buffers or other types of standards for multi-family use. He stated today's B-2 standards are not designed to address multi-family, which is why a PUD was brought forward to allow for appropriate standards relating to the adjacent uses.

Chairman Stone clarified that the applicant has the right to develop the property using the 1973 approval, but today's standards do not set forth what those B-2 zonings were for multi-family because multi-family does not exist within the B-2 zoning classification.

Mr. Metcalf concurred, noting the applicant considered merging the current and vested B-2 zoning classifications. He stated that did not make sense because current B-2 standards are not designed to address multi-family.

Mr. Metcalf provided an overview of the maps on the overhead screens, noting the red portion on the CSW vested area along SR 200 has a land use designation of vested Commercial. He noted the vested B-2 zoning is what controls the use and density in this area. Mr. Metcalf commented on the R-3 multi-family zoning to the north of this area.

Mr. Metcalf provided an example of a BLVR. He advised that policy 10.1.1 of the Marion County future land use element (FLUE) recognizes the vested rights of Vested DRIs that have obtained BLVR or BLIM approvals. Mr. Metcalf stated the intent of Policy 10.1.2 was to specifically recognize that the land use plan for the Vested DRI would designate and function as the Future Land Use Map (FLUM).

In response to Chairman Stone, Mr. Metcalf confirmed the area on the map represented by a star indicates a Vested Commercial land use designation.

Chairman Stone commented on the vested rights associated with this project and questioned why the applicant is here today.

Mr. Metcalf advised that under Florida law, the zoning is supposed to conform to the FLUM, noting there is actually a requirement in Section 163.3194 that states local governments must adopt zoning that conforms to the FLU designation within 1 year. He stated because the County does not have a zoning district that sets out all the standards that should apply to implement the standard, a PUD rezoning is being sought so that it is demonstrated to be consistent with the vested commercial FLUM and to address the other requirements for obtaining a rezoning. Mr. Metcalf noted there are policies in the Comprehensive Plan that would still regulate development on this property despite it being vested in terms of use and density (access requirements, buffers, etc.).

Ms. Icerman advised that if the applicant tried to create this development without a PUD or input from the County, elements such as the buffers, parking standards, and access points could be determined to be arbitrary.

In response to Chairman Stone, Mr. Minter stated one aspect of a vested right is that the government cannot change the LDC and take away vested rights. He advised that had the applicant not come in with this application for the PUD, there would not have been a public hearing, and the applicant would have gone through the Development Review Committee (DRC) process. Mr. Minter stated there would have not been the same level of opportunity for control relating to the specifics of the project that exists under the PUD process.

Commissioner Zalak questioned if Bridgewater Park was built to Commercial standards only.

Mr. Metcalf advised that it was also a PUD.

Ms. Icerman stated the applicant worked closely with staff, noting the parties agreed this was the best process.

Commissioner Bryant questioned if the developer has the right to develop without oversight from the Board relating to access and buffers should the Board deny the PUD request.

Mr. Minter stated that would conceivably be a scenario, noting the alternative to today's public hearing could have resulted in litigation coming from a number of different standpoints.

Mr. Metcalf addressed Comprehensive Plan consistency relating to the project, noting FLU Policy 5.1.2 establishes review criteria for changes to the Comprehensive Plan, zoning designations and SUPs. He advised that while 3 application types are mentioned at the top of the paragraph, the 12 criteria do not specify which application types they are associated with. Mr. Metcalf provided an overview of the criteria and how they relate to this project. He commented on the Housing Element Policy 1.1.1, which requires the County to provide a full range of residential choices.

Mr. Metcalf addressed compatibility, noting FS 163.3164(9) defines compatibility as a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition. He noted the multi-family use has already been determined to be compatible with adjacent uses. He reiterated the multi-family to the north within the OTOW DRI has R-3 zoning. Mr. Metcalf advised that multi-family adjacent to multi-family is typically not recognized as a condition that is creating an incompatibility concern. He stated Section 6.8.6 of the LDC includes a compatibility table showing the buffers required between adjacent uses. That table addresses multi-family next to multi-family and does not require a buffer. Mr. Metcalf noted Land Use Policy 1.1.6 provides that buffers may be required relating to compatibility concerns, noting the applicant is providing a buffer.

Chairman Stone noted the differences between the multi-family projects, including owner occupied vs. non-owner occupied and age restricted vs. non-age restricted.

Mr. Metcalf clarified that the property to the north is not owner occupied, it is subject to a lease arrangement.

Chairman Stone advised that the lease covers a 99 year period and in the minds of those individuals it is owner occupied.

Mr. Metcalf stated OTOW has certain approved waivers relating to buffers. The unnamed spine road and SW 99th Street Road will have a 10 ft, modified Type C buffer; the existing sales office will have a 20 ft, Type B buffer; the existing hotel and Publix will have a 20 ft, Type A buffer; and the existing mature buffer along the rear property line exceeds the LDC requirements where no buffers are required.

In response to Commissioner Zalak, Mr. Metcalf stated the majority rear property line buffer is located on OTOW property. He opined that the best way to ensure the buffer is a regulatory requirement is to have a Condition in the PUD rezoning approval as recommended by staff.

Commissioner Zalak questioned if this PUD can legally dictate this buffer that is not on its property. Ms. Iserman stated the applicant is willing to agree to a Condition that will impose a restrictive covenant over that portion of the property.

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Commissioner Zalak stated in addition to the PUD Condition relating to this buffer, the developer will agree to bind that buffer to this PUD, through a covenant. He advised that the PUD provides assurances to the properties to the north and the developer.

Mr. Metcalf commented on the proximity of the multi-family homes to the north to the buffer, noting they will not see the apartments. He advised that there is gap in the buffer where the lift station is located, and the applicant agrees with Staff's recommendation relating to buffers in this area.

Mr. Metcalf provided an overview relating to light detection and ranging (LIDAR), the technology used to demonstrate the opaqueness and density of the tree line. He referred to a slide on the overhead screens depicting the viewshed analysis, noting the software used recognizes all of the LIDAR points on the ground, tops of buildings, and trees. The images were taken at 6 ft. high as if an individual was standing on the north side of the buffer attempting to look through it. Mr. Metcalf stated the areas in red represent where the light could not penetrate through the dense foliage.

In response to Chairman Stone, Mr. Metcalf advised that the light connects elevation points, noting it looks at a laser beam that starts at 6 ft. above grade, and shoots it at all directions and all heights.

Commissioner Zalak questioned if the buffer to the right is not sufficient. Mr. Metcalf advised that the green areas represent what the light can see.

Mr. Metcalf provided an example of an individual looking out of their second story window from the project looking north, noting only the tree line is visible. He stated the inset map indicates higher rooftops in the distance can be seen, but it cannot see through the foliage where the actual units are. Mr. Metcalf referred to an image on the overhead screens showing the elevation of the second story windows. He advised that an individual has to look above the tree line to see through, which is far above the existing units to the north. Mr. Metcalf stated this project is vested from transportation concurrency; however, the applicant has submitted a traffic operational analysis. The analysis is not required by Code at the rezoning PUD conceptual stage, but the applicant wanted to identify as early as possible what operational needs may ultimately be required. The final determination will be made when the project goes through the major site plan review. He stated the analysis performed by Kittelson and Associates, Inc., evaluated this from a preliminary perspective, looked at multiple scenarios and determined the turn lanes that would be necessary to support the project from an operational perspective. There are internal sidewalks that will be provided and a multimodal path along the spine road.

Commissioner Zalak questioned who will be responsible for maintaining the multimodal path, how it will work relating to the path coming out of OTOW to the Commercial district, and who will have access to the path. Ms. Icerman advised that the multimodal path will be maintained by the Canopy Oaks Phase II Property Owners Association (POA) and it will be accessible to the public.

Mr. Metcalf stated centralized water and sewer will be provided by the Bay Laurel Community Development District (CDD). There is sufficient capacity relating to the landfill, the project is served by Fire Rescue/EMS and law enforcement within 5 miles, which is the guideline County staff uses to determine availability. He reiterated this project would be vested should the County adopt school concurrency.

Commissioner Curry commented on the staff analysis, which indicates a portion of the property is located in a flood zone. He questioned if there is adequate drainage retention area (DRA) capacity to take that water.

David Tillman, Tillman and Associates Engineering, LLC, SE 16th Avenue, stated there is a master DRA that serves this region, and a preliminary stormwater analysis has been performed. He advised that there is capacity.

In response to Commissioner Zalak, Mr. Tillman stated there is a POA and it will be the party responsible for the DRA. He advised that the applicant is requesting PUD guidelines, noting there were no standards applied to the old B-2, it was just a matter of whether there was a right. This was determined to be an appropriate use in the 1970s.

In response to Chairman Stone, Mr. Tillman stated the LDC was used as the basis of the applicant's criteria. He advised that when looking at the PUD guidelines for the LDC, the applicant meets all the criteria.

Mr. Tillman commented on the view shed analysis from the existing attached housing looking into the multi-family, noting there were slivers of green. He stated that depiction was before the implementation of the lift station that was built, creating a small break. Mr. Tillman advised that staff addressed that with the Condition requiring the applicant to provide and maintain opaque vegetation a minimum of 8' in height. He stated the unnamed spine road is basically a driveway that serves this region and commercial areas. Mr. Tillman provided an overview relating to the buffers for this project. He commented on a fence for separation relating to the buffer for the existing hotel and Publix.

In response to Commissioner Bryant, Mr. Tillman stated there is a 6 ft. chain link fence located within the buffer along the north side.

Mr. Tillman commented on the aerial photographs as seen on the overhead screens, noting the star depicts the location of the drone, and the blue triangle indicates the angle at which the pictures were taken.

In response to Chairman Stone, Mr. Tillman stated SECO Energy serves this project. He commented on a picture of the lift station, noting it shows the modification of the buffer. Mr. Tillman advised that the fence seen in the photo is 6 ft. high and provides a scale relating to the remaining buffer. He stated there is potentially 1 house that has any visual sight into the apartment complexes from that region.

Chairman Stone questioned if there is an easement that has given Duke Energy the authority to run that line. She addressed what can be done to keep the tree line clear to avoid any service disruptions during storms.

Mr. Tillman stated most of the canopy is below the lines which are currently being maintained. He advised that the lines are set back from that buffer, noting the buffer does not grow directly under those lines.

Ms. Icerman stated there is an easement.

Mr. Tillman commented on additional views of the tree line in relationship to the power lines, in addition to a photograph of the DRA that will serve this project. He provided an overview relating to setbacks. Mr. Tillman addressed a slide on the overhead screens, noting there is 71.2 ft, plus approximately 40-plus feet separating the buildings from the property line.

In response to Commissioner Zalak, Mr. Tillman stated the existing buffer is partially inside the 71.2 ft. area and extends over the property line while remaining outside of the parking area. He advised that the applicant requested the opportunity to maintain/replace the buffer in the event of tree decay or the death of any of the vegetation.

Commissioner McClain questioned where the fence is located in relation to the property line. Mr. Tillman confirmed the fence falls on the property line. He stated there is in excess of 100 ft. between the apartment buildings and existing homes.

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Mr. Tillman addressed the open space associated with the project, noting along with the inclusion of the improved open space areas and the buffers the location has 67.5 percent (%) open space. He stated the applicant is asking for a density that is far below what is allowed.

Mr. Tillman provided a brief overview relating to access points.

In response to Commissioner Bryant, Mr. Tillman advised that the access near the Publix will be emergency access only; however, individuals can utilize it if the other access is blocked for some reason. He stated the emergency access point is identified as such in an attempt to direct the majority of traffic through the one location. Mr. Tillman advised that the emergency access will be closed unless it is opened for an emergency purpose. He stated the applicant chose to create the access in that manner, noting it was not based on a recommendation from the County's Transportation Department.

Commissioner Bryant stated in today's development standards projects over 50 units typically require 2 access points. Mr. Tillman opined that the additional access points are provided as emergency access. He noted the project was analyzed by the transportation engineers as the 1 entryway. Mr. Tillman advised that the matter would be taken under advisement by the applicant, despite the preliminary transportation analysis showing it does function with just 1 entrance.

Commissioner Zalak questioned if there will be pedestrian/golf cart access to the Commercial areas. Mr. Tillman confirmed there will be internal sidewalks that will connect to the multimodal trail that takes individuals back and forth. Currently there is no multimodal trail along that portion, but it is being added and a connection is being created going to the south so the OTOW residents can also access the path. The multimodal path will be 12 feet wide along the entire property frontage. He stated the applicant proposed to limit the access to OTOW and will install a gate and security cameras to monitor exits and entries on the main gate (SW 99th Street Road).

Mr. Tillman advised that the project exceeds the parking requirements, is on central water and sewer, and has no outdoor lighting waivers.

In response to Commissioner Curry, Mr. Tillman stated there are no plans to include electric vehicle (EV) charging stations. He advised that the parking spaces are 9X18 ft.

In response to Commissioner Bryant, Mr. Miller stated there is a specific section within the lease agreement that covers prohibited conduct, including noise levels and disturbing the peace. He advised that the Community Manager/onsite operations team enforces those regulations. Mr. Miller stated depending on the issue, number of complaints and possible related police reports, the decision to evict is made by the onsite team and Continental Properties.

Commissioner Bryant requested Mr. Miller provide information relating to the frequency of eviction proceedings relating to Continental Properties guests.

In response to Chairman Stone, Mr. Miller advised that the onsite fitness area in the enclosed building is available 24 hours, the pool is open from dawn to dusk, the recreation multipurpose rooms are closed after the Community manager is off and the building has been locked and the carwash is in an open area available at all times. He stated the carwash has outdoor lighting, noting all lighting will comply with the LDC.

Mr. Tillman noted the applicant will abide by the Marion County Ordinance relating to noise.

Chairman Stone questioned if the Community Manager will have a noise meter to monitor decibels. Mr. Miller advised that it is possible to look into that option.

In response to Chairman Stone, Mr. Miller stated the pool is heated but there is not a hot tub.

Ms. Icerman advised that the applicant can provide the Board with a copy of the rules of conduct, noting it is in Continental's best interest to ensure residents are not disturbed by unruly patrons or other residents.

It was the general consensus of the Board to recess for forty-five minutes to ensure those in the audience have time to eat.

(Ed. Note: It was confirmed that Duke Energy is the electric provider for this project.)

There was a recess at 11:32 a.m.

The meeting reconvened at 12:18 p.m. with all members present.

Commissioner McClain out at 12:18 p.m.

Ms. Icerman advised that she emailed County staff the prohibitive conduct that is in the lease for Board review. She stated in terms of the access point, she has discussed the matter with staff and believes it is feasible, noting the applicant is open if the Board wants to impose a Condition relating to the second full access point.

Commissioner McClain returned at 12:20 p.m.

Chairman Stone opened the floor to public comment. She noted attorney Joseph Shoemaker had 10 citizens donate their time to him to speak on their behalf; therefore, the Board will allow him 20 minutes to speak.

Attorney Joseph Shoemaker, US Highway 441, Leesburg, provided a brief overview of his work history, noting he has attended a number of government meetings through the years as an attorney for The Villages, Lake County School Board, and has represented the City of Leesburg. He commented on the number of people that will be impacted by the proposal. Mr. Shoemaker advised that the BCC will ultimately have to decide whether or not the rezoning request would adversely affect the public interest, whether it is consistent with the current Comprehensive Plan, and whether it is compatible with surrounding land uses. He addressed the issue of having a multi-family development abutting a retirement community. Mr. Shoemaker commented on citizen concerns with the improvements and maintenance needed to SW 99th Street Road and who would pay for those improvements.

He expressed concern that the proposal would impact the safety of residents in the surrounding areas as it relates to crime, noting access to the On Top of the World (OTOW) community can be gained by walking, bicycles, golf carts, skateboards, or by the multi-modal connecting road/pathway to that community. Mr. Shoemaker noted many residents are concerned with the cost of having to secure their neighborhoods with privacy/security walls, pedestrian gates, etc. He commented on previous requests for similar types of development in the area (e.g. Calesa Township). Mr. Shoemaker addressed the costs associated with adding more growth to the area as it relates to law enforcement, Fire Rescue, Marion County school system, etc. He opined that if the Board does approve the request there are a number of things that need to be considered such as the height of the proposed buildings (three story), noise, lights, etc., which need to be addressed through intense buffering requirements. Mr. Shoemaker stated the multi-modal pathway would cause issues by forcing the OTOW seniors to drive through the apartment complex to access Publix Grocery store/pharmacy and other essential services. He addressed the unnamed spine road, noting the pathway will discharge golf carts on the wrong side of the road, in front of the hotel, which he opined is dangerous for the community. Mr.

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Shoemaker opined that the zoning request should require the spine road to be widened to incorporate a golf cart path lane on both sides of the road, noting costs should be absorbed by the property owner/developer and not from OTOW residents. He noted there are some concerns as to how the development's amenities will impact current residents and recommended those be placed near the front of the development near the spine road to help diminish the noise that will occur from those activities. Mr. Shoemaker reiterated concerns related to buffering and opined that the proposal would adversely impact the public interest as presented. He expressed his appreciation to the BCC for allowing folks to be heard and listening to their concerns. Mr. Shoemaker advised of concerns that have been expressed to him, including heights of buildings, sound issues, buffering for sound and light, preference for a wall versus a chain link fence, spine road maintenance to be funded by developer, path for golf carts on the other side of the street, and amenities moved to front of property.

Kim North, SW 84th Terrace, opined that multi-family residential of all ages is not compatible with the current, established senior community. She noted the OTOW residents all have front and back yards and expressed concern with buffering between the developments. Ms. North commented on the effect the development will have on her life. She presented 8 pictures (as shown on the overhead screens) of her backyard and the chain link separating her property from the proposed site. Ms. North also presented copies of petitions of objection signed by residents within 300 ft of the proposed development. She reiterated her concern relating to noise levels that will be created by the proposed project.

Dorothy Fazekas, SW 91st Circle, commented on the chain link fence and expressed concern with the sound and visual effects the development would create for existing residents in the area.

Lois Hatcher, SW 86th Place, commented on the Mission Statement written in 1980 by OTOW founder Sidney Colen, which reads as follows "This company has always stood for quality, value, moral obligation, and sustainable development practices. We have never undertaken the development of anything or any community unless we believe there would be a redeeming value. Money has never been the motivation or the purpose of existence. We have always believed, keenly, that service and human values are greater than mere development. We affect the lives of people, and we affect their lives for good". She opined that this mission statement brought people to live in the OTOW community; however, today residents question if these words have the same moral obligation, value, or commitment. Ms. Hatcher urged all Commissioners to vote no on the rezoning request in memory of Sidney Colen.

Nancy Carp, SW 96th Lane, presented a petition packet containing 3,552 signatures from surrounding residents opposing the application request. She commented on recent growth spurts affecting Marion County, especially Marion County schools. Ms. Carp expressed concern with the affect the growth is having on traffic and infrastructure, as well as residents' quality of life. She advised that in December 2022 the BCC considered a temporary moratorium on development; however, that never happened. Ms. Carp commented on FS Chapter 163 and opined that the BCC needs to consider what is in the public's best interest. She noted the need to allow time for infrastructure to catch up with growth. Ms. Carp stated senior lives matter and requested the Board deny the application. Charlotte Hunt, SW 88th Court Road, presented a 2 page handout relating to OTOW housing market trends. She advised that she loves the OTOW community amenities and the nearby convenient shopping. Ms. Hunt stated when she purchased her home, she

was told that commercially zoned undeveloped area by the front of the community's main entrance was to be the site of future businesses that would provide further services to the community. She advised that after 8 years, her Homeowners Association (HOA) fees have doubled, noting so has the traffic and public parking spaces in local businesses have become scarce. Ms. Hunt opined that the current infrastructure is unduly strained to support 600 additional people in such a small area. She referred to her handouts and stated property values are already affected by unrestrained growth. Ms. Hunt noted in March 2024, home prices were down 6.1% in OTOW compared to March of 2023. She expressed concern that if the project is approved, seniors who live in OTOW will move elsewhere. Ms. Hunt expressed concern that OTOW and the surrounding areas will evolve into a blight on the landscape of Marion County.

Laurie Hill SW 98th Street Road, did not appear when called upon to speak.

Patricia McNulty, SW 95th Lane, advised that she lives near the proposed complex and objects to the entire development. She stated if the Board does approve the project, there should be conditions that must be met. Ms. McNulty advised that there will be a Type "B" buffer around the OTOW sales office and Type "A" around the hotel property; however, along the back property line where residents live there are no buffer requirements. She stated the existing tree line and decrepit chain link fence is the only buffer being offered, which is not adequate and would allow for visual, physical, and noise intrusion. Ms. McNulty noted the area around the lift station is completely open with a chain link fence and several newly planted bushes protecting it. She expressed concern with how the developer can justify not providing the same buffer protection to residents as it is offering the OTOW sales office. Ms. McNulty opined that the northwestern boundary of the proposed complex must contain a buffer zone that integrates the existing tree line and a Type "B" or Type "D" buffer that includes a wall and additional shade and ornamental trees and shrubs. She stated with the proposed parking areas facing the OTOW property line, a Type "B" or Type "D" buffer is the only way to mitigate light and sound intrusion from cars, motorcycles, and trucks, as well as physical intrusion by trespassers.

Paul Belter, SW 82nd Terrace, presented a 3 page handout depicting water flow levels along SW 99th Street. He advised that he passed the engineering and training test and was a Senior Project Engineer in the curtain wall industry. Mr. Belter referred to page 1 of his handout relating to stormwater runoff from the proposed project. He advised that the retention pond (circled in red) will contain stormwater runoff from the proposed apartments, noting the water will be shifted up to the stormwater retention area by the Publix grocery store. Mr. Belter opined that the calculations should work and will be tested once the area receives a heavy rain. He commented on the importance of maintaining water retention areas. Mr. Belter referred to pages 2 and 3 of his handout and expressed concern with possible flooding issues that could occur on SW 84th Terrace if the Board changes the zoning from Commercial to a PUD.

Deborah Hluchanyk, SW 94th Loop, expressed concern with road conditions throughout Marion County, noting she is a motorcycle rider and motorcycle rider deaths are up 61%. She commented on the Ocala/Marion Transportation Organization, who advised that Marion County's fatality rate is higher than State and National fatality rates, and continues to grow at 6.5% annually due to explosive growth. Ms. Hluchanyk expressed concern about the inadequate level of Fire Rescue and Emergency Medical Services (EMS) and opined that residents are being harmed more and more each day. She noted this project will contribute to this issue and the harm it will cause is not in the public interest. Ms.

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Hluchanyk requested the Board deny the application and stop approval of other requests until infrastructure and public services match development.

Cheryl Myers, SW 89th Terrace, commented on a previous request (230210ZP), which the Board denied based on traffic concerns and the fact it was not compatible with the surrounding area. She advised that in 2023 the BCC approved 1,701 units and there are 3,054 single units now becoming available, and 3,858 multi-family units, noting there are 2,662 units planned within a ½ mile around State Road 200 off of SW 60th Avenue. Ms. Myers opined that the proposal today is not needed and does not fit the community.

Mark Frankel, SW 89th Terrace, presented a 1 page aerial map highlighting low lying areas within the community that are subject to potential flooding. He advised that the OTOW community will be impacted by the 749 tenants and the 421+ vehicles that will come with the apartment project, noting OTOW seniors should not have to bear the cost to upkeep SW 99th Street Road due to the extra car traffic and construction vehicles. Mr. Frankel opined that OTOW residents should not have to pay for extra security the apartments would cause to a 55+ community. He stated using the Canopy Oaks parking lot is the only entrance and exit and will tax an already dangerous situation. The use of a commercial area is not a safe solution and the adjacent spine road that connects SW 99th Street and Canopy Oaks cannot handle the influx of traffic the apartments will bring. Mr. Frankel stated 2 out of the 3 plats across from the proposed apartments are slated for buildout and will use the same spine road as the apartments. He referred to a previous BCC workshop, where the County Attorney stated the Board could not only reject the development if the adjacent road cannot handle the additional traffic, but would be obligated to do so. Mr. Frankel noted the Ocala Place project was denied based on similar or worse conditions being presented today. He opined that the proposed project would adversely affect the public interest, is not consistent with the Comprehensive Plan, and is not compatible with the surrounding land uses. Mr. Frankel opined that children arriving home before parents return home from work would open up the Canopy Oaks and OTOW parking lots to bike and skate board riding, which would create a very dangerous safety situation.

Jeannette Poe, SW 79th Lane, presented a 1 page handout entitled, "Future Use Capacity" relating to school capacity in Marion County. She advised that since 2020 enrollment has risen by 4,460 students at the elementary school level. Middle school capacity varies from 65% to 105% and high school levels range from 100% to 123%. She stated the current levels do not take into account the projected population growth. Ms. Poe advised that the overcapacity of schools poses problems to students because of tardiness due to bussing issues, noting some students miss 2 or more classes per day. She commented on the age of schools, noting some are in major disrepair and some are without air conditioned ventilation. She implored the Board to deny the application.

George Weir, SW 90th Place, presented a 2 page map relating to crime incidents in the OTOW area versus other areas in the County. He expressed concern with the anxiety that will come with having apartments next to a 55+ community. Mr. Weir requested the Board deny the application.

Sandy Matlock, SW 91st Circle, opined that the BCC has the opportunity to set a precedent as to whether or not Marion County will allow other people/entities to sell citizens' rights. She expressed concern that if the application is approved, OTOW would sell to Continental (developer/applicant). Ms. Matlock reiterated her concern that OTOW will not exercise their rights and would sell those rights to Continental.

Barbara Grimshaw, SW 93rd Place, commented on the need to have common sense infrastructure when dealing with growth. She addressed the need for adequate roadways, water, sewage, schools, telecommunications, etc. Ms. Grimshaw opined that uncontrolled development is leaving the area in dire need of timely Fire/Rescue and law enforcement services. She advised that the lack of infrastructure greatly affects the most vulnerable population (senior citizens).

Janella Duritsa, SW 90th Street, commented on the lack of infrastructure along the SR 200 corridor, noting the community is already overburdened. She noted it is hard enough to find parking spots at the Publix grocery store, Walmart, etc.

Harriett Pinchouck, SW 95th Court, stated she is a former teacher and is currently volunteering for the Marion County School District's "Reading Pals" program. She stated approximately 1/3 of public school students in Florida cannot read on grade level by the end of the 3rd grade. Ms. Pinchouck commented on the positive impact of the "Reading Pals" program; however, due to schools being overcapacity the program is not as effective as it could be for the children. She advised that Florida Education Association President Andrew Sparr stated the pipeline for Florida teachers is apparently shrinking, noting more and more teachers are leaving the education system. Ms. Pinchouck opined that there are already so many apartment complexes being built in Ocala.

Thomas Hotte, SW 95th Lane, stated he is present today in opposition of the rezoning request. He commented on Marion County's Vision statement, which is to "Keep Marion County a safe, well planned community with a thriving economy, that supports a high quality of life where family matters" and opined that although the BCC cannot stop growth it needs to control the issue. Mr. Hotte commented on previous Board discussions relating to growth in this area and opined that it is the BCC's responsibility to stop unprecedented and unfunded growth. He advised that denying this project is the right time and the right place to begin.

Mark Kellogg, SW 99th Lane, presented 3 handouts relating to traffic along SW 99th Street Road. He advised that during the February 2024 P&Z meeting he pointed out that the Traffic Study completed by the developer did not include the SW 99th Street Road and SR 200 intersection. Mr. Kellogg advised that the study was incomplete as it did not include the additional traffic resulting from the large number of homes not yet constructed at the rear of the OTOW property. He stated the SW 99th Street Road/SR 200 intersection currently includes 2 lanes: 1) a right turn lane and 2) a combined straight and left turn lane. Mr. Kellogg stated the first handout reflects the crash and injury data for the SW 99th Street Road/SR 200 intersection, which exceeds that of the SW 80th/SR 200 intersection. He advised that the second handout reflects the current OTOW roads connecting to SR 200 and SW 80th Avenue, as well a future connection on SW 110th Street from CR 484 to SR 40 to US 27. Mr. Kellogg commented on traffic concerns (3rd handout), noting corrective actions would include a left turn lane from SW 99th Street Road onto SR 200.

Bill Summerfield, SW 86th Place, expressed concern with dangerous traffic issues, security, safety, crime, vandalism, blight, declining property values, and total incompatibility. He stated it is the responsibility of the BCC to provide for the safety and welfare of Marion County residents.

Tom Rumora, SW 94th Loop, presented a 1 page handout, which he read into the record. He advised that the proposed family apartments are an awkward donut hole in a long established commercial area and does not benefit the OTOW residents. Mr. Rumora stated security is a major concern as the residents of the proposed apartments would have unrestricted access past the OTOW gate with no security check. He offered a 3 step

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collaborative idea to: 1) table this project; 2) allow County staff to help find and fast track an alternative site; and 3) allow for a national design competition for the subject property to help bring pride to everyone. Mr. Rumora opined that this idea would preserve the positive image and reputation of OTOW.

Steve Hluchanyk, SW 94th Loop, opined that plenty of testimony has been given as to why the project is not in the public interest and should be denied. He advised that vested development does not provide developers the right to build anything they want, noting public interest comes first. Mr. Hluchanyk stated the property was originally to be part of OTOW residential then changed to develop commercial/retail opportunities that would serve the residents of OTOW. He noted the VDRI was approved many decades ago, but was never developed. Mr. Hluchanyk opined that now is not the time and infrastructure is not in place to support the project. He stated if the Board approves the request, to please enact the changes requested by OTOW residents.

Paul Kannapel, SW 84th Loop, opined that “public interest” are the comments presented by those in attendance today from the neighboring community. He commented on all the other projects that are in the pipeline for rental units throughout the SW 200 corridor.

Carter Brusck did not appear when called upon to speak.

Gary White, SW 96th Court Road, commented on a shopping center that was owned by Ken and Sidney Colen that was sold to a holding company that is now in shambles and has been in bankruptcy.

Carol Vanconey, SW 94th Street, requested the Board deny the rezoning. She advised that questions have been raised regarding flood zones, compatibility, public interest, non-gated security, powerlines, and noise. Ms. Vanconey stated if the Board approves the request, OTOW residents will be impacted by 1,200 people per day in an already congested area. She expressed safety concerns for the children who will bike, skateboard and run across SR 200.

Kathy Nastally, SW 83rd Circle, opined that there is a child safety issue with the proposed apartment complex in this area. She commented on the general welfare and characteristics of the surrounding communities, noting the proposed development would alter the golf cart community. Ms. Nastally opined that the proposed development would impede access to emergency vehicles by increasing traffic. She questioned where the school bus stop would be located and who would ensure the safety of the students getting off the bus.

Leslie Miller, SW 94th Avenue, commented on an email she wrote to the Board last week, noting she is having to sell her parents’ home in OTOW, noting since word of the proposed development has gotten out, she has had fewer and fewer showings. She opined that the proposed development is a negative impact on the surrounding communities.

Commissioner Zalak out at 1:42 p.m.

Susan Byrne, SW 84th Terrace, advised that her property abuts the proposed development, noting she can see headlights from SR 200 through the tree border. She stated a parking lot is not a buffer and expressed concern with the noise that would be generated.

Commissioner Zalak returned at 1:44 p.m.

Diane Julian, SW 90th Lane, advised that she feels very safe where she currently lives and expressed concern if the development is approved.

Gwendolyn Garcia, SW 100th Avenue Road, commented on the amount of construction being done by OTOW, noting traffic is already being impacted.

Sarah Dennis, SE 36th Avenue, advised that she stands in solidarity with those who will be impacted by the proposed development. She commented on those who have worked towards retirement and invested in where they have chosen to live.

Dale Christensen, SW 95th Street Road, advised that the Board has already approved a project across the street from Cody's restaurant, noting that project has 3 access points. He stated the proposed project has no access to any County or State owned and maintained road. Mr. Christensen expressed concern that the current developer may sell the project to someone else.

Bill Ashton, SW 96th Terrace Road, advised that he and his wife performed a lot of research on where they wanted to retire, noting OTOW was their first choice. He opined that public interest is transportation, water and sewer, solid waste, Fire Rescue and Emergency Services, law enforcement, and public schools, noting the infrastructure is not there to accept the proposed development.

Evan Krieger, SW 94th Loop, commented on the lack of the project's compatibility with the surrounding neighborhood. He stated the property should remain commercial in order to serve the residents of OTOW.

Nancy Church, SW 84th Terrace, stated her property abuts the proposed project, noting she can see through the trees. She advised that the spine road is already heavily utilized, noting the infrastructure is not in place for this project.

Carla Lewins, SW 97th Street, expressed concern with the safety of residents during major storms and hurricanes, noting there are no shelters in the area. She commented on the lack of medical facilities in the area.

Daniel Tirro, SW 92nd Street, requested clarification relating to a proposed gate with cameras (off of SW 99th Street) going into OTOW. He questioned who would be working and maintaining the gate.

Commissioner Bryant out at 1:59 p.m.

Ginger Siltman, SW 89th Loop, referred to page 2 of the Agenda packet, which states there is no budget impact; however, she opined that there will be an impact due to the number of vehicles and trips that would be generated by this project. She stated there is no current mass transit infrastructure. Ms. Siltman advised that there will be an immediate need to widen and reconstruct nearby streets.

Patricia Bennett, SW 94th Street, questioned whether the project is Federally mandated or just for private financial gain. Chairman Stone advised that this is not a Federally mandated CRA project.

Commissioner Bryant returned at 2:01 p.m.

Ms. Bennett advised that OTOW has a long history of approaching the County with a development proposal (i.e., additional units or phases) that increase the densities and uses. She stated OTOW HOA fees are raised annually due to increased costs of operating and maintaining an aging community.

Bonnie Salo, SW 92nd Place Road, noted she is an 81 year old widow who has lived at OTOW for 18 years. She advised that her daughter is planning to move here, noting she is afraid to tell her about the proposed apartment complex. Ms. Salo requested the Board deny the request.

Chairman Stone advised that public comment is now closed.

Ms. Icerman opined that as Ocala/Marion County grows as a desirable area to live, so do the services that are needed to oblige the residents that move here. She noted all of the people who provide those services (fire fighters, nurses, police officers, etc.) need a place to live, which is what this community would provide.

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Kok Wan Mah, PE, Kittelson & Associates, Inc., East Robinson Street, Orlando, advised that he has 27 years of experience as a transportation engineer, of which 25 years were in development services (conducting and reviewing traffic impact studies). He stated the firm has conducted a preliminary analysis for the Canopy Oaks Phase II development, which includes the multi-family component, as well as the remaining lots that front SR 200. Mr. Mah advised of a Memo that was submitted in September 2023 that reviewed the intersection of SW 99th Street Road at the spine road, noting a supplemental analysis was also conducted and submitted last week that included the intersection of SW 99th Street Road at SR 200. Based on the analysis for the buildout of Canopy Oaks Phase II, the firm has identified improvement needs and have coordinated with OTOW to review those improvements. For the SW 99th Street Road at Canopy Oaks spine road the improvements would include constructing a left turn lane for SW 99th Street Road into Canopy Oaks, as well as a right turn lane out of Canopy Oaks. He advised that the spine road currently has a single lane approach, noting a right turn lane would allow for traffic to turn and head towards OTOW without being held up by vehicles making left turns. Mr. Mah stated the left turn lane would allow traffic to exit out of the through movement and provide safe passage into the Canopy Oaks development. At the intersection of SR 200 and SW 99th Street Road a left turn lane improvement was identified from SW 99th Street Road onto SR 200. Currently there is a shared left/through lane with an exclusive right. He stated there would need to be a signal modified to include the left turn movement from 99th Street Road.

Chairman Stone clarified that the traffic study is not due until the Master Plan/Major Site Plan comes back to the Board for review and questioned whether OTOW has agreed to make the recommended improvements.

Amber Gartner, Kimley-Horn and Associates, SE 17th Street, stated she is working with Continental on the operational traffic study that is required with the Major Site Plan and will coordinate further with staff as they move through that process. She clarified that they preliminarily concur with the recommendations and findings from Kittelson & Associates. In response to Commissioner Zalak, Ms. Gartner advised that the recommendation was for a dedicated left turn lane on SW 99th Street Road coming out from OTOW. She stated there is approximately 250 feet available for stacking (approximately 8 to 10 cars).

Ms. Icerman confirmed that they are agreeing to make these improvements, pending the final outcome of the Major Site Plan traffic analysis.

Mr. Minter requested clarification as to who will make those improvements, OTOW or Continental.

Ms. Icerman stated the improvements would be paid for by Continental Development.

In response to Ms. Icerman, Ms. Gartner advised that depending on the size (square footage) of the commercial development, it could generate up to 4 to 6 times the amount of traffic trips than the proposed apartment complex would generate. She clarified that what is being proposed is less intense than a commercial development.

In response to Commissioner Bryant, Ms. Icerman advised that they are willing to open the proposed emergency access only point to a full access point.

General discussion ensued.

In response to Commissioner Bryant, Mr. Tillman opined that there is plenty of capacity on the spine road and no road improvements are needed on that roadway. He noted there is no stripping on that road, which is typical for non-public roadways. Mr. Tillman addressed the suggestion that the multi-modal pathway be placed on the other side of the roadway, noting that would be the worst case scenario due to the number of

commercial driveways. He advised that the gates will be going on both sides and will require resident passes going in and out of the community, noting that improvement will be paid for by the OTOW Master Development.

Ms. Icerman commented on HOA fees and shared costs, noting although the access gates at the multi-modal path are being paid for by the applicant (OTOW Master Development), Continental (by purchasing the property) is becoming a member of the POA, which is required to maintain all the common area infrastructure (DRAs, multi-modal pathway, etc.). She stated there is a private agreement between the parties with respect to contributions for roadway improvements. Ms. Icerman noted OTOW is trying to be extremely fair regarding proportionate cost sharing measures.

In response to Commissioner Zalak, Ms. Icerman referred to the Canopy Oaks Phase II Replat Two map and advised that there are certain common areas, including the multi-modal path, that is part of the POA and will pay their share of the roadway, noting Phase I (including the Publix grocery store/shopping center) also pays their share of the roadway.

In response to Commissioner Zalak, Ms. Icerman advised that the Phase II POA will develop the multi-modal path. She clarified that the OTOW developer and not the Association will pay to install the access gates at the multi-modal path and the maintenance will then pass on to the POA.

Commissioner Zalak stated the cart pathway outside of the gates will be maintained by the commercial development. Ms. Icerman concurred.

In response to Chairman Stone, Ms. Icerman advised that the residents of OTOW will not be responsible for, or incur, any expenses if the application is approved.

Commissioner Zalak clarified that residents will be responsible for long term maintenance of the access/security gates. Ms. Icerman concurred.

General discussion ensued.

In response to Commissioner McClain, Ms. Icerman advised that SW 99th Street Road is currently a private roadway, noting there is a Master Association that contains sub-associations that all have a proportionate share agreement. She clarified that the OTOW DRI allows for 32,400 du plus commercial for a full buildout, and this project is 312 units. Ms. Icerman stated there are 3 other entrances, plus future entrances for the overall OTOW community and not everyone is funneled through the SW 99th Street access point. In response to Chairman Stone, Ms. Icerman stated the spine road is maintained by the Commercial POA.

In response to Commissioner Zalak, Mr. Tillman advised that there is currently an old established buffer and opined that if a wall or fence is constructed than it would isolate the buffer to where it cannot be maintained on a regular basis. He stated the buffer should remain open to be able to maintain it in perpetuity. Mr. Tillman noted the buffer maintenance would be a shared cost through the PAO in that region. He stated the buffer area is currently being maintained (mowing and trimming) by the PAO.

Commissioner Bryant questioned what the buffer requirements would be if the project was commercial going next to residential. Mr. Tillman stated because the project is within a PUD there is no requirement for internal buffers per the LDC.

Mr. Bouyounes advised that commercial to single family residential requires a Type "B" buffer, which does require a wall.

Commissioner Bryant opined that if the Board approved the application, it should require a wall.

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Commissioner McClain commented on the change of seasons, noting the existing buffer may be adequate during the summer months; however, once the foliage falls off in the fall and winter months it may not provide enough of a barrier.

General discussion ensued relating to buffers.

Commissioner Curry out at 2:38 p.m.

In response to Chairman Stone, Mr. Tillman advised that the pictures of the current buffering were taken by utilizing LiDAR data.

In response to Commissioner Zalak, Ms. Icerman advised that not every apartment will have a garage; however, there are numerous garages and storage lockers available for residents.

Commissioner Curry returned at 2:39 p.m.

Ms. Icerman stated Continental is willing to limit the height of the apartments to 2-story buildings.

Mr. Tillman recommended the language include "2-story of living and dwelling area" as not to limit the peak of the buildings or "limit the height of the building to 35 or 40 feet", whichever the Board determines.

General discussion ensued.

Ms. Chen clarified that the commercial to residential development is required to provide a Type "B" buffer (20 feet wide with a concrete/opaque wall).

Commissioner Zalak noted there are a few issues (gaps) with the current buffer.

Mr. Tillman suggested staff go out to the site and identify the areas that need additional plantings.

Commissioner Zalak stated it takes years for those plantings to grow and questioned what can be done in the meantime.

Commissioner Bryant opined that a wall is needed, noting it would also help with sound buffering. She commented on the need to protect adjacent property owners.

Mr. Tillman advised that there is an opening around the lift station and suggested it would make sense to provide something opaque right there.

General discussion ensued relating to buffering.

Mr. Tillman opined that a 2 ft berm with a 6 ft opaque fence would provide the same buffering as an 8 ft fence.

Chairman Stone noted she cannot support the request because it is not compatible with the surrounding area.

Commissioner McClain opined that the developer has the right to do this, noting he would prefer to try and find a way to address the issues and concerns brought forward by neighboring residents.

In response to Commissioner Curry, Mr. Minter advised that if the Board denies the request, OTOW and Continental would have several options, including filing a lawsuit against the County through the Bert J. Harris, Jr., Private Property Rights Protection Act for damages, Consistency Claim relating to the County's Comprehensive Plan, or Petition for Writ of Certiorari. He stated the BCCs denial would not take away the B-2 zoning, and the applicant/developer could go before the Development Review Committee (DRC) seeking to develop the project with a B-2 zoning. Mr. Minter noted the BCC could then sue to try and stop the development.

Chairman Stone opined that the BCC is being asked to do something that is not consistent with the Comprehensive Plan based on the surrounding area, as well as the fact that there is multi-family housing within miles of the proposed project. She reiterated that the applicant/developer has the ability to exercise their right to develop under the B-2 zoning.

Chairman Stone opined that the project is not appropriate where it is being proposed. Mr. Minter stated the Board may be in a situation that it is dealing with a brinkmanship, noting he was unsure of the possible outcome.

Commissioner Curry opined that developing a commercial project in front of OTOW and the traffic it would create could be a nightmare for their residents, noting a residential project would be a better option. He stated he would prefer to work with the applicant to build the proposed project than fight them in court.

Commissioner Zalak advised that this project has been vested since 1973 and has the right to develop, noting the best way to do that is through a PUD where conditions can be put in place to protect everyone's property rights.

General discussion ensued.

Mr. Tillman referred to the site plan, noting the dog park and car care center can be relocated to an area that would be further away from residents.

General discussion resumed relating to buffers.

Mr. Minter commented on a 2016 legal case that provided that if someone is purchasing a tract of land from a DRI developer, the purchase of that land does not carry with it the development rights; however, those rights can be assigned to that purchaser. He clarified that as part of this transaction, OTOW is assigning development rights to Continental. Mr. Minter addressed the possibility that OTOW and Continental could go in front of the DRC for the development approval and sue the County at the same time.

In response to Commissioner Bryant, Mr. Tillman advised that the berm/fence should be 15 ft from the shared property lines unless otherwise required to be further to maintain the existing vegetation.

General discussion ensued.

In response to Chairman Stone, Mr. Tillman stated the development would begin once the site plan process is complete.

General discussion resumed.

Ms. Straub advised that the traffic study will ensure that the minimum improvements are met and after the Major Site Plan is completed, it would be up to the Board's direction as to whether or not the PUD comes back to the BCC for final approval. It was the general consensus for the matter to come back to the Board for final approval.

In response to Chairman Stone, Mr. Bouyounes advised that staff would provide the list of approved multi-family development, and their stages of construction, for other developments in this area.

General discussion ensued.

Chairman Stone clarified that the Conditions being implemented include amended and increased buffering; security; gate access for the multi-modal pathways; recreational activities moved to the front of the property; two-story maximum 40 ft high limitation on buildings; spine road improvements paid for by commercial properties along that roadway; creation of a second, full access point; and the requirement that the Master Plan must come before the BCC for approval to ensure compliance.

A motion was made by Commissioner Zalak, seconded by Commissioner McClain, to adopt Resolution 24-R-144 approving the Special Use Permit request with Conditions 1 through 16, as amended below, agreeing with Growth Services staff and the P&Z Commission, based on findings and recommendations that the proposed use will not adversely affect the public interest, is consistent with the Comprehensive Plan and is compatible with the surrounding land uses. The motion was approved by a vote of 4-1 with Chairman Stone voting nay.

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Resolution 24-R-144 contains the following Conditions:

1. The PUD is restricted to a total maximum of 312 dwellings units (as series of 2-story multifamily buildings) and accompanying accessory amenities consistent with the Marion County Land Development Code, the PUD Application, and PUD Concept Plan dated 08/08/2023, as revised.
2. The applicant shall provide detailed information and calculation regarding the number of multifamily residential dwelling units from the VDRI vested rights assigned for this development.
3. The owner and/or developer shall be responsible for installing a controlled access gate system on the existing multi-modal paths along the northeast and southwest sides of SW 99th Street Road adjoining and flanking the existing guard/gate house on SW 99th Street Road lying west/northwest of the existing On Top of the World Communities Sales Center identified as Lot 9 of the Canopy Oaks Phase II Replat Two as recorded in Marion County Plat Book 16, Pages 56-57, wherein the gate system shall be installed and fully functional prior to obtaining any multifamily residential building permit final inspection for the PUD
4. The final project Traffic Operational Study shall be completed at the Major Site Plan phase to the satisfaction of the County Engineer and Growth Services Director; adequate provision shall be made for the coordination of improvements with the PUD.
5. All access point locations will be worked out to the satisfaction of the Development Review Committee during the time of Development Review. A minimum of two fully active access points shall be provided to the PUD in the locations as indicated on the Concept Plan dated 08/08/2023, as revised (rather than one fully active access and one emergency access); the access points may be gated to provide for controlled resident and/or guest ingress/egress.
6. A multi-modal path for pedestrians, bikes, golf carts, and vehicles shall be provided along SW 99th Street Road and the internal Spine Road within as shown on the submitted Concept Plan dated 08/08/2023, as revised.
7. The PUD shall be served by Bay Laurel Utilities.
8. A Major Site Plan submittal will need to be reviewed and approved through DRC for the proposed development of the site
9. Stormwater review during the Development Review phase will evaluate and determine whether the off-site DRA on the subject property can meet the size and depth requirement to serve the development to ensure LDC 6.13 is met with the Major Site Plan.
10. Provide typical illustrations showing all setbacks.
11. Overhangs such as building pop-outs, cantilevers, and/or other extensions that project outward from the principal structure shall be consistent with the Multiple Family Dwelling (R-3) zoning classification allowances of the LDC.
12. Multifamily buildings shall be a maximum of 40' in height, consistent with the Concept Plan dated 08/08/2023, as revised. Any clubhouse building's heights shall be a maximum of 40' and accessory structures shall be limited to 20'. All building heights shall be measured from the building's adjoining ground level to the peak of the roof.

13. The PUD's proposed dog park/dog wash, and car wash/detail structures shall be relocated to the northeastern corner of the site adjoining the southwest boundary of the existing adjoining hotel located on Lot 7 of the Canopy Oaks Phase II Replat as recorded in Marion County Plat Book 14, Pages 73-74, currently identified as PID# 3530-1001-08 and the Spine Road.
14. Buffers shall be provided as shown on the submitted conceptual plan and the following requirements:
 - a) The following buffers shall be provided as indicated on the PUD Concept Plan, as amended:
 - i. Buffers along SW 99th Street Road and the internal Spine Road frontages.
 - ii. Buffers along the property boundary shared with the existing adjoining hotel located on Lot 7 of the Canopy Oaks Phase II Replat as recorded in Marion County Plat Book 14, Pages 73-74, currently identified as PID# 3530-1001-08.
 - iii. Buffers along the property boundary line shared with the existing adjoining Canopy Oak Shopping Center (Publix, etc.) located on Lot 1 of the Canopy Oak Center as recorded in Marion County Plat Book 12, Pages 12-13, currently identified as PID# 3530-0001-00.
 - b) Along the PUD's northwest boundary shared with existing PID# 3530-0000-00, and Tract B (lift station) of the Canopy Oaks Phase II Replat Two as recorded in Marion County Plat Book 16, Pages 56-57, the following shall apply:
 - i. A minimum 2' high berm topped with a minimum 6' high opaque privacy fence shall be provided along the full length of the northwest boundary of the site, wherein the berm/fence shall be off-set 15' southeast from the shared property lines but may accommodate a limited meandering/curvilinear route to maintain existing vegetation subject to the approval of the Marion County Landscape Architect.
 - ii. A restrictive covenant requiring the maintenance and preservation of the existing off-site vegetation on PID# 3530-00000-00, currently held by On Top of the World Lease Holdings, LLC, adjoining the PUD shall be filed for review and approval by the County Attorney and Growth Services Director and, once approved by same, shall be recorded by On Top of the World Lease Holdings, LLC. in the Official Records of Marion County, prior to obtaining Major Site Plan approval for the PUD project.
 - iii. Adjoining and surrounding Tract B (lift station) of the Canopy Oaks Phase II Replat Two as recorded in Marion County Plat Book 16, Pages 56-57, the owner/developer, between the above required berm/fence, shall install, provide, and maintain opaque vegetation a minimum of 8' in height that may consist of a hedgerow and/or non-spreading bamboo

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- cluster planting, subject to the approval of the Marion County Landscape Architect.
- iv. The 70'+ and 50'+ green space separation areas adjoining the northwest boundary shown on Concept Plan dated 08/08/2023, as revised, shall be maintained as a "no touch" buffer; wherein existing trees and hedge vegetation along with the required berm/fence and additionally installed vegetation shall be maintained, however, the removal and replacement of dead and/or dying trees/hedge vegetation may occur consistent with the Land Development Code; further nonnative/ invasive species may be removed from the "no touch" buffer consistent with the approval of the County Landscape Architect.
15. The project's final PUD Master Plan or equivalent (Major Site Plan) shall be presented to the Board for confirmation that the foregoing conditions have been satisfied.
 16. Attachments:
 - a) Concept Plan dated 08/08/2023, as revised, including revised Sheet 4 of 4.

1.2. Adoption of Ordinance

The Deputy Clerk presented an Affidavit of Mailing and Posting of Notices received from Growth Services Director Charles Varadin regarding petitions for rezoning and Special Use Permits heard earlier in the meeting.

A motion was made by Commissioner Bryant, seconded by Commissioner Zalak, to adopt Ordinance 24-11 amending the Marion County Zoning Map pursuant to individual decisions made by the Board on each application heard in the public hearing. The motion was unanimously approved by the Board (5-0).

Ordinance 24-11 is entitled:

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF MARION COUNTY, FLORIDA, APPROVING A PUD REZONING APPLICATION AND AUTHORIZING IDENTIFICATION ON THE OFFICIAL ZONING MAP; PROVIDING FOR AN EFFECTIVE DATE.

There being no further business to come before the Board, the meeting thereupon adjourned at 3:24 p.m.

Michelle Stone, Chairman

Attest:

Gregory C. Harrell, Clerk