



GROWTH MANAGEMENT DEPARTMENT
ZONING DIVISION

CONSISTENCY REVIEW MEMORANDUM

To: Nancy Gundlach, AICP, Principal Planner, Zoning Services Section

From: Corby Schmidt, AICP, Principal Planner, Comprehensive Planning Section

Date: June 12, 2018

Subject: *Consistency Review of Proposed Planned Unit Development to Planned Unit Development Rezone Petition*

PETITION NUMBER: PL20180000646

PETITION NAME: Youth Haven Planned Unit Development (PUD)-to-PUD Rezone (PUDR)

REQUEST: This petition requests a PUD-to-PUD rezone to the 24-acre Youth Haven PUD, and a 1-acre parcel, zoned RMF-6(3) to: add a 1-acre parcel to the PUD bringing the total to ± 25 acres; change the density to allow a maximum of 250 individuals consisting of both children and senior adult individuals to be housed in group care facilities; utilize the additional acreage for stormwater management and buffering from Santa Barbara Blvd.

LOCATION: The subject property, consisting of ± 25 acres, is located south of Whitaker Rd., north of Royal Wood Blvd., and west of Santa Barbara Blvd., in Section 17, Township 50 South, Range 26 East.

COMPREHENSIVE PLANNING COMMENTS: The subject property is designated Urban – Mixed Use District, Urban Residential Subdistrict as identified on the Future Land Use Map within the Growth Management Plan (GMP). Relevant to this petition, Policy 5.10 of the Future Land Use Element (FLUE) states “Group Housing, which may include the following: Family Care Facility, Group Care Facility, Care Units, Assisted Living Facility, and Nursing Home, shall be allowed within the Urban designated area, and may be allowed in other future land use designations, subject to the definitions and regulations as outlined in the Collier County Land Development Code (Ordinance 04-41, adopted June 22, 2004 and effective October 18, 2004) and consistent with the locational requirements in Florida Statutes (Chapter 419.001 F.S.).”

Also relevant to this petition, main Urban Designation provisions of the FLUE state, “Urban designated areas will accommodate... Community facilities such as churches, group housing uses, cemeteries, schools and school facilities co-located with other public facilities such as parks, libraries, and community centers, where feasible and mutually acceptable.”

Youth Haven is presently a 24-acre PUD allowing Group Care Facilities and other uses comparable in nature with a maximum density of 10 children per acre and additional support staff as necessary.

This PUD-to-PUD rezone involves an acreage expansion, incorporating a residual parcel remaining following improvements made to Santa Barbara Blvd.

Review of Application materials

Submittal 1, Item 05, Evaluation Criteria. Revisions are needed to accept this application item in support of this PUD-to-PUD rezone petition. Revisions include, but are not limited to, correcting outdated GMP cites (i.e. FLUE Policy 5.4); and, explaining the (non)applicability of unaddressed FLUE Objective 7 and Policies 7.1 through 7.4.

In more than one location within the Evaluation Criteria document, statements indicate *[paraphrasing]* "the ...proposed amendment is consistent with the Growth Management Plan...". These types of statements appear to be copied from a previously proposed application – and should be revised as necessary to follow the changes made to the PUD Document and other to-be-revised and made-current application materials, as recommended herein.

In addition:

- This application item insufficiently addresses consistency with the current FLUE (Urban Mixed Use District, Urban Residential Subdistrict) provisions; revise as needed.
- This application item insufficiently addresses consistency with FLUE Objective 5 and its applicable policies, esp. s/s 5.3, 5.6 (GMP consistency clause; LDC compatibility & complementary clause);

Policy 5.10:

Group Housing, which may include the following: Family Care Facility, Group Care Facility, Care Units, Assisted Living Facility, and Nursing Home, shall be allowed within the Urban designated area, and may be allowed in other future land use designations, subject to the definitions and regulations as outlined in the Collier County Land Development Code (Ordinance 04-41, adopted June 22, 2004 and effective October 18, 2004) and consistent with the locational requirements in Florida Statutes (Chapter 419.001 F.S.).

- This application item insufficiently demonstrates/explains how the project complies with Conservation and Coastal Management Element (CCME) Policy 12.1.14, which requires *"All new nursing homes and assisted living facilities that are licensed shall have a core area to shelter residents and staff on site. The core area will be constructed to meet the Public Shelter Design Criteria that are required for new public schools and public community colleges and universities ("State Requirements for Educational Facilities," 2007). Additionally, this area shall be capable of ventilation or air conditioning provided by back-up generator for a period of no less than 72 hours". **

CCME Policy 12.1.14, and other requirements of the County and State have changed, which affect this proposal, with a summary provided below:

In September of 2017, Governor Rick Scott issued Emergency Rules after Hurricane Irma caused an extended power outage to a Broward County nursing home, resulting in heat-related deaths to several of its residents. After the close of the 2018 legislative session, Senate Bill 7028 ratified Rule 58A-5.036, F.A.C. entitled "Emergency Environmental Control for Assisted Living Facilities," which is implemented by the Department of Elder Affairs (DOEA). Additionally, HB 7099 ratified Rule 59A.-4.1265 entitled "Emergency Environmental Control for Nursing Homes," and it is implemented by the Agency for Health Care Administration (ACHA). These agency rules require nursing homes and ALFs to acquire alternative power sources, such as a generator, that ensure sufficient cooling temperatures are maintained at 81 degrees Fahrenheit or cooler, during extended power outages for at least ninety-six (96) hours to all the facility's residents.

At the Board of County Commissioners Work Session on November 7, 2017, Staff presented several regulatory responses to the After-Action Findings regarding the County's Hurricane Irma Response. Regulatory Action #1 suggested drafting an ordinance that expands on-site generator capabilities to address cooling, extended generator fuel run times, and comprehensive generator testing for licensed health care facilities.

This amendment proposes to incorporate the requirement to submit an EECF annually to the County in accordance with Rules 58A-5.036 and 59A.-4.1265 F.A.C., and to support the implementation of the state requirement. The amendment shall apply to nursing homes and ALFs and, as defined by Chapters 400 and 429 F.S., respectively. Furthermore, the amendment proposes to add the following additional standards to the State's requirement and assist staff's review to EECFs:

- Identification of the County's primary and secondary evacuation locations.
- Identification of the finished floor elevation for the first and second floors of all nursing homes and ALFs.
- Installation of permanent emergency generators. While the DOEA and ACHA requirements call for alternate power sources, this amendment requires the power source to be a permanent emergency generator. The following are required for permanent emergency generators in all nursing homes and ALFs:
 - Capability of keeping the ambient air temperature at or below 81 degrees Fahrenheit for a minimum of 96 hours in the event of the loss of primary electrical power.
 - Sufficient fuel supply to ensure compliance with Rules 58A-5.036 F.A.C., and 59A-4.1265 F.A.C., as amended.
 - Installation, testing, and maintenance shall be in accordance with National Fire Prevention Association (NFPA) 99, Health Care Facilities Code and NFPA 110, Standard for Emergency and Standby Power Systems.
- Installation of backup power connectivity to accommodate a secondary back-up generator, in the event of permanent emergency generator failure.
- Submittal of the manufacturer's specifications of the generator and calculations demonstrating the fuel supply needed shall comply with DOEA and ACHA rules.
- Annual third-party testing and inspection of the permanent emergency generator, under load, by manufacturer's specifications.

This LDC amendment supports Goal 12 of the Conservation and Coastal Management Element of the GMP which requires the County, "to make every reasonable effort to ensure the public safety, health and welfare of people and property from the effects of hurricane storm damage." It is consistent with CCME Policy 12.1.14.

The provisions that affect this application will appear in the Collier County Land Development Code, as shown below:

5.05.04 – Group Housing

E. Emergency Environmental Control Plans. In accordance with Rules 58A-5.036 and 59A-4.1265, F.A.C., as amended, Emergency Environmental Control Plans for assisted living facilities and nursing homes, as defined by §§ 400 and 429 F.S., shall be submitted as a supplement to its Comprehensive Emergency Management Plan, to the Bureau of Emergency Services-Emergency Management Division.

1. The Emergency Environmental Control Plans shall include the following information, in addition to the requirements identified in Rules 58A-5.036 and 59A-4.1265, F.A.C., as amended:
 - a. Primary evacuation locations, either within or outside the County, and a secondary location outside of the county.
 - b. Finished floor elevation of the first and second floors of all structures.
 - c. Permanent emergency generator or alternate power sources. Assisted living facilities or nursing homes, as defined by §§ 400 and 429 F.S., shall install permanent emergency generators or an alternate power source to ensure ambient air temperatures will be maintained at or below 81 degrees Fahrenheit for a minimum of 96 hours in the event of the loss of primary electrical power.
 - i. If a permanent emergency generator is used the following shall be required:
 - a) Permanent emergency generator specifications.
 - i) Permanent emergency generators and the associated fuel supply shall be sized to ensure compliance with §§ 58A-5.036 F.A.C., as amended, for assisted living facilities and 59A-4.1265 F.A.C., as amended, for nursing homes.
 - ii) Permanent emergency generators shall be installed, tested and maintained in accordance with NFPA 99 Health Care Facilities Code, and NFPA 110, Standard for Emergency and Standby Power Systems.
 - b) Regular testing and inspections required. Permanent emergency generators shall be tested under load as required by §§ 58A-5.036 F.A.C., as amended, for assisted living facilities and 59A-4.1265 F.A.C., as amended, for nursing homes, and by manufacturer's specifications, and be inspected a minimum of once per year. Each facility shall keep a written statement on site attesting to the regular maintenance, third-party testing and inspection of the generator and fuel system by a service organization authorized by the manufacturer.
 - ii. Submittal Requirements.
 - a) Manufacturer's specifications of the permanent emergency generator.
 - b) Calculations demonstrating adequacy of fuel supply to comply with §§ 58A-5.036 F.A.C., as amended, for assisted living facilities and 59A-4.1265 F.A.C., as amended, for nursing homes.
 - d. Backup connectivity. A power transfer switch or automatic transfer switch shall be installed to accommodate a secondary or back-up generator connection point in the event of failure for the permanent emergency generator or alternate power source.
2. Emergency Environmental Control Plans shall be reviewed and approved by the Bureau of Emergency Services-Emergency Management Division.

3. The Plan shall be resubmitted to the County annually from the date of original submittal, or at the time of a change of ownership of the facility, or after a modification to a previously approved Plan.
4. Notification of Plan submittal shall be in accordance with Rules 58A-5.036 and 59A-4.1265, F.A.C., as amended.

PUD Document Review

Submittal 1, Item 19, Proposed PUD Revisions, STATEMENT OF COMPLIANCE – This part of the PUD document needs revision, as the Statement of Compliance is required to describe compliance with current GMP Elements, per FLUE Policy 5.3.

The statement appearing in Submittal 1, Item 19 – Proposed PUD Revisions, does not comply with Policy 5.3, i.e., the Statement of Compliance's closing statement, indicating that the "...Future Land Use Element ...contains language similar to that in the 1983 Comprehensive Plan. Therefore, the subject request (sic) is in compliance with the GMP." [This formal document no longer reflects a "request".] This contention is characterized by errors ranging from apparently being copied from past application PUD document(s), to its incompleteness, in not identifying and addressing the other applicable Elements of the GMP and the amendments (to them) that have occurred to date.

These revisions will require addressing FLUE Policy 5.3 fully (including 5.3.d.), Policy 5.10, CCME Policies, and so forth. In addition, other application materials addressing compliance, will necessitate similar modification.

The provisions that affect this part of the PUD document, include, but are not limited to, those shown below:

Policy 5.10:

Group Housing, which may include the following: Family Care Facility, Group Care Facility, Care Units, Assisted Living Facility, and Nursing Home, shall be allowed within the Urban designated area, and may be allowed in other future land use designations, subject to the definitions and regulations as outlined in the Collier County Land Development Code (Ordinance 04-41, adopted June 22, 2004 and effective October 18, 2004) and consistent with the locational requirements in Florida Statutes (Chapter 419.001 F.S.).

Submittal 1, Item 19, Proposed PUD Revisions, SECTION IV, GENERAL DEVELOPMENT COMMITMENTS – this section provides an incomplete set of commitments for addressing the land uses proposed.

Development commitments regarding sheltering residents and staff on site in nursing homes, assisted living facilities and other such licensed facilities must be added to reflect an understanding of and adherence to the provisions of LDC Section 5.05.04.E. Group Housing, Emergency Environmental Control Plans. In addition, these changes must align with the changes made to the Evaluation Criteria document and other to-be-revised and made-current application materials, as recommended herein.

Future Land Use Element Policy 5.6 requires new development to be compatible with, and complementary to, surrounding land uses, as set forth in the Land Development Code (Ordinance 04-41, adopted June 22, 2004 and effective October 18, 2004, as amended). **Comprehensive Planning leaves this determination to the Zoning Services staff as part of their review of the petition in its entirety.**

The compatibility analysis is encouraged to be comprehensive and include a review of both the subject property and surrounding or nearby properties regarding allowed use intensities and densities, development standards (building heights, setbacks, landscape buffers, etc.), building mass, building location and orientation, architectural features, amount and type of open space and location, traffic generation/attraction, etc.

The County recognizes *Smart Growth* policies and practices in its consideration of future land use arrangements and choice-making options. FLUE Objective 7 and Policies 7.1 through 7.4 promote *Smart Growth* policies for new development and redevelopment projects pertaining to access, interconnections, open space, and walkable communities. No individual changes are proposed by this PUD-to-PUD rezone to access, interconnection or sidewalk provisions, and the PUD must comply with open space requirements of the LDC. These Policies were not addressed at the time of original approval in 1989, as they were not adopted until 2004. However, it appears that no changes are proposed to pertinent PUD provisions, and analysis by staff may be unnecessary. Application materials – and perhaps the PUD Statement of Compliance itself – need to address these Policies further.

CONCLUSION:

Based upon the above analysis, this proposed PUD-to-PUD rezone may not be deemed consistent with the FLUE.

Revisions needed to review this application rezone petition further for consistency with the GMP.

- Revise Evaluation Criteria to include, but not limit to, correcting outdated GMP cites (i.e. FLUE Policy 5.4); and, explaining the (non)applicability of unaddressed FLUE Objective 7 and Policies 7.1 through 7.4, as discussed above.
- Revise Proposed PUD Revisions, STATEMENT OF COMPLIANCE – to describe compliance with current GMP Elements. Revise GMP policy number references to reflect current GMP Elements here, and throughout PUD documents to ensure current GMP Elements are referenced. Revise, in particular, the closing statement, indicating that the “...Future Land Use Element ...contains language similar to that in the 1983 Comprehensive Plan. Therefore, the subject request (sic) is in compliance with the GMP.” [This formal document no longer reflects a “request”.] Address FLUE Policy 5.3 fully (including 5.3.d.), Policy 5.10, CCME Policies, and so forth, as discussed above. Modify other application materials addressing compliance, similarly.
- Revise Proposed PUD Revisions, SECTION IV, GENERAL DEVELOPMENT COMMITMENTS, which now provides an incomplete set of commitments for addressing the land uses proposed, as discussed above.
- Revise Proposed PUD Revisions, SECTION IV, GENERAL DEVELOPMENT COMMITMENTS, to reflect an understanding of and adherence to the provisions of LDC Section 5.05.04.E. Group Housing, Emergency Environmental Control Plans. In addition, align these changes with revisions made to the Evaluation Criteria document and other to-be-revised and made-current application materials, as discussed above.

PETITION ON CITYVIEW

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