

**SUMTER COUNTY  
SPECIAL MASTER PROCEEDING**

<b>CASE NO.</b>	DRI2020-0002
<b>APPLICANT:</b>	The Villages Operating Company
<b>REPRESENTATIVE:</b>	Darrin Taylor of Carlton Fields Jo Thacker of Nelson Mullins
<b>REQUESTED ACTION:</b>	Amend the Tri-County Villages of Sumter Development of Regional Impact (DRI) amended and reinstated development order.

**ORDER OF SPECIAL MASTER**

On September 21, 2020, Applicant The Villages Operating Company, through its representative Jo Thacker, was present at the hearing before the Special Master requesting to amend the Tri-County Villages of Sumter Development of Regional Impact (DRI) amended and reinstated development order (“DRI Order”). The request includes the following:

- Updates and removes obsolete language in accordance with statutory changes.
- Adds multifamily housing as an option in the town center.
- Removes references to total acreages of residential and non-residential uses.
- Extends build-out and expiration dates.
- Reclassify parcel D12-001J.

The Tri-County Villages of Sumter DRI is one of a cluster of DRIs operated as The Villages. The DRI includes a wide variety of uses including residential, institutional, commercial, town centers, and recreational uses. The DRI Order was originally approved in 1990 as the Orange Blossom Gardens West DRI. Amendments to the DRI Order have been granted periodically as development and needs have changed. This would be the thirteenth amendment.

As a procedural matter, because this application received substantial public comment relating to all three similar pending applications - DRI2020-0001, DRI2020-0002, and MISC 2020-0006 – the special master, County staff, and the Applicant agreed to allow all evidence and testimony submitted into the record on an item to be introduced into the record of the later

application(s). Therefore, the record from the hearing on DRI2020-0001 is made part of this record.

At the hearing, Applicant, through representative legal counsel Jo Thacker, Esq., made an opening statement. As part of that opening statement, Applicant submitted evidence and addressed the application. Notably, Applicant clarified that although the addition is for “multi-family,” all housing would still be under the age restrictions of the Villages. Applicant also stated that the land use for the area in question is “Mixed Use,” and cited the variety of uses available under the Sumter County Comprehensive Plan for Mixed Use. Applicant asserted that the proposed DRI amendment would permit uses that are allowed in areas designated Mixed Use. Applicant asserted that the area in question has an existing zoning of R-PUD, and the proposed use is consistent with the Sumter County Code for R-PUD. Applicant also asserted that the proposed modification is “compatible” with the surrounding area under the Sumter County Comprehensive Plan. Applicant also tendered Applicant’s witness, Richard Barr, who testified that the conversion ratio would not result in net additional traffic impact beyond the current vested rights. Applicant’s application was part of the record.

Staff, Mr. Karl Holley, presented the staff report, in which staff deemed the application sufficient, consistent with the Sumter County Land Development Code and Comprehensive Plan, and recommended approval.

Staff noted that item one, which is modification of language, is sought to address the Florida Legislature’s amendment of Chapter 380, Florida Statutes in 2018. The proposed amendment would remove language that is now legally obsolete. Similarly, on item three, the DRI Order contains language regarding total acreage for residential and non-residential that are no longer required by statute.

On multi-family, Staff noted that this is a two-step process. Approval of this DRI is step

one, and application MISC 2020-0006 and the memorandum of agreement would govern the actual implementation and sites. Staff also noted that the request for multi-family was not seeking additional development, but instead an additional type of development. The application calls for conversion of certain amounts of vested commercial use, single family residential use, or a combination thereof, for a delineated amount of multi-family use.

Staff concurred with the Applicant that the area in question is designated Mixed Use and R-PUD. Staff stated that multi-family land use is a permitted use in the Mixed Use land use category, and a permitted use in the R-PUD zoning. For clarity, staff noted that the request to reclassify Parcel D12-001J will have significant additional use rights established. The subject property has a land use of Mixed-Use and a zoning of RPUD. The subject property is identified in The Villages Master Plan as “Village Center”, but the amendment would change the designation to Mixed-Use. The Mixed-Use designation provides for all commercial and residential uses available under the Development of Regional Impact Development Order. The addition of multi-family residential as a potential use is consistent with the current land use and zoning designation of the property.

On buildout dates, staff recommended approval of the requested extension of the DRI buildout and expiration dates.

The staff report was entered into the record.

There was a substantial amount of public comment received. The public comment was directed at the request to add multi-family housing and to reclassify Parcel D12-001J. The vast majority of the comments focused on allegations that the proposed multi-family use was contrary to promises made by the developer of the Villages. Many asserted that the potential multi-family building on Parcel D12-001J was inconsistent with the character of the area. A number of public comments asserted that the transportation infrastructure, especially Morse Blvd, could not handle

the proposed multi-family housing on Parcel D12-001J. Commenters also repeatedly objected to the potential “four story” height of a building on Parcel D12-001J. Many commenters asserted that the majority of Villages residents opposed the multi-family housing, and that the Villages residents were not given sufficient opportunity to vote or be heard on the issue. Commenters also asserted that multi-family housing would bring down single family housing value. Some commentators argued that the “rezoning” should not be granted due to inconsistency with the surrounding area.

The Special Master asked staff for clarity regarding a few items, specifically the future land use and zoning for the property and whether a rezoning was even at issue. Staff clarified that what the Applicant was seeking was not a rezoning, and is consistent with the future land use and current zoning of the property in question. The County Attorney also addressed questions to staff to clarify staff conclusions in the staff report. Staff confirmed that the 50 foot height availability currently exists under the DRI Order. Staff also addressed that the development of the site could have a significant impact on nearby properties, but staff clarified that any commercial use of the property would also have a significant impact on nearby properties. Further, staff clarified that the evaluation is on a DRI-wide basis, and so while there might be a higher traffic impact in one portion of the DRI property, there is no net impact on the DRI-wide basis.

The Applicant presented a rebuttal in closing. The Applicant emphasized that under the DRI Order, as currently written, the Applicant went through evidentiary review to obtain the current entitlements of development. The Applicant is not seeking additional entitlements, but an additional use. This would allow the Applicant to convert existing entitlements from single family, commercial, or a combination thereof to multi-family housing. Applicant also stated that multi-family uses are still subject to the Villages development plan. Applicant discussed the conversion table and the data used for establishing that the conversion ratio did not have a net increase in impact using established data. Applicant concluded by pointing out that the proposed amendment

is consistent with the land development code and comprehensive plan.

Preliminarily, the Special Master notes that in a quasi-judicial hearing, once the applicant has met the criteria for obtaining the development order at issue, the burden shifts to the authority to demonstrate, “by substantial, competent evidence presented at a public hearing and made part of the record, that petitioner's application did not meet the zoning code requirements and that the requested permit was, in fact, adverse to the public interest. Objections of local residents to the conditional use permit based on fears as to increased traffic do not constitute such substantial, competent evidence.” *Flowers Baking Co. v. City of Melbourne*, 537 So. 2d 1040, 1041 (Fla. 5th DCA 1989); *BML Investments v. City of Casselberry*, 476 So.2d 713 (Fla. 5th DCA 1985), *rev. denied*, 486 So.2d 595 (Fla.1986). Objections of residents to proposed development is not a sound basis for denying a permit. *BML Investments v. City of Casselberry*, 476 So. 2d 713, 715 (Fla. 5th DCA 1985) citing *City of Apopka v. Orange County*, 299 So.2d 657 (Fla. 4th DCA 1974). It is well established in Florida that the County’s staff report constitutes competent substantial evidence.

Based on the foregoing and all of the competent substantial evidence presented at the hearing, the Special Master finds the following:

- a. The Applicant presented a conversion table citing the Institute of Transportation Engineers manual in which Applicant indicated that Applicant was requesting a conversion of single family and commercial units to multi-family units. Applicant further established that the conversion table is based on a standard mathematical calculation for such conversions.
- b. Applicant does not request additional units; Applicant requests to convert a vested use to a different type of use.
- c. The future land use for the site allows for multi-family use.

- d. The zoning for the site allows for multi-family use.
- e. The staff report recommends approval based upon staff's review of the Applicant's application, and states that the requested relief is consistent with the Land Development Code and Comprehensive Plan.
- f. There was no evidence presented that rebutted the Applicant's evidence or the staff report that the Applicant's proposed conversion table correctly compensated for change in use.
- g. The alleged promises of the developer, unrelated to the DRI Order, zoning, or comprehensive plan, are legally irrelevant to this proceeding.

Based upon the evidence presented at the hearing, the Special Master recommends APPROVAL of Application DRI2020-0002 to the Board of County Commissioners at the commission meetings currently scheduled for October 13, 2020 and October 27, 2020.

**ORDERED** this 28th day of September, 2020.



ZACHARY T. BROOME, ESQ.  
Special Master  
Florida Bar No. 91331