

Staff Report



To: Planning & Zoning Board
From: Ron Paradise, Director, Community Services
Date: April 12, 2022
Re: **RZ19-0003, Ordinance No. 11-2022, Rezoning from County Rural Agriculture (RA), Prime Agriculture (A-1), and Resource Corridor (RC) to Pell Business Planned Unit Development to facilitate an excavation use. The site involves approximately 197 acres of land located within the Osteen Joint Planning Area.**

Summary of Application:

Applicant:

Glenn Storch, Storch Law firm representing owner Janette Pell.

Request:

To rezone approximately 197 acres of Deltona incorporated land from County Rural Agriculture (RA), Prime Agriculture (A-1), and Resource Corridor (RC) to City of Deltona Business Planned Unit Development (BPUD). The intent is suitable areas of the property will be incorporated into an excavation use.

Tax Parcel Numbers:

The following parcel numbers are associated with the 197-acre property.

9206-00-00-0160, 9207-00-00-0010, 9207-00-00-0150 and 9207-05-00-0054

Property Acreage:

Parcel ID	Size
9206-00-00-0160	31.4 acres
9207-00-00-0010	80.3 acres
9207-00-00-0150	80.5 acres
9207-05-00-0054	4.8 acres

Area proposed to be rezoned, in total, is approximately 197 acres.

Property Location:

The property is located east of SR 415 and generally south of the City wastewater reclamation plant situated within the Osteen Joint Planning Area.

Legal Description:

See attached Exhibit “B”

Existing & Proposed Zoning:

Existing Zoning

Parcel ID	Zoning Classifications	Acreage per Zoning
9206-00-00-0160	A-1(C) Prime Agriculture (County)	23.25
	RC(C) Resource Corridor (County)	8.15
9207-00-00-0010	A-1(C) Prime Agriculture (County)	20.5
	RC(C) Resource Corridor (County)	59.50
9207-00-00-0150	A-1(C) Prime Agriculture (County)	16.7
	RC(C) Resource Corridor (County)	63.8
9207-05-00-0054	RA(C) Rural Agriculture (County)	4.8 acres

As per the table above, notwithstanding the property being incorporated within the jurisdictional limits of the City of Deltona, the property still carries County zoning classifications. The property was annexed into the City in 2005. Per State law, if a property is annexed into a municipality, the existing County zoning classifications and land use designations on the property would be retained. While the Future Land Use designations on the property have been changed as a result of the adoption of the Osteen Joint Planning Agreement with the County, the zoning was never changed.

As per the City Osteen Local Plan, new developments are intended to be processed under the parameters of a planned unit development. The following policy from the City Osteen Local Plan is applicable:

Policy FLU3-1.2

To ensure that the Osteen Local Plan is appropriately implemented all development requests must be processed as a Planned Unit Development (PUD) except as follows: Individual single family dwellings on parcels situated within residential land use categories, provided that the parcel was legally created prior to the adoption of the Osteen Local Plan.

The proposed zoning is Business Planned Unit Development (BPUD). The project consists of an excavation use. While the excavation could not be considered a traditional commercial use like retail or service, the BPUD category is the most logical designation of which to process the request.

Background:

As has been stated, the applicant requests a Business Planned Unit Development (BPUD) rezoning for a non-exempt excavation on +/-197 acres situated on the east side of the City east of SR 415. The BPUD is situated generally south of the Deltona Eastern Wastewater Reclamation plant. The excavation includes four (4) parcels. The eastern terminus of the four (4) parcels abut the jurisdictional line between County of Volusia and City of Deltona. Another approximately 189.2 acres located within unincorporated Volusia County abutting the 197-acre BPUD site is also proposed for an excavation use. A request for a special exception for a non-exempt excavation has been conditionally approved by the County for a non-exempt excavation use. A prime County condition of the Special Exception is the County approved excavation use cannot carry forward until the City approves the BPUD rezoning for an excavation. Reasons for the condition is to promote intergovernmental coordination between the City and County and to recognize the fact that access to SR 415 for the entire excavation will be within the incorporated limits of Deltona.

The entire excavation (City and County) will consist of a total of four (4) excavation pits to mine approximately 1,270,813 cubic yards of fill material. 412,942 cubic yards of the fill will be yielded from the BPUD site. There is one pit located entirely on the BPUD property and then a portion of a larger pit that extends to the neighboring property. The pits are clustered in the northeastern section of the BPUD site. Each pit is proposed to be approximately 30 feet deep. Slopes of the pits will be designed to be 1:4 feet controlled by the dry season water table and will continue beyond that point at a 1:1-foot ratio to the bottom of each pit. The slopes meet City Land Development Code requirements of one-foot vertical for each four feet horizontal to a depth of two feet below the seasonal low water table elevation. For depths greater than two feet below the seasonal low water table elevation, the slope may be one-foot vertical for each one-foot horizontal.

The fill will be hauled by dump trucks. Dewatering has been proposed by the applicant as part of the excavation activities. The dewatering plan includes the use of sock drains and rim ditches to rehydrate the wetlands and the completed pits. Excavation material is proposed to be loaded directly on to arriving trucks via backhoes. There are no proposed plans for stockpiling materials on the property.

The applicant is proposing hours of operation between 6:00 am and 5:00 pm, Monday through Friday. The site will be closed on Saturdays and Sundays. The applicant anticipates maintaining three full-time employees on site during operations. The pits will be secured with a 3-strand farm fence.

The excavation and reclamation will be completed within five years of final City approval. After reclamation, the pits will become open water lakes. Other areas will be converted to pasture and the site will be used for cattle grazing.

Access to the BPUD and adjacent County excavation use will be from SR 415 with a driveway cut located about 1,200 feet north of the intersection of SR 415 and Doyle Rd. Since SR 415 is a State road, FDOT has issued a driveway permit. The permit allows for temporary modifications to the existing median so traffic leaving the site can make a westbound left turn. The permit does require the applicant to restore the median to its current configuration once the excavation is complete.

Following the completion of excavation activities, the applicant will reclaim the site by removing interior truck haul roads, grading and shaping the slopes to final grade, sodding and planting littoral zones, and removing silt fencing. Reclamation is intended to ensure the site will yield ecologically functional landscapes and the property will be left in a condition that represents as much as possible pre-use conditions. All reclamation activities are proposed to be completed within five years.

Support Information:

Public Facilities:

- a Potable Water: N/A
- b Sanitary Sewer: N/A
- c Fire Protection: Deltona Fire Station Number 64 will provide service. However, as per mutual aid it is possible the County could also respond from the Osteen fire station.
- d Law Enforcement: Volusia County Sheriff's Office (VCSO)
- e Electricity: Florida Power and Light

Matters for Consideration:

Section 110-1101, Code of City Ordinances, states that the City shall consider the following matters when reviewing applications for amendments to the Official Zoning Map:

1. *Whether it is consistent with all adopted elements of the Comprehensive Plan.*

The Comprehensive Plan is the City long range master planning document. The Plan includes numerous policies intended to guide growth and development to achieve City goals including viable land use patterns, a sustainable economy, and the efficient use of City infrastructure. The proposed BPUD excavation has been reviewed by Staff in light of the Comprehensive Plan.

Policy CON4-ME1.1

Proposed mineral extraction activities shall minimize impacts to environmentally sensitive lands and critical habitats. In cases where adverse alterations of such lands are unavoidable, appropriate mitigation shall be required.

The above policy in the plan establishes minimum standards for extraction uses. The proposed use does minimize impacts to wetland systems. The use does result in the impacts to 0.69 acre of wetlands to accommodate a haul road. In addition, wetlands are afforded a 50 foot buffer which is beyond the 25 foot buffer required within much of the City. Finally, the geotechnical information reveals the wetlands will not be desiccated or otherwise impacted as a result of the excavation or associated dewatering.

Policy CON4-ME1.2

The City shall maintain standards for reclamation of excavation sites so as to resemble a natural system to the greatest extent feasible, including, at minimum:

- a. creation of sinuous shorelines;*
- b. bank gradients properly sloped to establish planted littoral shelves with appropriate submerged and emergent vegetation;*
- c. fish stocking, if warranted;*
- d. ambient water quality testing;*
- e. completion of the reclamation plans; and*
- f. compliance with standards established for artificial lakes by the SJRWMD and other appropriate agencies.*

Reclamation involves the removal of interior truck haul roads, grading and shaping the slopes to final grade, sodding and planting littoral zones, and removing silt fencing. All reclamation activities are proposed to be completed within five years. More specifically with regard to the above criteria the City Land Development Code also establishes reclamation parameters based on Policy CON4-ME1.2. The policy criteria is analyzed in light of the proposed use and is as follows:

- a. creation of sinuous shorelines;*

The goal of this provision is to ensure the borrow lakes will have a natural appearance and function as natural lakes. The borrow lakes will be sculpted to feature a meandering shoreline with coves and littorals like most natural lakes in Volusia County.

- b. bank gradients properly sloped to establish planted littoral shelves with appropriate submerged and emergent vegetation;*

Slopes will be 1:4-feet to the dry season water table and will continue beyond that point at a 1:1-foot ratio to the bottom of each pit. The slopes meet the zoning code requirements of one-foot vertical drop for each four feet horizontal to a depth of two feet below the seasonal low water table elevation. For depths greater than two feet below the seasonal low water table elevation, the slope may be one-foot vertical for each one-foot horizontal. The littoral areas will be planted to augment the natural recruitment of emergent and submerged vegetation. A goal is to avoid the introduction of non-indigenous, invasive aquatic vegetation into lakes.

- c. fish stocking, if warranted;*

Currently there are no plans to stock the lakes with fish. There is anticipation the lakes will be eventually be populated with fish.

- d. ambient water quality testing;*

The lakes and wells will be tested for a period of five years. This information will be reported to the St. Johns River Water Management District.

- e. completion of the reclamation plans; and*

A reclamation plan will be associated with the site plan review process.

- f. compliance with standards established for artificial lakes by the SJRWMD and other appropriate agencies.*

The excavation will be permitted consistent with all applicable agencies, including the St. Johns River Water Management District.

Policy FLU1-7.16

Applicants requesting amendments to the Zoning and/or Future Land Use Map shall be evaluated with respect to consistency with the Goals, Objectives and Policies of all Elements, other timely issues, and in particular the extent to which the proposal, if approved, would:

- a. Satisfy a deficiency in the Future Land Use Map to accommodate projected population or economic growth of the City;*
- b. Maintain and/or improve the City's ratio of non-residential lands to residential lands available for economic use. Support efforts to increase the provision of a viable mixture of land uses in a compact, walkable area that is accessible to the full range of feasible non-motorized and motorized transportation modes;*

- c. Enhance or impede the provision of services at adopted LOS Standards;*
- d. Be compatible with abutting and nearby land uses;*
- e. Enhance or degrade environmental resources; and*
- f. Based on the ability to provide adequate potable water and/or sanitary sewer resources.*

The proposed excavation is needed to provide needed fill material. Fill material has numerous uses including public works projects like roads and residential and non-residential construction. For example, fill is often needed to facilitate the construction of a single family dwelling on a Deltona Lakes lot, platted in the 1960's. The fill is used to elevate building pads to an ideal level predicated on the slope of the land, roadway grades, and the finish floor elevations of houses in the vicinity. Often this fill is sourced from an off-site borrow/excavation use and trucked to the site for deposit and compaction. Therefore, fill resources are important to supporting growth and development not only within the City but other areas of the County/Central Florida area.

In addition, the City will be contemplating changes to its Land Development Code to encourage more sustainable, lower impact development activity. This includes working with the natural slope of the land to minimize extensive clearing, cutting and filling. However, depending on site specific circumstances, using the existing topography may require building pads be elevated through the use of externally sourced fill.

Ensuring land use compatibility is a prime objective of the above policy. Excavations are intensive uses involving extensive land alteration and hauling. In the case of the proposed excavation, the site is remote. The area is developed at a low density. Agricultural uses, including cattle grazing, are common in the area. Other uses in the vicinity of the BPUD site include the City Eastern Wastewater Reclamation facility.

The excavation activity will be limited to the eastern section of the property proposed to be rezoned. This area is located along the eastern margin of the incorporated limits of Deltona. To the east is property situated within unincorporated Volusia County. A roughly 20-acre parcel developed with a homesite abuts a portion of the BPUD near the northeastern corner of the BPUD. The majority of the BPUD shares a boundary with undeveloped land proposed to be used for the same excavation operation. This land is referred to as the 'McCaskill' property. The County approved the excavation use via a Special Exception on the McCaskill property in late 2021 contingent on the City approving the BPUD for an excavation use. Land to the north of the active excavation area is owned by the City. This includes a recently acquired

site known as the Lawhoun property. The Lawhoun site abuts the Eastern Wastewater Reclamation operation. There is anticipation a portion of the Lawhoun site will be used for public uses in the future. While no plans have been formulated, the Lawhoun site may be used for a public safety training facility.

The parcels that comprise the 197-acre BPUD site are associated with a large wetland system known locally as the Savannah. The Savannah is a large herbaceous wetland system encumbering 66 percent of the BPUD property. The Savannah will provide a natural buffer of over ¼ mile from land near the 415 corridor. Therefore, existing and planned urban uses under the Osteen JPA along the SR 415 corridor will be well removed from the active excavation areas. Land to the south is vacant and is incorporated into the City of Deltona. This land is used for cattle grazing. A haul road represents the closest activity associated with the BPUD excavation operation will come to property on the south. The unpaved haul road at the closest point will be about 400 feet north of the southern boundary of the BPUD. Finally, the Code does require and the applicant will afford a 50-foot landscape buffer around the active excavation areas to serve as a separator and visual screen. However, the boundary of the BPUD and the McCaskill excavation will not be afforded a 50-foot buffer. As has been stated, the BPUD within the City and the McCaskill excavations will be under a unified management plan.

2. Its impact upon the environment or natural resources

The BPUD site from a physiographic standpoint is located at the eastern toe of the Deland Ridge on the St. Johns River Valley. The St. Johns River Valley is associated with a high water table, poorly drained soils, flat topography, interconnected and isolated wetlands and abundant floodplain areas. The BPUD side is mostly wetlands and includes a system of local significance referred to as the Savannah. The Savannah is mostly a herbaceous system with a margin of hydrophytic trees. The Savannah is probably hydraulically influenced by the lateral movement of ground water moving off of the higher elevations of the nearby Deland Ridge. The Savannah system flows north eventually flowing to the Deep Creek system. About 36 acres of the property is upland. The upland area is mostly improved pasture used for cattle grazing.

There will be 0.69 acre of wetland impacts associated with the project. The wetland impacts involve the improvement to the interior haul road. There is a current crossing for an existing farm road. However, the wetland crossing will need to be improve to support the truck traffic associated with the use. Impacts to the wetlands will be permitted and mitigated consistent with City wetland regulations. Other wetland regulatory agencies will also need to be consulted with regard to the wetland impact.

The majority of the BPUD site is located within the 100-year floodplain. The floodplain corresponds closely with the wetland areas of the property. The upland areas where the borrow pits will be located are not located within the 100 year floodplain.

The property provides habitat for large mammals like deer, black bear and bobcat. These species do use the pasture areas for feeding and foraging. However, the cover provided by the forested wetland and herbaceous areas of the Savannah would be considered large mammal prime habitat. Smaller mammals like raccoons are also well represented on BPUD property. The site does provide habitat for various avian species including sandhill cranes, a range of wading birds and typical song birds. The Savannah area offers the most suitable habitat for wading birds and cranes.

The upland area of the property may support gopher tortoises. The area where the borrow pits are planned and ancillary staging areas will be surveyed for gopher tortoises before excavation activities occur.

The BPUD does not provide habitat for scrub jays.

Soils on site are either hydric or poorly drained. The hydric soils correspond to the wetland area of the property and the upland soils can be considered poorly drained.

Topography is flat with little relief. The wetlands are established on lower elevations on the site.

The excavation use will be mostly contained to existing altered areas – improved pasture. Excavation uses will be directed away from wetlands and floodplain areas. When the excavation use is active, wildlife usage will shift to the natural areas of the site to avoid the operation. After the excavation is complete, the site reclaimed and improved pasture reestablished, wildlife will return to these areas. In fact bird activity, especially wading birds, may increase as a result of open water features created as part of the operation.

3. *Its impact upon the economy of any effected area.*

The BPUD will facilitate job growth in the mining and trucking sectors. The mining industry is not well represented in the City and not a very active sector in Volusia County. Mining jobs will include equipment operators and perhaps an on-site manager. Trucking jobs will be needed to support the hauling element of the project.

4. *Notwithstanding the provisions of Article XIV of the Land Development Code, Ordinance No. 92-25 [Chapter 86, Code of Ordinances], as it may*

be amended from time to time, its impact upon necessary governmental services, such as schools, sewage disposal, potable water, drainage, fire and police protection, solid waste or transportation systems.

- a. *Schools*: BPUD will not create any demand for school workstation space.
- b. *Sewage Disposal*: N/A.
- c. *Potable Water*: N/A.
- d. *Drainage*: Appropriately designed and constructed on-site drainage facilities will address stormwater run-off and related dewatering activity.
- e. *Transportation Systems*: The applicant provided information from the traffic engineering consultant Lassiter Transportation Group (LTG). LTG provided information with regard to the type of traffic, volumes and access management. The traffic generated from this use will be heavy truck oriented – dump trucks. The main access for the BPUD and excavation activity on the nearby McCaskill site within the County will be SR 415. The driveway will be located on the east side of SR 415 approximately 1,200 feet north of the intersection of SR 415 and Doyle Rd. The applicant has made arrangements with FDOT for a temporary median cut to facilitate full movement of trucks entering and exiting the property. After the excavation use has ceased, the median cut will be restored. The median cut will be designed with enough room for a truck making a left movement in or out of the site without having to impede the travel lane. This will minimize the blockage of SR 415 travel lanes as heavy trucks negotiate access on the highway. The onsite driveway will have enough storage on the property so trucks will not stack on the highway and block traffic.

According to the LTG analysis, the use will generate 400 truck trips per day. There will be 50 trips in the AM and PM peak hours. There is anticipation 70% of the traffic will be going north on SR 415. A logical destination for the northbound trips would be east Volusia. However, there is anticipation some of the northbound truck traffic will go west on Howland Blvd. and disperse throughout the City. Destinations for the Howland Blvd. truck traffic will probably be scattered construction sites ranging from a new single family home on an existing Deltona Lakes lot to a commercial development. The remaining 30% of the trips will go south on SR 415 with 10% of the trips going down the Doyle Rd.

corridor. The other 20% of the trips will be going south on SR 415 to probably out of county destinations.

The segment of SR 415 (Howland Blvd. to Enterprise-Osteen Rd.) where the BPUD driveway cut is located has a 45 mph speed limit and operates at a level of service D. There is capacity to support traffic associated with the BPUD.

Truck traffic by the inherent nature creates traffic friction. Trucks are large and slow to accelerate. The fact the trucks will be crossing multiple travel lanes can be problematic from a function and safety standpoint. However, there are some factors to consider:

- a. The use will protract over a number of years but is temporary;
- b. The highway sight lines in the area of the BPUD driveway cut are unobstructed;
- c. There will be a refuge area in the median for left hand movements; and
- d. While traffic is often moving faster than the 45 mph posted speed limit, traffic is slower than other areas of SR 415 with higher posted speed limits.
- e. Finally, there will be signage posted to warn the traveling public of truck turning movements.

The City did hire Marlin Engineering to review the LTG analysis. Marlin Engineering found the LTG analysis representative of the traffic characteristics associated with the BPUD use and the LTG report to be technically sound.

Any changes in circumstances or conditions affecting the area.

The area proposed for the BPUD is in a rural area of the City. This area has been used for low intensity uses for many years. There have been no changes or conditions affecting the area.

4. Any mistakes in the original classification.

The Osteen JPA has earmarked the BPUD site with low intensity land uses. Based on the condition of the BPUD land – environmentally constrained and located well away from infrastructure like central utilities and roadways, those low intensity uses are appropriate and there are no mistakes or oversights in the existing land use designations or zoning classifications.

5. *Its effect upon the public health, safety, or welfare.*

The BPUD is associated with a written BPUD. The BPUD establishes parameters for how the excavation use will be conducted, how the use will be reclaimed and future uses after reclamation. There are some uses, public in nature, staff suggests the BPUD should facilitate:

- a. Hurricane debris management area. The City has identified several options for hurricane debris storage and management. There may be areas of the BPUD that may be suitable for the City use of hurricane debris management. The BPUD DA has been updated to allow for such a use.
- b. Public recreation. After reclamation there will be several water bodies created. In addition, the other areas of the site are ecologically sensitive. Therefore, the site could be used for a nature park featuring passive, resource-oriented opportunities. The DA has been updated to allow for such a use.

The two uses above are public. However, the property is privately owned. Therefore, any public use on the BPUD would be subject to negotiations with the underlying landowner including appropriate compensation.

CONCLUSION/STAFF RECOMMENDATION:

The BPUD allows for an excavation use. The Osteen JPA requires most land development activities to be processed as a Planned Unit Development. Excavation uses are extractive and are typically situated in remote areas outside of urban landscapes associated with municipal limits. However, the fill generated from these uses are used in towns and cities to support a range of development types. In short fill resources are needed to support development activities, including construction within the City of Deltona. As has been stated, this is a remote site even though it is within the City limits.

The BPUD is consistent with the Comprehensive Plan. In addition, the excavation use will create a condition where the property cannot be developed at an urban capacity. Basically, most land that could be relied upon to support development or any residential density will be converted to open water. Open water features like lake – man made or not – are not counted as land for density calculation purposes. Therefore, staff recommends the Planning and Zoning Board recommend the City Commission adopt the BPUD Ordinance No. 11-2022.

The following options are applicable to this request:

- 1) Approve the BPUD for an excavation as part of Ordinance No. 11-2022.**

Advantages:

- a) The excavation use will be managed to ensure appropriate operation including hours/days of use and heavy truck traffic management;
- b) The property will be subject to a reclamation plan;
- c) The property in the future will not be eligible for urban development thus perpetuating the rural character of the east Osteen area;
- d) Urban development will no longer be an option; therefore urban sprawl will not be introduced into the Osteen area earmarked for non-urban uses;
- e) There will be less potential future conflicts with City operations in the area like the Eastern Wastewater Reclamation Plant; and
- f) The request is consistent with the Comprehensive Plan by furthering several provisions that address the management and conservation of soil and mineral resources.

Disadvantages:

- a) The excavation use will perpetuate a rural development pattern for the incorporated area for the eastern portion of incorporated Osteen;
- b) More truck traffic will be introduced to the SR 415 corridor; and
- c) The project will involve 0.69 acre of wetland impact.

Do not approve the BPUD for an excavation as part of Ordinance No. 11-2022.

Advantages:

- a) There is a possibility the land could be developed at an urban capacity in the future; and
- b) Heavy truck traffic on SR 415 will be minimized.
- c) 0.69 acre of wetland will not be impacted.

Disadvantages:

- a) If the property was to be developed at an urban capacity, there could be conflicts with existing (wastewater reclamation plant) and proposed (training facility) City uses in the area; and
- b) The property could be developed with urban uses in the future.