

Memorandum

Date: May 14, 2005

To: Volusia Smart Growth Implementation Committee

From: Clay Henderson

Re: Cluster Development

At the Committee's meeting on March 21 and April 8, 2005, there were extensive discussions about Cluster Development and how it might be further encouraged as a tool of Smart Growth in Volusia County. This discussion was in furtherance of the interim report to the County Council wherein there was agreement to promote "limited development at urban densities in designated areas through an approach that preserves the character of the area, such as clustering or transfer of development rights." The Committee asked for a report on use of cluster development and how it might be applied further in Volusia County.

This memo is meant as a means of focusing initial discussion on Clusters in hopes of developing more detailed policy. We have reviewed the literature on the subject obtained model ordinance language so once we reach agreement on the concepts, we can draft language which supports our policy consensus.¹

CLUSTER DEVELOPMENT

Cluster Development is a smart growth tool for promoting open space, conservation of natural resources, agriculture in subdivision development. In a cluster development, smaller lots than would otherwise be allowed in the zoning district are permitted so long as at least half of the development remains protected or in open space. This approach has been given different names around the country including open space development, conservation development, hamlet style, farm village, or clustering. It is sometimes confused with "new urbanism" because many so called developments have used the cluster approach. They are not, however, synonymous.

Under typical land use and zoning, property is assigned a density and a landowner is allowed under various zoning procedures to subdivide property so as to achieve that density. A cluster subdivision generally concentrates lots on smaller parcels than would otherwise be allowed by the zoning ordinance and converts the remainder to some form of shared open space. Typically cluster subdivisions are density neutral meaning there is no increase in density than what is otherwise provided by the land use plan. Cluster subdivisions have been used to maintain the rural character of areas, protect historic sites, protect scenic vistas, provide open space for a community, and to preserve

¹ Arendt, Randal, *Growing Greener: Putting Conservation into Local Plans and Ordinances*, Island Press Washington, DC 1999

imported natural areas including wetlands, floodplains and wildlife habitat. Proponents of clustering believe that clustering reduces sprawl, reduces costs associated with development of infrastructure, and allows greater private contribution to protection of open space.

Clustered developments have been used in many parts of the country as a means to preserve rural areas and protect natural resources. Florida's Growth Management Act encourages innovative techniques and strategies such as "clustering" Sec. 163.3177(11)(b), Fl. Stat.

The Volusia County Comprehensive Plan provides for the use of clusters in its future land use element. The provision was a compromise that was developed in working with large forestry owners in the county to allow the property owners to maintain some ability to develop their property in exchange for deep reductions in density. Prior to the comprehensive plan, the lowest density was 1:10 dupa, but the plan dropped much of the forestry areas to 1:20 and 1:25 dupa.

Section 1.2.3 of the Future Land Use Element encourages the county to develop innovative design that supports conservation of open space and natural resources.

Policy 1.2.3.3 sets forth the planned development cluster guidelines. The intent of the section is to permit development that is permissible under present land use regulations but at the same time retain lands for agriculture, open space and other things such as hunting, recreation and natural resource protection. Key components of this policy are as follows:

- The planned development is at least 500 acres in size.
- The planned development has no more than 400 units.
- There is not an increase in the net density.
- Lots no smaller than 1 unit per acre unless utilities are provided.
- The development provides for the protection of all wetlands.
- 75% of the property is to be designated as open space and all development rights are to be "permanently severed".
- Protection of identified endangered species.
- It must be developed through a PUD process.

The Volusia County Zoning Ordinance authorizes cluster development. First, it is generally defined in the code consistent with its generally understood definition. In addition, Section 828 sets forth criteria for clustering of dwelling units. The purpose allows for concentrating building into a specific area allowing the remainder to be used

for recreation, open space and preservation of environmentally sensitive areas. The following requirements must be set for a cluster:

- Minimum lot size 5,000 square feet. Minimum lot width 45 feet. Front yard 25 foot setback. Rear yard 20 foot setback. Waterfront yard 25 foot setback. Side yard 5 feet.
- The maximum permissible density under the cluster subdivision shall be consistent with that permitted by the corresponding future land use designation.

Per the Comprehensive Plan, clusters can only be done as a Planned Unit Development and Section 813.00 sets forth requirements for PUDs. The ordinance requires that 20% of the project be set aside as common open space and that 10% of the common open space shall be preserved in a natural state. Provisions for a common open space are to be set forth in the development agreement and the open space is to have the following qualities: “accessibility, visibility, security, and interconnection.” A PUD is a highly regulated land use that requires pre-application meetings with the zoning staff, sketch plan, PUD application, and approvals by the PLDRC and County Council. What is different about a PUD is that it is driven by a development agreement which sets forth all the standards for the development. A PUD is labor intensive in its effort to meet all the standards to be able to be approved and gives to the local government wide discretion into what standards should be accepted. A PUD should be thought of as an agreement between the landowner and the local government for how development should proceed on the site.

Based on the combination of the comprehensive plan and zoning ordinance requirements, here are the current major aspects of clustering in Volusia.

- Clustering is authorized by the Comprehensive Plan and Zoning Ordinance.
- Clustering must be accomplished by re-zoning to PUD.
- Filing fee is based on acreage and number of units.
- Clustering can not be used to increase density on a parcel.
- Parcel size must be at least 500 acres
- No more than 400 units.
- 75% must be open space.
- 20% must be in common open space.
- 10% of the 20% must be natural protection area.
- All Wetlands protected.

As was indicated at the meeting, there is only one case study for clustering in Volusia County and it is currently working its way through the zoning process. Last week the PLDRC gave unanimous approval to Heart Island Equestrian Estates by Plum Creek Timber Company as the first project proposed under the clustering provisions. It is a 7000 acre project within a 38,000 acre conservation area. The project is proposed for

335 units and over 75% of the project will be placed in conservation easement. The owner's vision is that this will be a model for conservation development. One of the unintended consequences of clustering was discovered with this project. The filing fees are based on acres whether developed or conserved. The Heart Island project was charged the highest filing fee for any development project in the history of the county even though the county council reduced the fee from \$250,000 to \$45,000.

The discussion and the recent experience indicates that there are good reasons to consider encouraging cluster developments. Currently, Volusia County allows subdivision as a matter of right for division into ten acres or more on a private road. Unfortunately this encourages "ranchette" style development which does not protect important natural features. On the other hand, a developer who wishes to be creative, maximize open space and protect natural functions by clustering is subjected to the highest level of scrutiny and extensive procedures through PLDRC and County Council. Accordingly, a fresh examination of these issues is good to see if we can encourage the market to support these kinds of developments.

Recommendations:

Cluster Development should be encouraged in Volusia County as a tool for protection of open space, scenic vistas, historic sites, rural landscapes, agricultural lands, and environmentally sensitive lands as follows:

- Cluster developments should be allowed "as a matter of right" through approval of a "binding development agreement" that does not increase underlying density, provides for lots of one acre or larger, protects substantially all wetlands, and places 50% of the project under a conservation easement held by Volusia County.
- Cluster developments should be encouraged by granting a density bonus for projects which place more than 50% of the project under a conservation easement, protect environmentally sensitive lands, wetlands, water features, or recharge areas, scenic vistas, or contribute to an integrated system of protected natural areas.
- Cluster developments could also be allowed that protect working landscapes, agricultural practices or continued forestry operations.
- Within certain geographically defined areas, such as Natural Resource Management Area, Environmental System Corridors, or lands identified in the GIS Environmental Model, only cluster developments would be allowed where conservation areas would link to an integrated conservation network.
- Filing fees for cluster developments should be adjusted so as to not penalize clusters.

- Procedures should be adapted which treat cluster developments differently and less onerous than PUDs.
- Design Standards should be adopted which could be incorporated into cluster development agreements to encourage conservation result.