

**September 19, 2017 Board of County Commissioners Regular Meeting**  
Agenda Item #38

**SUBJECT**

Public Hearing (LDC 17T-11/RBMD) (First Public Hearing – No Action) to consider the adoption of an applicant-initiated ordinance amending Chapter 3, Section 303 the Land Development Code regarding the timing in which commercial portions of a Residentially Based Mixed-Use Development (RBMD) may be constructed.

**DESCRIPTION**

This is an applicant initiated request to amend the "Residentially Based Mixed-Use Development" language in Chapter 3, Section 303 of the Land Development Code. Specifically, the request seeks to amend language geared towards the timing in which commercial portions of a *Residentially Based Mixed-Use Development* (RBMD) may be constructed. State law requires one Planning Commission hearing, which was held on September 13, 2017.

Section 163.3202, Florida Statutes (F.S.) requires the Board to adopt LDC regulations consistent with the implementation of the Polk County Comprehensive Plan. Amendments to the LDC require two public hearings before the Board to be adopted. The Florida Statutes require the local governing Board take one of the following actions on the proposed amendment after the second reading on October 3, 2017.

**RECOMMENDATION**

Adopt,  
Adopt as amended by the Board, or  
Do not adopt.

**FISCAL IMPACT**

No Fiscal Impact

**CONTACT INFORMATION**

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Land Development Division  
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## ORDINANCE NO. 17 -

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS, POLK COUNTY, FLORIDA, LAND DEVELOPMENT CODE AMENDMENT **LDC 17T-11**, AMENDING ORDINANCE NO. 00-09, AS AMENDED, THE POLK COUNTY LAND DEVELOPMENT CODE, AMENDING CHAPTER 3, SECTION 303 "RESIDENTIALLY BASED MIXED-USE DEVELOPMENT," MODIFYING THE TIMING OF CONSTRUCTION OF NON-RESIDENTIAL USES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, pursuant to Article VIII, Section I(g) of the Constitution of the State of Florida and the Local Government Comprehensive Plan and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes (FS), as amended, (the Act) Polk County is authorized and required to adopt a Land Development Regulations consistent with the Polk County Comprehensive Plan; and

**WHEREAS**, the Board of County Commissioners adopted said Land Development Regulations on March 1, 2000, titled the Polk County Land Development Code; and

**WHEREAS**, Chapter 9, Section 903 of the Land Development Code requires Land Development Code Amendments to be a Level 4 Review; and

**WHEREAS**, Chapter 9, Section 907 of the Land Development Code sets forth the purpose and review process for Level 4 Reviews; and

**WHEREAS**, pursuant to Section 125.67 of the Florida Statutes, every ordinance shall embrace but one subject and matter properly connected therewith; and

**WHEREAS**, pursuant to Section 163.3164 of the Florida Statutes, the Polk County Planning Commission conducted a public hearing, with due public notice having been provided, on the proposed Land Development Code Amendment on September 13, 2017; and

**WHEREAS**, the proposed text amendment to the Polk County Land Development Code is to amend language in Chapter 3, Section 303 regarding the timing of commencing commercial development in an approved Residentially Based Mixed-Use Development (RBMD); and

**WHEREAS**, the Board of County Commissioners, reviewed and considered all comments received during said public hearing, and provided for necessary revisions; and

**NOW, THEREFORE, BE IT ORDAINED** by the Board of County Commissioners of Polk County, Florida that:

NOTE: The underlined text indicates proposed additions to the current language. The ~~strikeout~~ indicates text to be removed from the current ordinance.

**SECTION 1:** SECTION 303, of the Polk County Land Development Code, Polk County Ordinance No. 00-09, as amended, shall be created in the following manner:

*Residentially Based Mixed-Use Development (Revised 01/03/05 - Ord. 04-80)*

... ..

2. Mixed-use developments may be phased. ~~In no instance shall the commercial/ office uses of a project be constructed prior to completion of at least 50 percent of the residential dwelling units.~~

... ..

5. If the commercial/office area of an RBMD is intended to serve only the residential customers of the RBMD, then it shall be sized according to the population standard parameters established for the various activity centers in Policies 2.110-C through 2.110-E of the Comprehensive Plan. In this instance, twenty-five percent (25%) of the approved non-residential development square footage may be constructed before any vertical residential development takes place. After each increment of twenty-five percent (25%) of approved residential units are built, another twenty-five percent (25%) of non-residential square footage may be constructed.

6. If the commercial or office uses are intended to serve other customers than contained in the residential portion of the development, the applicant shall demonstrate that the proposed commercial or office uses meet the minimum population support, market area radius, and spacing criteria established in the Comprehensive Plan for the type of activity center that it most closely represents. Once these criteria have been demonstrated, non-residential development may commence without being limited to a percentage of existing residential development within the RBMD. Proposed commercial/office areas designed to serve customers outside of the mixed-use development may, in no instance, exceed the size of a Neighborhood Activity Center (NAC).

**SECTION 2: SEVERABILITY**

If any provision of this Ordinance is held to be illegal, invalid, or unconstitutional by a court of competent jurisdiction the other provisions shall remain in full force and effect.

Attachment: LDC 17T 11 Ordinance (2618 : LDC 17T-11/DMS No. 59533 (RBMD Amendment))

**SECTION 3: EFFECTIVE DATE**

This ordinance shall become effective upon filing with the Department of State.

**ENACTED BY THE BOARD OF COUNTY COMMISSIONERS OF POLK COUNTY,  
FLORIDA** this 3<sup>rd</sup> day of October, 2017.

Attachment: LDC 17T 11 Ordinance (2618 : LDC 17T-11/DMS No. 59533 (RBMD Amendment))

## POLK COUNTY DEVELOPMENT REVIEW COMMITTEE STAFF REPORT

<b>DRC Date:</b> June 22, 2017	<b>Level of Review:</b> Level 4 Review
<b>PC Date:</b> September 13, 2017	<b>Type:</b> LDC Text Amendment
<b>BoCC Date:</b> September 19, 2017 October 3, 2017	<b>Case Numbers:</b> LDC 17T-11/DMS 59533
<b>Applicant:</b> Bowman Consulting	<b>Case Name:</b> RBMD Amendment
	<b>Case Planner:</b> Thado N. Hays, Senior Planner

<b>Request:</b>	This is an applicant initiated request to amend the “ <i>Residentially Based Mixed-Use Development</i> ” language in Chapter 3, Section 303 of the Land Development Code.
<b>Location:</b>	N/A
<b>Property Owner:</b>	N/A
<b>Parcel Size (Number):</b>	N/A
<b>Land Use District:</b>	N/A
<b>Development Area/Overlays:</b>	N/A
<b>Nearest Municipality/County:</b>	N/A
<b>DRC Recommendation:</b>	Approval
<b>Planning Commission Vote:</b>	Pending Hearing

**Case Summary:**

The proposed text amendment to *Chapter 3, Section 303* of the Land Development Code (LDC) involves amending language associated with the timing to commence commercial development approved as part of a *Residentially Based Mixed-Use Development* (RBMD). RBMD’s are mixed-use planned developments that incorporate both residential and non-residential uses on property primarily designated for residential purposes. The commercial component of an RBMD is designed to be accessory to the overall residential development, but may serve surrounding residential developments as well. Currently, the *Conditional Use* language in Section 303 of the Code prohibits the commencement of building any approved commercial area of an RBMD until 50% of the approved residential dwelling units are built. The proposed text amendment seeks flexibility to the strict implementation of the Code by allowing at least 25% of an RBMD’s approved commercial area to begin vertical construction prior to the completion of half of the approved residential dwelling units.

Staff’s analysis of the proposed request examines the potential implications of the text amendment County-wide and whether or not the proposed amendment is in conflict with other applicable areas of the Comprehensive Plan and Land Development Code. It takes under consideration similar practices of surrounding jurisdictions, as well as a review of planning principals both in theory and practice. The analysis also attempts to gage potential impacts to adjacent and surrounding properties (if approved); while offering suggestions for mitigation of potential impacts via the proposed language.

**Relevant Sections, Policies, and/or Regulations to Consider:**

- Section 2.125-H1.b.2. of the Comprehensive Plan (Residentially Based Mixed-Use Development.).*
- Section 2.125-H2 of the Comprehensive Plan (RBMD Regulations)*
- Chapter 3, Section 303 of the Land Development Code (Conditional Use Criteria for RBMDs).*
- Chapter 10 of the Land Development Code (Residentially Based Mixed-Use Development defined).*

**Findings of Fact**

- *The proposed request seeks to amend the Conditional Use standards for Residentially Based Mixed-Use Development (RBMD) in Chapter 3, Section 303 of the Polk County Land Development Code regarding the timing of commencing commercial development approved within a RBMD.*
- *Per Section 2.125-H1.b.2 of the Polk County Comprehensive Plan,*
  - “b. commercial and office uses shall be permitted provided:*
  - ...*
  - 2. one of the following situations are met: (a) if the commercial is intended to serve the proposed development only, then it shall be sized according to the population standard parameters established for the various commercial activity center in Sections 2.110-C through 2.110-E, or (b) if the commercial is intended to serve other customers than contained in the residential portion of the development, it must meet the minimum population support, market area radius, and spacing criteria for the type of activity center that it most closely represents but in no instances shall non-residential uses exceed the size of a Neighborhood Activity Center.”*
- *Per Section 2.125-H2 of the Polk County Comprehensive Plan,*
  - “Polk County shall implement the Land Development Code regulations that encourage innovative land development through the use of Planned Development (PD) pursuant to Policy 2.125-M, or other similar mixed-use planning techniques, that:*
  - a. incorporate a mix of land uses and housing densities, ownership patterns, and building types; b. include specific public uses as an integral part of the projects design; c. utilize design commitments which establish pleasant, safe, and inviting public spaces along streets within the Mixed-Use Development; d. incorporate design features that enhance the use of non-motorized travel for routine trips between various land uses; e. are designed so that buildings are more directly accessible from non-motorized pathways along streets and in other locations; f. employ a network of on-site roadways that reduce travel time and increase the potential for local streets to handle vehicular movement between all uses and consequently reduces the need for traffic generated by the development to use or cross the major collector and arterial streets in the vicinity; and g. provide visual amenities that use a range of techniques, including landscapes and streetscapes.”*
- *Per Chapter 3, Section 303 ( Residentially Based Mixed-Use Development) of the Polk County Land Development Code,*

Attachment: LDC 17T 11 BoCC Staff Report (2618 : LDC 17T-11/DMS No. 59533 (RBMD Amendment))

“... 2. *Mixed-use developments may be phased. In no instance shall the commercial/office uses of a project be constructed prior to completion of at least 50 percent of the residential dwelling units.*”

“... 5. *If the commercial or office uses are intended to serve other customers than contained in the residential portion of the development, the applicant shall demonstrate that the proposed commercial or office uses meet the minimum population support, market area radius, and spacing criteria established in the Comprehensive Plan for the type of activity center that it most closely represents. Proposed commercial/office areas designed to serve customers outside of the mixed-use development may, in no instance, exceed the size of a Neighborhood Activity Center (NAC).*”

### **Development Review Committee Recommendation:**

Based upon a review of information submitted by the applicant, an evaluation and analysis of the request, and an analysis of relevant policies and regulations of the Polk County Comprehensive Plan and Land Development Code, Staff recommends **Approval of LDC 17T-11** in that it is **CONSISTENT** with the general intent of the goals and vision of the Polk County Comprehensive Plan and the Polk County Land Development Code.

### **Data and Analysis:**

Residentially Based Mixed-use Developments (RBMDs) are mixed-use planned developments that incorporate both residential and non-residential uses on property primarily designated for residential purposes. The commercial component of an RBMD is designed to be accessory to the overall residential development, but may serve surrounding residential developments as well. The RBMD use requires a Level 3 Review (Public Hearing and Planning Commission Approval) within all allowable land use districts of unincorporated Polk County with the exception of the Residential Medium-X (RMX) and Rural Cluster Center-X (RCCX) land use districts within the Village Center & Village Center Core areas of the Southeast Polk Selected Area Plan (RMX and RCCX only require a Level 2 Review).

Section 2.125-H1 of the Comprehensive Plan provides guidance for establishing permitted uses within RBMD's. This Section of the Comprehensive Plan acknowledges the establishment of commercial and office uses within an RBMD as long as they are sized according to the population standard parameters of similar sized “*Activity Centers.*” This section of the Comprehensive Plan also provides guidance for limiting the size of proposed commercial areas of a RBMD when: 1. designed to serve only residents within an RBMD; or 2. designed to capture business from surrounding residential developments outside of the RBMD. In addition, Section 2.125-H2 of the Comprehensive Plan (*RBMD Land Development Regulations*) provides guidance for Land Development Code implementation of RBMD's by encouraging innovative development via mixed-use planning techniques.

However, these guiding sections of the Comprehensive Plan do not speak directly (or indirectly) to the timing of commencing commercial development within an approved RBMD. Currently, the *Conditional Use* standard in Chapter 3, Section 303 of the Land Development Code contains a regulation that: “*In no instance shall the commercial/office uses of a project be constructed prior to completion of at least 50 percent of the residential dwelling units.*” This LDC regulation was originally adopted as part of the Code in March of 2000. Although the intent of the of the regulation at this point and time is unclear, Staff surmises that the intent may have been to dissuade those

seeking RBMD's (for commercial uses only) purely to avert undergoing Comprehensive Plan Amendments (CPA) to the County's Future Land Use Map (FLUM).

The proposed text amendment does not necessitate that commercial areas of approved RBMDs proceed approved residential areas; nor does it encourage the use of RBMDs to avert seeking CPAs to the FLUM in order to achieve commercial development. The proposed text amendment provides flexibility to the timing of construction of commercial areas within an approved RBMD. It recognizes the direct correlation between the success of residential and non-residential uses within a mixed-use development, and the fact that they often complement each other.

According to a 2015 study by Professor Johnathan Wiley (Department of Real Estate at Georgia State University) titled *The Impact of Commercial Development on Surrounding Residential Property Values*, "the quality and quantity of retail is commonly ranked as one of the most desirable neighborhood attributes and new shopping and restaurants can attract residents to the community, increasing total housing demand." Similarly, the *Urban Land Institute* produced a study titled *Ten Principles for Rebuilding Neighborhood Retail*, wherein they described similar planning considerations that are still in effect today: "The convenient availability of goods and services is a key factor that people consider when choosing a place to live, and neighborhoods without suitable retailing are dramatically weakened."

Limits of the Proposed Ordinance

The scope of the amendment applies to proposed and existing RBMD's throughout unincorporated Polk County. In order to achieve a RBMD, a Level 3 Review must be approved by the Polk County Planning Commission via a public hearing process. The design standards in which a proposed RBMD must meet are provided in Section 2.125-H of the Comprehensive Plan and Section 303 of the Land Development Code. Although there are only a few RBMD's approved throughout the County, the proposed amendment would not infringe upon vested rights of previously approved development. The amendment would, however, allow existing RBMDs to construct at least 25% of their approved commercial areas prior to development of half of their approved residential dwelling units. The proposed request is not anticipated to present negative unduly impacts to areas surrounding or adjacent to RBMDs because it specifically speaks to the timing in which the commercial areas of an approved RBMD may commence.

Comparisons to Surrounding Jurisdictions

Staff analyzed a number of surrounding County jurisdictions with regards to similar development requirements associated with mixed-use developments. The focus was to identify planned development regulations that addressed the incorporation of both residential and non-residential uses, and determine if such regulations spoke to a timing mechanism for constructing any areas of the overall development. The surrounding County jurisdictions are identified in Table 1 on the following page. Table 1 also indentifies the types of development (in surrounding counties) that are similar to an RBMD, a brief description of the development, and whether or not a timing mechanism is being implemented by the type of development. The results yielded that only one surrounding jurisdiction (Orange County) applies a timing mechanism towards the construction of commercial areas when developing mixed-use developments. However, this jurisdiction permits the development of at least 25% of approved commercial areas in a mixed-use development prior to the construction of any approved residential units. Once 25% of the residential units are built, the commercial areas may construct another 25% of approved commercial space. The proposed request seeks to mimic this standard.

Attachment: LDC 17T 11 BoCC Staff Report (2618 : LDC 17T-11/DMS No. 59533 (RBMD Amendment))



Table 1

Surrounding County Comparisons		Development Conditions?
Jurisdiction	RBMDs or Equivalent	
Hardee County	Planned Development Mixed Use (PD-MU)	Hardee County Land Development Code, Article 7.05.04.05 – Planned Unit Development Mixed Use: The PUD-MU district is intended to provide for and encourage a compatible <i>mix</i> of uses, rather than a separation of uses, in accordance with the Comprehensive Plan. PUD-MU districts are defined for purposes of these regulations as planned development districts for the establishment of complimentary groupings of residential, commercial, office, industrial, or other uses. This type of development does not identify a timing mechanism for the construction of commercial/residential uses.
Highlands County	Traditional Neighborhood Development (TND/MU)	Highlands County Land Development Code, Section 12.05.260 – TND: Provides a mix of residential, commercial, office, public institutional and recreational activities in close proximity to each other within the confines of the neighborhood. The traditional neighborhood concept brings different, but supporting uses or activities together providing a continuing and sustainable relationship between non-residential uses such as in the work place, retail facilities and public services into juxtaposition with residential uses. This type of development does not identify a timing mechanism for the construction of commercial/residential uses; however, it does require a minimum of 50 square feet (maximum of 75 square feet) of commercial GFA per dwelling unit.
Hillsborough County	Planned Villages	Hillsborough County Land Development Code, Section 5.04.02 – Design Rules. D. Phasing: Prior to the issuance of building permits for more than 75 percent of the residential units, Certificates of Occupancy shall be issued for a minimum of 50 percent of the required on-site neighborhood retail and community commercial floor space. Certificates of Occupancy for the remaining on-site neighborhood retail and community commercial floor space shall be issued prior to the issuance of building permits for more than 95 percent of the residential units. An alternative phasing schedule may be approved by the Board. In the proposed phasing schedule, the developer shall justify any modifications to the above standards based on a realistic market study.
Lake County	Mixed Use Quality Development	Lake County Land Development Code, Chapter 4, Section 4.04.03 – MUQD Site Development Standards: MUQDs Shall contain a <i>mix</i> of uses and be phased to allow for changes in market conditions, Maintenance of adopted L.O.S. standards, and to ensure that the project develops in a balanced nature. Example: MUQDs require a minimum of 30% residential, 5% Commercial, 5% Community Facilities, 15% Industrial, and 15% Open Space, rather than a timing requirement for commencement of development.
Orange County	Urban Village	Orange County Land Development Code, Section 38-1653.h. – General Requirements: Development of the neighborhood center shall be phased as follows: Twenty-five (25) percent of the nonresidential development square footage may be constructed before any residential development takes place in the urban village. After each increment of twenty-five (25) percent of the approved residential units are built, another twenty-five (25) percent of the nonresidential square footage may be constructed.
Osceola County	Neighborhood Center (Place Type Function)	Osceola County Land Development Code, Chapter 3, Section 3.13.2 – Place Type Function: Development of the neighborhood center shall be phased as follows: Twenty-five (25) percent of the nonresidential development square footage may be constructed before any residential development takes place in the urban village. After each increment of twenty-five (25) percent of the approved residential units are built, another twenty-five (25) percent of the nonresidential square footage may be constructed. Example: An Urban Center requires minimum percentage of uses to be achieved at buildout (15% Residential, 55% Commercial, and 10% Park/Open Space), rather than a timing requirement for the commencement of development.

## Consistency with the Comprehensive Plan

- *Per Section 2.125-H1.b.2 of the Polk County Comprehensive Plan,*

*“b. commercial and office uses shall be permitted provided:*

*...*

- 2. one of the following situations are met: (a) if the commercial is intended to serve the proposed development only, then it shall be sized according to the population standard parameters established for the various commercial activity center in Sections 2.110-C through 2.110-E, or (b) if the commercial is intended to serve other customers than contained in the residential portion of the development, it must meet the minimum population support, market area radius, and spacing criteria for the type of activity center that it most closely represents but in no instances shall non-residential uses exceed the size of a Neighborhood Activity Center.”*

- *Per Section 2.125-H2 of the Polk County Comprehensive Plan,*

*“Polk County shall implement the Land Development Code regulations that encourage innovative land development through the use of Planned Development (PD) pursuant to Policy 2.125-M, or other similar mixed-use planning techniques, that:*

- incorporate a mix of land uses and housing densities, ownership patterns, and building types;*
- include specific public uses as an integral part of the projects design;*
- utilize design commitments which establish pleasant, safe, and inviting public spaces along streets within the Mixed-Use Development;*
- incorporate design features that enhance the use of non-motorized travel for routine trips between various land uses;*
- are designed so that buildings are more directly accessible from non-motorized pathways along streets and in other locations;*
- employ a network of on-site roadways that reduce travel time and increase the potential for local streets to handle vehicular movement between all uses and consequently reduces the need for traffic generated by the development to use or cross the major collector and arterial streets in the vicinity; and*
- provide visual amenities that use a range of techniques, including landscapes and streetscapes.”*

The proposed request is consistent with the above sections of the Comprehensive Plan in that, the language presented in the request is not in conflict with guidance provided by the Comprehensive Plan regarding RBMDs. The proposed text amendment still encourages the use of Sections 2.110-C through 2.110-E of the Comprehensive Plan to adequately size potential commercial areas of RBMDs. The proposed request still encourages those RBMDs that are intended to serve areas outside of the RBMD boundary to meet the minimum population support, market area radius, and spacing criteria for the type of activity center that it most closely represents; and not to exceed the size of a NAC district for non-residential uses. The proposed request is not in conflict with the expressed implementation direction of the Comprehensive Plan (*Section 2.125-H2*). The proposed request seeks to adjust the Land Development language regarding the timing of construction for commercial areas in a RBMD.

**Comments from Other Agencies:** None

**Draft Ordinance:** Under separate attachment