

## **PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES**

The Brevard County Planning & Zoning Board met in regular session on **Monday, May 9, 2022**, at **3:00 p.m.**, in the Florida Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order at 3:00 p.m.

Board members present were: Board members present were: Henry Minneboo (D1); Ron Bartcher (D1); Brian Hodgers (D2); Robert Sullivan (D2); Ben Glover (D3); Mark Wadsworth, Chair (D4); Liz Alward (D4); Logan Luse (Alt. D4); Bruce Moia (D5); and John Hopengarten (BPS).

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Jane Hart, Planner III; Alex Esseeesse, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

### **Excerpt of Complete Agenda**

#### **Charles K. Donaldson**

A Small Scale Comprehensive Plan Amendment (22S.04) to change the Future Land Use designation from RES 1 (Residential 1) to RES 4 (Residential 4). The property is 5.51 +/- acres, located on the west side of N. Tropical Trail, approx. 500 ft. northwest of Easy Street. (1605 N. Tropical Trail, Merritt Island) (Tax Account 2416959) (District 2)

Kim Rezanka, Law Firm of Lacey, Lyons, Rezanka, 1290 U.S. Highway 1, Rockledge, stated the Donaldson's have owned the property, which is part of a larger parcel, since 1975. She stated there are two homes on the property; one has been there since 1901, and the other has been there since 1950. The entire parcel is 7.66 acres, split by North Tropical Trail, and the portion west of North Tropical Trail is the subject property being considered today, consisting of 5.5 acres. The subject property is EU and is next to quite a bit of EU; almost everything to the south is EU and there is also some EU to the north. She stated the request is for RES 4 and there is other RES 4 not too far from the subject property. She explained the entire area was once RES 15 until 2009 when the small area study was done. At that time, when the County administratively changed the Future Land Use, they left the EU zoning, which is inconsistent. She said the Donaldson's would like to sell half of their property, creating two lots of 3.25 acres and 2.26 acres each; one will be kept as their homestead, and one is under contract to sell. She stated surveyor John Campbell originally submitted the application, but staff disagreed with him and said it should have been a zoning application, but she believes it could be solved with a BDP (Binding Development Plan), and she doesn't even think they need to change the Future Land Use. She noted there is recent precedent for a BDP with the Dunkin Donuts application because when she took it to the County Commission, the District 2 Commissioner asked for a BDP on the land use amendment to define the access. There is precedent, even though Section 62-1155 doesn't seem like there could be. Mr. Donaldson does not want to change his zoning, and that's why they are requesting RES 4. The zoning is site specific and has specific details as to what can be done with setbacks, the size of the homes, and things like that, but they don't want to make any more inconsistency by changing the zoning. The issues are whether a 2 and 3-acre lot is consistent with what is in the area, then there is the issue of Policy 1.2C, which states that in the RES 4 land use, centralized potable water and wastewater treatment shall be available concurrent with the impact of the development. The impact with the development is still only two units on 5.5 acres, it's not like the request the board heard last month where they wanted to do three or four units in an area that didn't have potable water, this project will still be consistent with the development. She said she doesn't agree that this requires central water and central sewer, it just says it shall be consistent. She stated Policy 1.7 talks about a step-down in density, and when there is RES 15 on the east side of North Tropical Trail, it is a step-down to RES 4. She noted under Policy 4, the character of the neighborhood, the land use change will not materially or adversely impact the established

surrounding neighborhoods. She said the staff comments ask the board to consider if the request is consistent and compatible with the surrounding area, and she believes the answer is yes. She stated she proposes a BDP for the future land use, and because it is different she added language to it to explain why. The proposed BDP explains that the land use was changed in 2009 resulting in an inconsistency between the Future Land Use and zoning; the property is now nonconforming due to no fault of the property owner. The recitals in the BDP limit density to two units per acre. She said the intent is just to allow them to subdivide their property and to sell it consistent with everything in the area.

Bruce Moia asked if the density will be limited to two units total, or two units per acre. Ms. Rezanka replied it is limited to two units total on 5.5 acres.

Liz Alward asked if Ms. Rezanka is suggesting that the BDP replace the comp plan change amendment. In other words, put the BDP on the zoning that is already there.

Ms. Rezanka replied that is what she's asking in an abundance of caution. She mentioned the recent Dunkin Donuts application and stated she doesn't think the future land use needs to change if there is a BDP, but she would prefer a recommendation of both to go the County Commission and let them figure out what they prefer.

Mr. Moia stated if the land use changes, then Policy 1.2 becomes a problem, potentially. He asked Ms. Rezanka if it has been done before, where the land use is kept the same, but the BDP is put in place to make it consistent. Ms. Rezanka replied no, not in this particular circumstance, not with the potable water, but there is Cocoa water there and sewer is coming that way. Mr. Moia stated that may or may not help, whether it's in the future or it needs to be there now. Ms. Rezanka replied the residential development proposal is not for density of 4 units per acre, so she believes it's still okay with Policy 1.2, with the BDP.

No public comment.

Ms. Alward asked staff if what Ms. Rezanka is proposing something that the County Attorney could support.

Alex Esseeesse, Deputy County Attorney, stated Ms. Rezanka is referring to is Dunkin Donuts, but that BDP dealt with access that the Board limited; this application was advertised as a small scale comprehensive plan amendment, so if the board is going to take a different route, the application would have to be readvertised with the BDP.

Ms. Rezanka stated the request is for a comprehensive plan amendment with a BDP that's come about because of the request in the staff comments, and she doesn't see it's any different than when there is a rezoning.

Bruce Moia asked if BDP's go with rezoning and not land use.

Jeffrey Ball stated the reason BDP's came about was to provide consistency, so BDP's are used to cap density, but for a rezoning, not for a small scale comprehensive plan amendment. He said his professional opinion is that a BDP cannot provide a consistency for the comprehensive plan. The application would have to be readvertised because it was advertised for a small scale plan amendment, and a BDP is not a small scale plan amendment.

Mr. Moia asked, if they put aside the BDP and just look at the land use request, does 1.2 propose a problem, and also asked if there are plans to re-develop. Ms. Rezanka replied the property is under contract to sell half of it.

Mr. Moia stated it can't be divided because it's inconsistent. He noted there are already two houses on the property, so they are just selling one of the homes and not developing anything. Ms. Rezanka explained that one of the homes is going to be torn down and re-built. She said her only point in bringing up the Dunkin Donuts is that it was used in a future land use amendment, which is unusual, but it's done in other jurisdictions.

Mr. Ball stated the intent of Policy 1.2 was to require, when developing at 4 units per acre, water and sewer, because 4 units per acre is a quarter-acre lot.

Mr. Moia stated the way he reads the policy, one requires that it be available, and the other requires to be connected. Ms. Rezanka noted that is if the development is 4 units per acre.

Mr. Moia stated the first part is that if the land use is approved, it has to be available, so if water is in front of the property and they build a new home they have to connect to that water system. If the sewer is far enough away that they're not required to connect and it's not considered available by State definition, then they don't have to extend sewer to get to it, but if they are developing more than 4 units per acre, which is a development standard, then they would have to connect. He said basically, if the board approves it as RES 4 and they build a new home, they would have to connect to the water but they don't necessarily have to connect to sewer if it's considered available by State definition.

Ms. Rezanka stated she agrees with that.

Mr. Moia stated maybe the BDP isn't necessary. He asked the minimum lot size of EU. Ms. Rezanka replied it is 15,000 square feet. Mr. Moia asked with the lot width and everything else, is it even possible to develop more than two units on the property, and asked the minimum lot width in EU. Ms. Rezanka replied, the frontage is 125 feet, so they can't build more than two homes.

Mr. Moia stated because they need a flag stem to do this, they can't build more than two units, so the whole density thing is really a non-issue.

Ms. Alward stated a BDP is not necessary because RES 4 will allow two units.

Motion by Liz Alward, seconded by Bruce Moia, to recommend approval of the Small Scale Comprehensive Plan Amendment from RES 1 to RES 4. The motion passed unanimously.