

PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board/Local Planning Agency met in regular session on **Monday, June 15, 2020, 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: Ron Bartcher; Brian Hodgers; Harry Carswell; Ben Glover; Mark Wadsworth, Chair; Peter Filiberto, Vice Chair; Bruce Moia; Joe Buchanan; and Dane Theodore.

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Jad Brewer, Assistant County Attorney; George Ritchie, Planner III; and Jennifer Jones, Special Projects Coordinator.

Excerpt of Complete Minutes

Theodore Goodenow (Chad Genoni / Kim Rezanka)

A Small Scale Comprehensive Plan Amendment (20S.02) to change the Future Land Use designation from PI (Planned Industrial) to RES 2 (Residential 2). The property is 4.85 acres, located on the east side of Hammock Road, approximately 650 feet south of Parrish Road. (1930 Hammock Road, Titusville) (20PZ00024) (Tax Account 2105262 – partial) (District 1)

Theodore Goodenow (Chad Genoni / Kim Rezanka)

A change of zoning classification from AU (Agricultural Residential) to RU-1-9 (Single-Family Residential), with a BDP (Binding Development Plan) limited to 62 units. The property is 31.43 acres, located on the west side of Hammock Road, approximately 650 feet south of Parrish Road. (1930 Hammock Road, Titusville) (19PZ00158) (Tax Account 2105262) (District 1)

Kim Rezanka, Cantwell & Goldman, Cocoa Village, representing Beachland Managers and Theodore Goodenow, stated the requests are two matters to encompass all 31.43 acres of the entire property. The Comprehensive Plan amendment is the 4.845 acres on the east side of Hammock Road. (Ms. Rezanka presented handouts to the board. The handouts can be found in files 19PZ00158 and 20PZ00024, located in the Planning and Development Department). She said the aerial map shows the different zoning in the immediate area. The Future Land Use (FLU) is RES 2 (Residential 2) on the west side of Hammock Road, and then PI (Planned Industrial) on the right side. There's not much in the way of Planned Industrial on the east side of Hammock Road; there is single-family residential to the north of the proposal; then PIP (Planned Industrial Park) to the east. She continued, there is City of Titusville property belonging to SE Power, which is aptly developed; there is the East Central Florida Railroad that has a substation in the far northeast corner; and there is a vacant parcel, which is also owned by SE Power. The SE Power land in the City of Titusville is where they keep their trucks and business offices. SE Power is in the construction and maintenance of power lines and fiberoptic installation, so it's not a heavy industrial use, even if it is zoned that way.

She stated there are 11 single-family home directly across from SE Power; there are a number of single-family homes to the north, even though they are zoned PI; and PIP allows single-family homes at one unit per acre. There is TR-2 zoning to the north of the comprehensive plan parcel allowing two units per acre, but half-acre lots are required. To the west of the complete parcel, including that on the other side of Hammock Road, there is one unit per acre, and below that there is 72 acres of property within the City limits that is PUD (Planned Unit Development), at a density of two units per acre. She noted at the bottom of the larger site plan she provided there is a location map depicting the area before the board today; and the area below it is the 71.99 acres of PUD also owned by Beachland Managers, that was approved by Titusville in 2019, allowing two units per acre, with a maximum of 143 units, and with houses anywhere from 6,000 square feet and higher. She stated

Page 2 of the staff comments for the comprehensive plan amendment talks about Policy 3.5 of the FLU element that Planned Industrial is intended to have light industrial and business uses; however, that's really not applicable here because there is no industrial uses in the area. Housing has existed in the area since the 1980's before PI was even assigned to it, and it's only industrial because of the SE Power Corporation property to the south. Future Land Use designation 1.1, Criteria B, states this land has had a PI land designation since 1988, but houses have been in the PI land use designation since before that designation. Page 4, under RES 2, Policy 1.18, Criteria A, it says the subject parcel is not immediately adjacent to RES 2. She said they disagree with staff because Hammock Road is the only dividing line, and Hammock Road, in theory, would allow that property to be annexed over a road, so they believe it is immediately adjacent. She asked that the board adopt the comprehensive plan amendment of 4.845 acres from PI to RES 2 and believe that it is adjacent to RES 2.

Ms. Rezanka addressed the rezoning request for the entire 31.43 acres, and stated the property to the west of Hammock Road is RES 2, so RU-1-9 with a BDP is consistent, but if the board does not adopt the comprehensive plan amendment it would not be consistent with the parcel on the east side of Hammock Road. She stated the TR-1 zoning to the south of the subject parcel on the west side of Hammock Road requires 7,500 square-foot lots, and there are two that were built in 2003 and 2004; they could be smaller lots, and they are small houses. To the west of the parcel is RRMH-1, which are one-acre lots and there's a wide variety of types of homes of approximately 840 square feet, such as single-family, and manufactured, some of which are single and some are double. The property immediately to the south is the PUD from 2019 that was adopted by the City of Titusville, and the entire ordinance has been provided to staff for the record. There are half-acre lots, and 7,500 square-foot lots all around both subject parcels, the whole 31-acre parcel. She stated RU-1-9 requires 6,600 square-foot lots with a minimum floor area of 900 square feet. The property to the south that was rezoned in 2019 has 143 units, and 2 units to the acre. Page 3 of the rezoning staff comments, under Primary Concurrency, it states there is no anticipated decrease in maximum acceptable volume to U.S. 1, there is also no school concurrency issue, and although the property does not have water and sewer, the BDP states that the property will connect to City water and sewer. She said her client attempted to annex the property into the City for their services, but the City said it is not appropriate to annex, which is why they are in front of the County for this zoning change.

Mark Wadsworth asked why Titusville said it was not appropriate to annex. Ms. Rezanka replied she believes they thought it was too far from the hook-ups, but the PUD to the south will bring the water and sewer, so they will be able to connect.

Ron Bartcher advised a Planning Official from Titusville told him the City felt it would create an enclave, and State Statutes say you can't do that.

Ms. Rezanka stated the proposed BDP limits the density to two units per acre and asks for the RU-1-9 zoning to allow flexibility and design. She noted there's already a very large retention pond on the parcel they will have to work around. The intent of doing both parcels is to have the drainage structures and amenities on the east side of the property. If the board feels it necessary to put that in the BDP, or to limit the number of houses on the east side of Hammock Road, Mr. Genoni is willing to do that. This property has been owned by Mr. Goodenow since 1983; there's been no development on this property; it's not been feasible to develop because of the water and sewer, but bringing the water and sewer will improve what could be there with septic tanks. She asked the board to approve the comprehensive plan amendment on the 4.8-acre parcel on the east side of Hammock Road and the entire rezoning to RU-1-9 on the 31.43 acres, with the BDP. She noted she has put in to the

public record the parcel detail records from the PAO website of all the property around the subject property, just so it's in the record that they are one-half acre or 7,500 square-foot lots. She further noted that none of the objection letters are from the adjacent neighbors.

Bruce Moia asked what the lot sizes will be. Ms. Rezanka replied they only have to be 7,500 square feet. She said Mr. Genoni believes they are going to be bigger than that, but he hasn't done any engineering on the property yet, so he hasn't done a site plan.

Harry Carswell asked if the elevation of this subdivision been determined. Ms. Rezanka replied no, and there are some issues on the west side of Hammock Road, but her client has not done the elevations.

Public Comment:

Laurilee Thompson, 3550 Irwin Avenue, Mims, stated she is opposed to the change in land use. The proposed amendment to the FLU map will place RES 2 into an area of Planned Industrial, resulting in residential encroachment into a designated industrial area. The subject parcel does not serve as a transition between land uses with a density greater than two units per acre, and areas with lesser density. It's surrounded by PI land use; immediately north of the subject parcel is TR-3 zoning, which are modular and mobile home residences on approximately half-acre and one-acre lots. The subject parcel is not located adjacent to an incorporated area that would be considered a logical transition for RES 2. The City of Titusville boundary is located approximately 200 feet south of the subject property where a developed parcel with heavy industrial zoning and an industrial Future Land Use currently exists. Additionally, the subject parcel contains 100% hydric soils and a small area of mapped St. Johns River Water Management District wetlands. The potential exists for listed species, and a majority of the property is mapped as being within AE and X floodplains as shown on the FEMA flood zone map. The AE designation indicates areas that are at high risk for flooding. Flood zone X is an area that's designated by FEMA as having a moderate or minimal risk of flooding. She stated she has seen Hammock Road flood so badly, driving on it isn't possible; the ditches are full, running over into the properties. She noted there's not a lot of PI zoning in northern Brevard and who's to say that with the activities increasing at the space center that the proximity of this property to the Titusville railroad bridge, which connects the Florida East Coast Railway to the space center, may be a used for industrial on this piece of property. She addressed the rezoning request for RU-1-9, and stated she is not opposed to growth. She noted she sat on the Planning and Zoning Board 13 years ago and supported projects for the developer that had four houses per acre in Mims. She stated those developments were within the core area of Mims, where there is water and sewer service; they were appropriate for those areas. Although the area between Jay Jay Road and Parrish Road doesn't fall within the boundaries of the Mims Small Area Study, it should be considered a transition zone to move from the higher densities of Titusville to the lower densities proposed in the Mims Small Area Study, which suggests that higher densities shall take place along and near U.S. 1, with the densities moving from four houses per acre, to two house per acre, and one house per acre, and as you get closer to Hammock Road, the densities go from one house per 2.5 acres, to one house per 5 acres, and one house per 10 acres. The bigger lots are closest to the Lagoon. She stated diminishing densities as you approach the Lagoon was what the Mims community wanted. The subject property is 650 feet from where the Mims small area boundary begins at Parrish Road. The Mims community felt so strongly about keeping densities low in order to protect the Lagoon, they created a shoreline preservation overlay zone along the Lagoon shoreline and the near-shoreline area. Any type of development within this zone, except what occurs on multi-acre lots should be discouraged. The

shoreline preservation overlay zone was the expressed wish of the community in order to keep the Lagoon area in Mims from being developed as other shorelines have been. If the shoreline preservation zone overlay was extended south from Parrish Road, the east side of the this proposed property would be adjacent to the shoreline overlay. A lot of relatively undisturbed hammock land exists along the waterfront here. This is a feature the Mims community views as positive and wishes to preserve. Another factor is that this area coincides with the State-defined Coastal High Hazard Area. Comprehensive Plan Amendments are expected to reduce development intensities in this high-risk zone. For the proposed development, the shoreline of the Indian River Lagoon will only be 850 feet away. There's a salt marsh only 200 feet from the property that is connected to the Lagoon through a culvert that goes underneath the railroad track. The eastern side of the subject property is the same distance from the river as are the lakes in the Chain of Lakes Park. Allowing this change in land use and zoning will set a precedent along both sides of Hammock Road for others who wish to develop in the future. In the Mims small area plan nothing less than one home per 2.5 acres was suggested for either side of Hammock Road unless it is a pre-existing zoning. The developer is asking for the same density as Brooks Landing Phase I, which is further to the west and closer to U.S. 1. The homes that already exist are mostly on one acre or larger lots and they've been there for decades. Aside from Brooks Landing Phase 1 to the west, there is no pattern of higher density development. She stated there are other properties in North Brevard where this kind of density is acceptable. She said Hammock Road, from where it starts at the north end of the Chain of Lakes Park, all the way to where it ends north of the County line, does not have any existing housing close to the river that is similar to what the developer is proposing. She concluded by saying there's no precedent of any changes to existing land use or zoning along Hammock Road and this stretch of the Lagoon; therefore, there is no reason to start the process of allowing changes.

Terri LaPlante, 4052 Friar Tuck Lane, Melbourne, stated she is against the rezoning of property for Phase II of Brooks Landing as it lies too close to the Indian River Lagoon. The voice of the residents of Brevard County made clear that they want the Lagoon restored, and taxed themselves to restore the Lagoon. She stated despite everything being done to restore the Lagoon, it is not enough and the growth must be managed of any nearby development. The prosperity of the state and local community depends upon cleaning up the waterways and protecting what is left of the drinking water supplies. She noted the Florida Department of Environmental Protection Basin Management Plan mandates that since the North Indian River Lagoon is an impaired water that currently does not meet State water quality standards, new development in the basin cannot increase nutrient loads to the Lagoon. Also, to ensure the future growth does not add to the degradation of the North Indian River Lagoon, local governments must be proactive in controlling loads from future growth. The FEP recommends low-impact development to minimize the impact of new developments. She urged the board to enforce compliance with the comprehensive plans that are in place to ensure the economic prosperity of the majority rather than a single business interest.

Kim Rezanka stated residential is seen as less intense than industrial. Single-family homes are allowed in PIP zoning, and they are there now to the east side of Hammock Road. She said she doesn't believe this is introducing RES 2 to industrial, she believes it is an extension across Hammock Road and an existing RES 2. There's mostly wetlands on the property to the east of this Future Land Use application, so it's likely nothing will be built there and that's what the residents want, they don't want anything to be built there because it's been that way for so long. The soils, floodplains, and wetlands are all site plan issues. Currently, even though the land use is industrial, the zoning is AU, so it's still going to have to be rezoned to something allowed in Planned Industrial, and that could be a junkyard, a hotel, or overnight commercial parking, versus several homes, a drainage

pond, or amenities that are planned for the east side of Hammock Road. She noted Brooks Landing Phase I will not be interconnected to the subject property. The residents did not want that and Mr. Genoni agreed not to combine Phase I with Phase II because of the traffic concerns on the road to the south. The Brooks Landing Phase I to the south of the property at issue is a trend because all of this other land has been developed long ago. As to other development along the Indian River, at least to the south there are several mobile home parks along the river, so there is development next to the river. As to Ms. LaPlante's concerns, this development will be connected to sewer as part of the binding development plan; if it's not connected to sewer then it cannot be built. She asked the board to approve the comprehensive plan amendment and rezoning.

Mr. Wadsworth asked if the BDP states the project will also be connected to water. Ms. Rezanka replied yes, and the developer will have to bring that, which will be beneficial to both developments if this is approved.

Peter Filiberto stated he agrees PI is more impactful than residential; however, it does seem to be a high-impact development project with 32 acres and the developer wants 62 lots. He noted that usually as a rule of thumb 25% is subtracted for roads, utilities, et cetera, so he sees it more as 47 houses and that's an impact in itself. He asked if the developer was stuck on RU-1-9. Ms. Rezanka replied RU-1-9 is the 6,600 square foot lots, and noted she doesn't have the authority from the developer to do anything lesser, but if the board wanted to limit it to larger lots, such as 7,500 square foot lots, which is what the properties to the south are, she doesn't think that would be a problem.

Mr. Filiberto noted the staff comments state there is no deficiency in transportation, the developer is willing to hook up to water and sewer, and there is the capacity for schools in the area.

Joe Buchanan asked if the developer plans to put a landscape or buffer wall around the property. Ms. Rezanka replied he will have to comply with the landscape code and buffering code, and next to the industrial it will probably be mandated, but she is not sure about the existing residential. Mr. Buchanan stated the Natural Resources Management report states there are some wetlands to be concerned with, and asked if it is a small percentage. Ms. Rezanka replied there are some wetlands on the east side of Hammock road and also some elevation problems the developer will likely be limited by with compensatory storage.

Mr. Wadsworth asked for the representative from Natural Resources to comment.

Jeanne Allen, Natural Resources Management Department, stated the noteworthy land use issues were wetlands and hydric soils, but she didn't see that mapped on the east side, although she did see a portion of it on the west side, to the south. She said that until she gets a full wetland report she won't know exactly know where the wetlands are, but it does look like there could be some spots of it. She noted the Indian River Lagoon Septic Overlay will not be an issue because they are going to connect to sewer through the BDP.

Ron Bartcher stated the small area study stopped at Parrish Road because it was expected that the City of Titusville would annex all the property up to Parrish Road. He said had it been included in the study, everything on the other side of Hammock Road would be Residential 1:25 or less, just like it is the rest of the way north. He stated he personally thinks residential is better than industrial; however, RES 2 is not the right number, it should be Residential 1:2.5. He said it should be low-density, as it is

too close to the Lagoon, and too much money has been spent trying to repair it. He said the density should be kept as low as possible, and no development at all would be even better.

Motion by Ron Bartcher, to deny the Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from PI (Planned Industrial) to RES 2 (Residential 2).

Jeffrey Ball stated the board could recommend a lower intensity land use it feels is more appropriate, such as RES 1 (Residential 1).

Ron Bartcher modified his motion to recommend Residential 1:2.5.

Joe Buchanan seconded the modified motion.

Mr. Moia stated the board can make restrictions on the development in the BDP. He said the reason for the request for Residential 2 is for the density on the overall piece, and by getting Residential 2 on the 4.8 acres, they get nine units; at one unit per acre they get four units. He said he is not in favor of the motion but he would be in favor of more restrictions on the BDP during the zoning part of the discussion because there are things the board can do and still give the developer the ability to develop the project.

Mr. Bartcher pointed out that the larger piece of property is already Residential 2, so there is no need for a Future Land Use change on that, and by separating them, they are creating two separate issues. He said the board can focus on the issue of the 4.85 acres and keep it separate from the other.

Mr. Moia stated if the developer is looking for a number of lots he has to get the Residential 2, but the board can limit development on that side of the road and he can still have his density count on the overall project.

Mr. Hodgers asked Ms. Rezanka if she said the 4 acres on the east side would largely be for drainage. Ms. Rezanka replied it will be for drainage, stormwater, and possibly amenities. She noted Mr. Genoni is not sure he's going to put homes on the east side, but currently, in PIP, he could build one unit per acre.

Mr. Hodgers stated if Residential 2 is on the larger parcel, the board could add to the BDP that the east side would be for drainage or amenities. He said he'd be in favor of that rather than try to combine them together and denying the whole request because of the east side.

Mr. Bartcher said he would be willing to put that into the BDP, that development be severely restricted, and he'd like to see the development restricted on that property to less than one unit per two and a half acres.

Mr. Ball clarified that right now, the board is only talking about the land use request, which is Residential 2, so there needs to be a recommendation for that, and then the board can move onto the zoning action and BDP.

Motion by Ron Bartcher, seconded by Joe Buchanan, to recommend approval of Residential 1:2.5.

Mr. Hodgers asked staff if the developer can do what he is proposing at Residential 1:2.5 on the east side with drainage or amenities and not build houses on that side at all.

Mr. Ritchie stated Code Section 62-2116 states when a property divided by a public road right-of-way and the lot is big enough to meet the zoning criteria, you're looked at as the owner of two different lots. The board can look at the comprehensive plan issue and leave it as PIP and change the land use to a different designation. He said for the zoning, RU-1-9 is what is requested, and there could be multiple lots on that 4-acre piece of property, so it's big enough to stand on its own. The applicant has not requested a transfer of development rights to take the development rights the site could generate, which right now is zero residential, to move it to the other side of the roadway. He stated those units would be captured in this piece of property unless they came in for that type of request. If they want to transfer units, they would have to make a new request to transfer units off of that tract to the other piece of property. How the subdivision gets platted and developed later on, how they share or don't share the retention and stormwater, that would be a different issue that would be addressed during that platting process.

Mr. Moia asked if the developer could not do a unity of title to have it considered one piece of property. Mr. Ritchie stated Section 62-2116 states, where a property meets the requirements on both sides of the road you're considered the owner of two different lots. Mr. Moia stated the land use is already Residential 2. Mr. Ritchie stated if the developer wanted Residential 4, they would need to amend both of them and it would be considered two separate applications because each side of the roadway would be considered a separate lot. Mr. Moia asked if the zoning could be considered under one lot. Mr. Ritchie replied it would be the binding development plan that would limit development on the total property. He stated if it was kept it as Residential 2 and the developer wanted to transfer units, there would still need to be a development rights application, but if they want to keep the units that the east side could develop on the east side, and units on the west side that they could develop on the west side, that would just be part of the zoning application.

Mr. Moia asked if they could have asked for that as part of this process if they wanted to. Mr. Ritchie replied the PUD zoning would allow for some transfer of development rights within the project, but this is a single-family residential zoning request, so that would be a separate action.

Mr. Moia asked how many units per acre could they get under PI on the east side. Mr. Ritchie replied if the use for single-family residence is a permitted with conditions use, it is not a permitted right. The code says if the property was recorded before 2004, that property owner could build one house on the entire.

Ms. Rezanka stated PIP is one unit per acre. Mr. Ritchie stated the zoning would be inconsistent with the comprehensive plan; the zoning has a vacant property, so the current zoning doesn't have a standing on the property. The comprehensive plan has to be looked at first, and when the comprehensive plan says PIP, there is a minimum lot size and there is a minimum Planned Industrial Park tract size. The zonings that would fit in PIP would be a PIP zoning or a GML zoning. The compatible PIP zoning is where there could be one single-family residence on the property to be vested for one residential unit. There is another provision in the permitted with conditions note for PIP that says either the property be owned before 2004, or deed restrictions in place on the property before 2004 to be able to allow residential use.

Ms. Rezanka stated Mr. Goodenow purchased the property in 1983, so it existed prior to 2004. Under 62-1542, it's a conditional use that allows one unit per acre which she believes would be sufficient and it would be hard for the County to deny a conditional use when there is a single-family home of a half-acre to the north of it. She said she is unfamiliar with the transfer of density, but her client doesn't have that density to transfer right now, so it wouldn't have made sense for Mr. Genoni to have applied for that.

Mark Wadsworth called for a vote on the motion as stated and it failed 8:1, with Moia, Glover, Hodgerson, Wadsworth, Carswell, Buchanan, and Theodore voting nay.

Motion by Bruce Moia, seconded by Ben Glover, to approve the request for a Small Scale Comprehensive Plan Amendment (20S.02) to change the Future Land Use designation from PI (Planned Industrial) to RES 2 (Residential 2). The vote passed 8:1, with Ron Bartcher voting nay.

Mr. Moia said for the rezoning request his only concern is the lot size, because it would be very unusual to have a 6,600 square-foot lots in this area. He said there is residential development in the area, but for the most part they are half-acre lots, so 6,600 square feet would be inconsistent. He stated at 31 acres, even if every lot was a half-acre, the developer could probably not get full capacity because of the other infrastructure. The board would need a realistic lot size for the west side and a separate one for the east side, because the east side should be more restrictive. Right now, it's an agricultural grove, and that's one of the worst land use categories for polluting the river because it's untreated, direct discharge.

Ms. Rezanka stated without the engineering, there is no way to know how big the lots can be. She said she doesn't have a problem with one-acre lots on the east side, but she doesn't have the authority to make decisions on the west side, but the board can table the request and Mr. Genoni could be present at the next meeting.

Motion by Bruce Moia, seconded by Peter Filiberto, to table the request for a change of zoning classification from AU (Agricultural Residential) to RU-1-9 (Single-Family Residential), with a BDP (Binding Development Plan) limited to 62 units to the July 6, 2020, Planning and Zoning Board meeting. The vote was unanimous.