

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: APPLICATION FOR RE-ZONING)
BY CRAIG W. PATTERSON AND) Case No. 08-2719
TIMOTHY BUFFKIN)
_____)

RECOMMENDED ORDER

The final hearing in this case was held on August 19, 2008, in Starke, Florida, before Bram D. E. Canter, an Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Applicants:

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For Bradford County:

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STATEMENT OF THE ISSUE

The issue in this case is whether the Bradford County Board of County Commissioners should approve or deny an application to rezone a 12.76-acre parcel located at the southwest corner of U.S. Highway 301 and County Road 18 in unincorporated Bradford County ("the Property") from Residential, (Mixed) Single Family/Mobile Home (RSF/MH-1) to Commercial Intensive (CI).

PRELIMINARY STATEMENT

This matter was referred to the Division of Administrative Hearings on or about June 25, 2008, pursuant to Section 16.6 of the Bradford County Land Development Regulations (LDRs), which provides for the appointment of hearing officers when the Board of County Commissioners ("BOCC") is unable to achieve a quorum, due to recusals, on a matter requiring a quasi-judicial hearing. The hearing officer may be an Administrative Law Judge employed by DOAH.

On May 15, 2006, Petitioners filed an application to rezone the Property from RSF/MH-1 to CI. On July 10, 2006, the County Planning and Zoning Board held a public hearing to consider the re-zoning application and formulate a recommendation to the BOCC. The Planning and Zoning Board voted to recommend denial of the re-zoning application.

On July 20, 2006, the BOCC held a public hearing to consider the re-zoning application, but four of the five Commissioners recused themselves because of ex parte communications they had received regarding the application. The BOCC voted to refer the matter to DOAH to conduct a de novo proceeding and prepare a Recommended Order.

On November 20, 2006, following referral of the matter to DOAH, the Administrative Law Judge assigned to the case issued an Order Closing File, based upon that Administrative Law Judge's

determination that there was no authority in the LDRs for using outside hearing officers under the circumstances. On May 17, 2007, the BOCC amended the LDRs to provide for the referral of quasi-judicial proceedings to a hearing officer where recusals would prevent a quorum of the BOCC.

On April 28, 2008, Petitioners/Applicants filed another petition for hearing with the County, requesting that the matter be referred to DOAH. The County referred the petition to DOAH on June 9, 2008.

On August 19, 2008, a quasi-judicial, public hearing was held before the Administrative Law Judge at which all interested persons were provided an opportunity to speak. All speakers were placed under oath and were subject to cross examination.

Petitioners presented the testimony of their land use expert, Ray Spofford. Petitioners' Exhibits 1 through 25 were admitted into evidence. Five members of the public spoke in opposition to the re-zoning: Ernest Reid, Jeff Marshall, Michael Davis, Randall Scoggin, and Paul Meng. The County took no position as to the merits of the re-zoning, but stipulated that the procedures required by the County's LDRs had been followed. Additionally, County Planning Director Nora Thompson answered questions regarding interpretation of certain definitions contained in the LDRs.

FINDINGS OF FACT

The Parties

1. Petitioners Craig W. Patterson and Timothy Buffkin own the Property and are the applicants for the proposed re-zoning.

2. Bradford County is the local government responsible for determining the land use designation and zoning classification for the Property and has adopted a comprehensive plan and LDRs which it amends from time to time.

The Property

3. The Property is a 12.76-acre parcel located at the intersection of U.S. Highway 301 (US 301) and County Road 18 (CR 18) in unincorporated Bradford County. US 301 is a four-lane divided principal arterial roadway, and CR 18 is a two-lane major collector roadway. The intersection has a traffic light and left turn lanes on US 301. This is the only intersection of a principal arterial road and a major collector road in unincorporated Bradford County.

4. The Property is roughly rectangular, with approximately 1,240 linear feet fronting on US 301 (eastern boundary of the Property) and approximately 450 feet fronting on County Road 18 (northern boundary).

5. The Property is not located within a flood-prone area and has little or no wetlands. Approximately a half mile to the east of the Property is Hampton Lake.

6. The Property is relatively flat. The soils on the property are poorly drained soils, but not indicative of wetlands. The soils and topography of the property do not preclude its development with a system to control stormwater and drainage.

7. Currently, the Property contains one single-family dwelling unit. The Property is bounded on the north by a commercial land use and single-family residences, on the east by vacant and commercial land use, on the south by vacant land, and on the west by vacant land and single-family residences.

Current Zoning and Land Use Designations

8. Before October 2004, the Property was designated on the County's Future Land Use Map (FLUM) as "Residential Low Density," which authorizes residential development at a density of less than or equal to two dwelling units per acre. On October 21, 2004, the County amended the FLUM to re-designate the Property as "Commercial." However, the zoning for the Property remained "Residential, (Mixed) Single Family / Mobile Home (RSF/MH-1). The current zoning does not allow the types of uses appropriate under its Commercial land use designation.

9. The Property is also located within an Urban Development Area which is defined in the Future Land Use Element of the comprehensive plan as an "area to which higher density agricultural, residential (single family, multi-family and mobile homes) and commercial and industrial uses are to be directed."

Within Urban Development Areas, lands classified as "Commercial" are to be used for the "sale, rental and distribution of products or performance of services, as well as public, charter and private elementary, middle and high schools." Certain other uses may also be approved as special exceptions or special permits.

Surrounding Land Uses

10. A portion of the land to the north of the Property and all of the land immediately east are within the municipal boundaries of the City of Hampton. The City of Hampton has zoned property at the US 301/CR 18 intersection as "CG", a commercial designation which includes all of the uses authorized under Bradford County's CI zoning district. Within the past several years, a truck repair and auto parts facility was located and is still operating east of the Property, across US 301. Farther east, but bordering those commercial lands, a residential subdivision (Fox Hollow) is under development.

The Requested Re-zoning

11. The Applicants seek to re-zone the Property to Commercial Intensive (CI). Permitted principal uses and structures allowed within the CI zoning district are consistent with the types of commercial uses listed in the comprehensive plan for the Commercial land use designation, namely retail outlets for the sale of food, home furnishings, vehicles, etc.; service establishments such as barber shops, shoe repair shops,

repair and service garages; medical or dental offices; and wholesaling.

12. The CI zoning district is described as "intended for intensive, highly automotive-oriented uses that require a conspicuous and accessible location convenient to streets carrying large volumes of traffic and shall be located within commercial land use classifications on the [FLUM]." The Property meets the description of a conspicuous and accessible location that is convenient to streets carrying large volumes of traffic.

Concurrency Management Assessment

13. The requested re-zoning is a "straight" re-zoning request, meaning that the re-zoning is not associated with any particular proposed use. Future development of the site will be subject to development plan review and approval, pursuant to Article Fourteen of the County LDRs.

14. A concurrency reservation is not available until final site plan approval. However, at the County's request, the North Central Florida Regional Planning Council (NCFRPC) performed concurrency management assessments of the re-zoning in 2006 and again in 2008. In 2006, the NCFRPC provided the County with nonbinding concurrency determination that the applicable service levels would be met or exceeded for potable water (to be supplied by potable water wells); sanitary sewer (to be served by on-site septic tanks); solid waste; drainage; recreation; affordable housing; and historic resources.

15. As to transportation facilities, the 2006 concurrency management assessment determined that the maximum potential development of the Property would generate 389 trips on US 301 at "PM peak hour." When added to the then-existing PM peak hour trips, based on Florida Department of Transportation (FDOT) traffic count data, US 301 would continue to operate within the adopted level of service (LOS).

16. Between 2006 and 2008, the adopted LOS standard for US 301 was raised from "C" to "B," meaning that the governmental objective was changed to maintain a freer flow of traffic during evening peak traffic. Therefore, despite the reduction of "background" trips on US 301, the 2008 concurrency management assessment determined that maximum development of the Property would cause the new LOS "B" standard to be exceeded.

17. Petitioners presented a traffic analysis based upon more recent FDOT traffic count data than was used by the NCFRPC for its 2008 concurrency management assessment. The newer data showed a further decline in background trips on US 301, so that adding the maximum potential trips from the Property would no longer result in total PM peak hour trips that would exceed the adopted LOS standard. Petitioners' more recent data and analysis is professionally acceptable and should be used.

18. At the time of site plan review for any future development of the Property, an updated concurrency assessment will be required and will be based on the number of trips

generated by the actual proposed use, rather than the trips that would be generated by the maximum development potential of the Property. The assessment will also use the most current FDOT traffic count data.

Compatibility with Surrounding Land Uses

19. The County's Planning and Zoning Board reviewed the application for re-zoning at its July 10, 2006, meeting. It recommended denial of the re-zoning based upon the impact of the proposed change upon living conditions in the neighborhood. As factual support for the recommended denial, the Planning and Zoning Board's report cites "all comments received during the said public hearing and the Concurrency Management Assessment concerning said application."

20. At the August 19, 2008, public hearing held before the Administrative Law Judge, members of the public expressed concern that the CI zoning would be incompatible with the existing residential development to the west, in the Hampton Lake area. Some members of the public also expressed concern about possible future uses of the Property, such as a truck stop or bar.

21. Package stores for the sale of alcoholic beverages, bars, taverns, cocktail lounges, truck stops and automotive service stations can only be approved as special exception uses in the CI zoning district. Special exception uses require approval of the County's Board of Adjustment after a public hearing, upon a finding that granting the special exception use

would promote the "public health, safety, morals, order, comfort, convenience, appearance, propriety or the general welfare." The Board of Adjustment must also determine that the special exception use would be compatible with adjacent properties. A favorable decision here on the requested re-zoning to CI is not a determination that a bar or truck stop on the Property would be compatible with the adjacent residential area.

22. The LDRs impose site use and design criteria for commercial uses that adjoin residential districts. Site plan approval for commercial developments in CI zoning districts requires the consideration of landscape buffers, height restrictions, off-street parking requirements, lot coverage and yard standards. These development conditions are designed to minimize impacts to adjacent residential areas.

Stormwater

23. Some of the speakers at the public hearing expressed concern about stormwater runoff from the Property. One speaker, Michael Davis, testified that stormwater from the Property currently flows across his property. Another expressed concern that runoff from the Property would flow directly to Hampton Lake.

24. On-site stormwater retention facilities would be required for the Property in conjunction with its development. The LDRs require that post-development runoff rates not exceed pre-development conditions. The objective of the required

stormwater runoff controls is to approximate the rate, volume, quality, and timing of stormwater runoff that occurred under the site's unimproved or existing state. There is no basis, at this stage of analysis, to determine that the County's stormwater regulations are not adequate to prevent adverse stormwater impacts to adjacent residences or to Hampton Lake.

Traffic on CR 18

25. Several speakers expressed concerns regarding increased traffic on CR 18. Petitioners conducted a site-specific traffic count for CR 18 east of US 301 and determined that the peak hour trips are now 131. The capacity for CR 18 is approximately 600. Based upon the total of 389 additional trips generated by the maximum potential development of the Property (on either US 301 or CR 18), the adopted LOS standard for CR 18 would not be exceeded.

26. Petitioners demonstrated that the proposed re-zoning is consistent with the comprehensive plan and the LDRs.

CONCLUSIONS OF LAW

27. DOAH has jurisdiction of this matter, pursuant to Section 16.6 of the Bradford County LDRs.

28. The Administrative Law Judge is to conduct a de novo public hearing and issue a recommended order stating whether the BOCC should approve or deny, in whole or in part, the application for re-zoning.

29. Citizen testimony in a zoning matter constitutes competent substantial evidence, provided that it is fact-based. Miami-Dade County v. Walberg, 739 So. 2d 115, 117 (Fla. 3d DCA 1999), citing Metropolitan Dade County v. Blumenthal, 675 So. 2d 598, 607 (Fla. 3d DCA 1995), rev. dismissed, 680 So. 2d 421 (Fla. 1996). However, general statements of opposition are not sufficient to support a finding of fact.

30. Petitioners have the burden to prove that the re-zoning is consistent with the comprehensive plan and complies with all procedural requirements of the LDRs. See Board of County Com'rs v. Saepler, 627 So. 2d 469, 476 (Fla. 1993). The burden then shifts to an opponent of the re-zoning to demonstrate that denial of the re-zoning accomplishes a legitimate public purpose. Id.

31. The policy decision regarding whether the Property should be developed with commercial uses was made by the County in 2004 when it changed the FLUM designation of the Property to Commercial. The current zoning of the Property is inconsistent with that FLUM designation.

32. Petitioners proved by a preponderance of the evidence that the requested CI zoning is consistent with the comprehensive plan and that all procedural requirements of the LDRs have been met.

33. The Planning and Zoning Board issued a report and recommendation on the re-zoning application based on its consideration of 16 criteria in Section 16.2.2 of the LDRs. The

Planning and Zoning Board recommended denial based on one criterion: "The impact of the proposed change upon living conditions in the neighborhood." However, based on the record created at the public hearing before the Administrative Law Judge, the proposed re-zoning is appropriate for a parcel located at a major intersection, and there is no basis in the record for concluding that the re-zoning would cause impacts upon living conditions in the neighborhood that are greater than the reasonable and unavoidable impacts associated with mixed uses in urbanizing areas.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Bradford County Board of County Commissioners approve the requested re-zoning.

DONE AND ENTERED this 18th day of September, 2008, in Tallahassee, Leon County, Florida.



BRAM D. E. CANTER
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Filed with the Clerk of the
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this 18th day of September, 2008.

COPIES FURNISHED:

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