

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

WOLF CREEK HOMEOWNERS
ASSOCIATION, INC.; J.P. LEPEZ;
CAROL SMITH; MICHAEL URBAN;
AND ELIZABETH URBAN,

Case No. 16-1278

Petitioners,

vs.

LEON COUNTY DEPARTMENT OF
DEVELOPMENT SUPPORT AND
ENVIRONMENTAL MANAGEMENT AND
FLORESTA, LLC,

Respondents.

RECOMMENDED ORDER

This case was heard by D. R. Alexander, the assigned
Administrative Law Judge of the Division of Administrative
Hearings (DOAH), on April 27, 2016, in Tallahassee, Florida.

APPEARANCES

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STATEMENT OF THE ISSUE

The issue is whether Leon County Project ID No. LSP160001, conditionally approved on February 5, 2016, is consistent with the Leon County Land Development Code (Code) and the Tallahassee-Leon County 2030 Comprehensive Plan (Plan).

PRELIMINARY STATEMENT

On February 5, 2016, the Director of the Department of Development Support and Environmental Management (Department) issued a letter approving, with conditions, a site and development plan submitted by Floresta, LLC (Floresta), which would allow the construction of the first phase of a single-family residential (condominium) project, consisting of 24 units, to be developed on 4.09 acres of the total parcel on Blountstown Highway just west of Capital Circle Northwest, Leon County (County).

Petitioners, Wolf Creek Homeowners Association, Inc. (Association), an association of homeowners in a subdivision adjacent to the project, and J.P. Lepez, Carol Smith, Michael Urban, and Elizabeth Urban, who reside adjacent to or near the project, timely filed their Petition for Formal Proceeding (Petition) contending that the project was inconsistent with

certain provisions within the Code and Plan. Pursuant to a contract, the County transmitted the matter to DOAH to appoint a special master to conduct a quasi-judicial hearing.

At the hearing, the parties agreed that no witnesses would be called by any party, and that the matter would be submitted on a stipulated record consisting of County Exhibits 1, 2, 3a through 3g, 4 through 7, 8a through 8e, and 9 through 19. Those exhibits have been accepted in evidence. Exhibits 1 through 18 make up the original application file, while Exhibit 19 is a copy of speaker cards. The parties have also stipulated to certain facts in their Pre-hearing Stipulation. Pursuant to section 10-7.414(J)(v)d. of the Code, six members of the public offered comments, all in opposition to the project. Official recognition was taken of those Code and Plan provisions that are cited in the Petition or relied upon by the parties in their post-hearing filings. As required by section 10-7.414(J)(viii) of the Code, a copy of this Recommended Order is being sent to all members of the public who participated at the hearing.

A transcript of the hearing was not prepared. Petitioners and the County filed proposed recommended orders (PROs), which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

A. The Parties

1. Floresta is a limited liability corporation that proposes to develop property located at 5044 Blountstown Highway (State Road 20), approximately one-half mile west of the intersection of Capital Circle Northwest and State Road 20.

2. The Association is comprised of residents of the Wolf Creek Subdivision (Subdivision), and numbers around 200 residential town homes on State Road 20 just west of the proposed development. The parties agree that a substantial number of members of the Association would otherwise have standing to bring this action in their own right.

3. J.P. Lepez lives in the Subdivision directly adjacent to, and west of, the development proposed by Floresta.

4. Michael and Elizabeth Urban reside in Deer Tree Hills Condominium Community adjacent to, and west of, the Subdivision, and in close proximity to the proposed development.

5. Carol Smith resides just south of Deer Tree Hills Condominium Community on the opposite side of Blountstown Highway, and in close proximity to the proposed development.

B. The Approval Process

6. On January 12, 2016, the County received a site and development plan application filed by Floresta regarding a proposed project called the Residential Condominiums on

Blountstown Highway, a principal arterial roadway. The application consisted of an application; a permitted use verification; an applicant's affidavit of ownership and designation of agent; a school impact analysis form; an application for concurrency determination; a natural features inventory approval; a site plan narrative; a site and development plan; a concept utility plan; a concept water and sewer plan; and fire flow calculations. The applicant also submitted an environmental impact analysis application, consisting of the application, an environmental impact analysis narrative, a proposed conservation easement, a conservation easement management and maintenance plan, a stormwater analysis, and an environmental impact analysis plan. See Ex. 3a.-g., 4, 8a.-e., 9, 13, 14, and 16.

7. The project is Phase I of a multi-phase development. Floresta proposes to develop around 4.09 acres of the total 33.52-acre parcel. As explained in more detail in the site plan narrative prepared by Floresta's consultant on January 13, 2016:

The residential condominium project is limited to the front +/- 4 acres along Blountstown Highway and will include the entry drive with guest parking, a stormwater pond and 24 residential units.

Each unit is a small footprint unit for low-income residents. It is anticipated that not all residents will rely upon a vehicle for transportation and therefore not all units will have driveways. Units will range

in size, but will be less than 500 gsf [gross square feet], single story dwellings. The units will be placed within the identified area and located among the existing trees of the property to retain a wooded development. Future phases of construction may include community buildings and additional units based on market conditions.

Ex. 3g. Because of the small size of the units -- gross square footage represents the overall footprint of the building -- they were referred to at times by members of the public as "tiny homes." Petitioners' PRO alleges that information obtained at a public meeting conducted by the County on January 27, 2016, revealed that the project will in all likelihood function as a homeless shelter. While no County or Floresta representative testified to confirm or deny this fact, testimony by public commenters suggest this may be true, and their testimony was not challenged by Respondents at hearing.

8. The project is located on a parcel zoned R-3, Single- and Two-Family Residential. It is designated Urban Residential 2 on the Future Land Use Map of the Plan. The R-3 zoning and Urban Residential 2 Future Land Use category allow for a wide range of single-family dwelling units, including single-family detached dwellings, single-family attached dwellings, two-family dwellings, and zero-lot line single-family detached dwellings. See § 10-6.637, L.D.C.; Land Use Element Policy 2.2.24(L). The project consists of

small condominium units as single-family detached dwellings. These are a permitted use in the R-3 zoning district and in the Urban Residential 2 Future Land Use category.

9. Because the project is located on a parcel zoned R-3 and consists of 24 units, it qualifies for a Type "A" review under section 10-7.402 of the Code.

10. Under Type A review, an applicant can select from two development review tracks. See § 10-7.402(5), L.D.C. The project was reviewed under the concept plan approval track. This review track option is intended to expedite the review process by reducing the requirement for permitting-level information while providing assurance that the development entitlements reflected on the concept plan can be realized on the subject site. See § 10-7.402(5)(a), L.D.C. An applicant is still required to complete the environmental permitting process for the project prior to construction. A point of entry is available to third parties to challenge any state, but not County, environmental permit required for the project.

11. Under Type A review, an Application Review Committee (Committee), composed of City and County technical staff, reviews the site and development plan application for compliance with the applicable regulations. See § 10-7.403(e), L.D.C. The Committee then renders a recommendation to the County Administrator or designee recommending approval, approval with

conditions, or denial of the application. Id. The County Administrator or designee renders a Written Preliminary Decision. Id. That decision becomes final unless an appeal is timely filed. See § 10-7.403(h), L.D.C. For this project, the County's Administrator's designee is the Director of the Department.

12. On January 27, 2016, the County held a noticed Application Review Meeting, whereby the Committee convened to review the application for the project and receive public comment. Pursuant to section 10-7.403(g), notice of the public hearing was mailed at least seven calendar days prior to the meeting to all property owners within 600 feet of the proposed project. The notice euphemistically described the project as a 24-unit "Residential Condominium Project." Although Petitioners assert the notice was misleading, they attended the January 27 meeting, and they were given an opportunity to present witnesses, introduce evidence, and to otherwise participate in the instant case. No evidence of prejudice was shown.

13. At the meeting, the Committee presented a staff report, which included memoranda from the Tallahassee-Leon County Planning Department, Leon County Environmental Services Department, City of Tallahassee Utilities Department, City of Tallahassee Fire Department, and Leon County Public Works Department. See Ex. 7. The staff report and each memorandum

included comments regarding deficiencies in the application that the applicant must address in order for the project to be consistent with the Code and Plan.

14. County and City staff determined, however, that the deficiencies were "minor" in nature and agreed to recommend approval of the site and development plan with the condition that the applicant must correct the deficiencies identified in the staff report. See § 10-7.403(f), L.D.C., which allows approval of a Type A application, with conditions. Because they considered the deficiencies to be minor, the staff took the position they did not require a substantial, or even moderate, alteration in the layout or geometry of the site plan. Some of the deficiencies are related to notes that are required to be added to the site plan simply for clarification purposes.

15. On February 2, 2016, the County, through a Department Planner II, issued a Notice of Application Deficiency Letter (Notice). See Ex. 2. The Notice outlined many of the conditions raised in the staff report. The Notice did not impose any additional conditions.

16. On February 5, 2016, the Director of the Department issued a Written Preliminary Decision, approving the project subject to the conditions outlined in the staff report presented at the meeting on January 27, 2016. See Ex. 1. The approval required the applicant to submit a revised site and development

plan demonstrating compliance with all conditions within 90 days, or by May 6, 2016. It further cautioned that unless a timely extension was requested by the applicant, a failure to comply with that requirement by the May 6 deadline would render the approval expired. The revised site and development plan was not made a part of the record, and the staff's final compliance determination was not disclosed at hearing. Under the County's approval process, an administrative challenge to the staff's final determination is not available to third parties.

17. On February 17, 2016, Petitioners timely filed a Notice of Intent to File a Petition for Formal Proceedings Before a Hearing Officer. See Ex. 17.

18. On March 7, 2016, Petitioners timely filed their Petition for Formal Proceeding (Petition). Except for one ground voluntarily dismissed at hearing, the Petition alleged that the application was inconsistent with the Code and Plan for the same reasons cited in the staff report dated January 27, 2016, and reiterated in the Notice issued on February 2, 2016.

C. Petitioners' Objections

19. Petitioners' PRO asserts generally that any one of the conditions noted by the staff constitutes grounds for denial of the application. However, based upon the exhibits and testimony of members of the public, in their PRO, they focus on only four items regarding the project.

i. Setbacks

20. Petitioners first allege that the project is inconsistent with development standards for the R-3 zoning district. See § 10-6.637, L.D.C. Development standards for single-family detached dwellings in zoning district R-3 are found in the site data table of section 10-6.637 and require a minimum lot or site size of 5,000 square feet (or 0.11 acres); minimum lot widths of 50 feet; minimum lot depths of 100 feet; minimum front setbacks of 20 feet; minimum side-interior lot setbacks of 7.5 feet on each side; or any combination of setbacks that equals at least 15 feet, provided that no setback shall be less than five feet; minimum side-corner lot setbacks of 15 feet; minimum rear lot setbacks of 25 feet; and no building exceeding three stories in height.

21. In assessing whether the applicant complied with these standards, the staff made the following comments on the project's compliance with setbacks and building height and size requirements:

Finding #4: The project appears to meet the applicable building setbacks, height and size requirements; however, please annotate the height of the building (in feet) in the site data table alongside the minimal requirements. Please clarify that the setbacks provided in the site data table are the perimeter setbacks for the development. The applicant will need to also provide the proposed setback between structures to

ensure compliance with the Florida Building Code requirements.

Ex. 7, p. 000004. This comment became a condition of approval in the Department's Notice to ensure that Floresta was meeting those requirements.

22. As a condition, Floresta was required, no later than May 6, 2016, to "clarify" that the setbacks in the site data table are the perimeter setbacks for the development and provide the proposed setback for each structure. Also, the County relies on note 14 of Sheet 6.0 of the plan, which indicates a front setback of 20 feet, a side interior setback of 15 feet, and a rear setback of 25 feet. See Ex. 4. These distances satisfy the Code requirements. Because the units are one-story in height, they do not exceed the three-story limitation. As an added condition, the County required Floresta to provide the setbacks between each structure.

23. Petitioners contend that the County failed to fully apply the R-3 zoning district's building standards for single-family detached dwellings found in section 10-6.637. Specifically, they assert that the 24 units are listed on the site plan as having a total area of approximately 39,000 square feet, or 1,625 square feet per dwelling. They also contend that the lot geometry is not shown and therefore the site and development plan is not consistent with the minimum lot widths,

depths, and setbacks required by the Code. Even if lot geometry were shown, they contend that the 39,000 square feet allotted is insufficient to provide for lots for 24 single-family detached dwellings that meet the minimum required lot width of 50 feet and lot depth of 100 feet.

24. The project involves a condominium development with the creation of individual units on a single lot. See Ex. 3g., p. 4. Therefore, the County asserts that the minimum lot sizes found in section 10-6.637 are inapplicable. This is a reasonable interpretation of the Code. Also, due to a typographical error in the staff report, it initially appeared that rear setbacks were not provided. However, the rear setbacks are actually shown on Note 14 of Sheet 6.0 of the site plan. See Ex. 4. Subject to the above conditions, the project is consistent with the requirements of the Code.

ii. Parking Requirements

25. Petitioners also contend that the project fails to comply with parking requirements, as the project will have 24 units, but only 18 regular parking spaces and two handicapped parking spaces are proposed. Section 10-7.545 requires that developments in the R-3 zoning district have between 85 percent and 100 percent of the parking standard in schedule 6-2 of the section. Because the schedule requires that conventional

detached homes have 1.5 parking spaces per unit, Petitioners assert that 30.6 parking spaces are required.

26. The applicant does not anticipate that all residents will have automobiles. Because the project will serve low-income residents, this is a logical assumption. The applicant also proposes grass parking to be located closer to each unit. Section 10-7.545(a) allows a deviation from the range of required parking established in Schedule 6-2 upon approval or an approval with conditions from the Parking Standards Committee (Committee). See Ex. 1, p. 000007. That Committee is comprised of the Planning Director, the Department Director, and the Public Works Director, or their designees. As a condition, the applicant will be required to secure approval from the Committee before final approval for the project is given. Id. Subject to Floresta's compliance with this condition, which cannot be administratively challenged by Petitioners, the site plan is consistent with the Code.

iii. Transportation Infrastructure

27. Petitioners contend that there is a lack of adequate transportation infrastructure in the area. They also point out that there are no sidewalks on State Road 20, and there is no bus stop adjacent to the project. Therefore, residents or guests in the project will have to walk east along State Road 20 in order to find a bus stop.

28. As a condition of approval, the County required the applicant to extend a stub out from the parking lot to the property line for future interconnection. See Ex. 1, p. 0000010. Mobility Element 1.4.1 requires vehicular, pedestrian, and bicycle interconnection between adjacent, compatible development. The applicant's site plan includes sidewalks within and connecting to the facilities along State Road 20. See Ex. 4; Ex. 1, p. 0000010. Also, a Preliminary Certificate of Concurrence was issued for the project, and a final certificate will be issued upon final site plan approval. See Ex. 1, p. 000005. Subject to compliance with these conditions, the site plan is consistent with the Code.

iv. Compatibility

29. For obvious reasons, Petitioners' greatest concern is the intrusion of former homeless persons into the units immediately adjacent to their properties. (By definition, once a person resides in a home, he/she is no longer homeless.) On this issue, they assert that the project is inconsistent with section 10-7.505, which requires that each development shall be designed to be as compatible as practical with nearby development. Petitioners argue that the tiny house community being proposed is not compatible with the "typical" single-family homes found around the project site.

30. The parcel on the west side of the project is also zoned R-3. The parcels on the east side of the project are zoned OA-1 (Airport Vicinity District) and CP (Commercial Parkway District). The OA-1 district does not permit residential uses due to the noise levels from aircraft exceeding the thresholds identified by the Federal Aviation Administration and the State as being compatible with certain land use types. See § 10-6.645, L.D.C. The CP district permits general commercial and community facilities. See § 10-6.649, L.D.C.

31. The project proposes a Type "D" 50-foot buffer on both the eastern and western borders of the property. A Type "D" buffer is the most restrictive buffer provided in the Code. See § 10-7.522, L.D.C.

32. Respondents agree that the project is "small footprint housing for low-income residents." However, there is no prohibition in the Code that restricts low-income housing from occurring in any residential zoning district. Also, the Plan and Code do not regulate the size of dwelling units, outside of minimum housing standards found in the Florida Building Code. While Petitioners' objections are genuine and well-intentioned, there is nothing in the existing Code or Plan that prevents the introduction of extremely small low-income housing units into a residential district, assuming all other requirements are met. The project is compatible with the surrounding area.

D. Public Comments

33. Six members of the public presented comments at the hearing. The public commenters either live in or own typical single-family homes adjacent to or near the project, or operate a commercial business near the project. The undersigned has rejected the County's assertion in its PRO that the comments should be disregarded because a transcript was not prepared.

34. One commenter, who owns a business on State Road 20 less than a quarter mile from the project, is concerned that State Road 20 is inadequate to handle more traffic. He also is concerned with the tiny house development feature of the project and noted that one-half of the project is located within the flood zone.

35. Another commenter who resides in the Subdivision with her disabled daughter expressed concern that low-income housing units occupied by homeless persons sent from the Kearney Center, a nearby homeless shelter, will result in a substantial loss in value to her property and increase safety issues for her daughter who remains home alone during the day while she is at work. Like other commenters, she complained that State Road 20 is already overburdened with traffic without adding another development to the area.

36. A third commenter is also concerned with the level of traffic on State Road 20. During morning rush hours, he cannot

turn left onto State Road 20 to go into town and fears the project will cause a further deterioration of traffic conditions.

37. A fourth commenter, who lives in another county, has owned a condominium in the Subdivision since 2007, first used by her daughter while going to college, and now rented. She complained that the notice of the public meeting was misleading as it indicated a condominium project would be built on the parcel, and not tiny homes for former homeless persons. She is concerned that the current level of traffic on State Road 20 will be exacerbated, and that the value of her condominium will be negatively impacted.

38. A fifth commenter who resides in the Subdivision complained that the notice of the public meeting was misleading and vague, and led her to believe that a traditional or multi-story condominium project would be constructed on the parcel, rather than a cluster of tiny homes. She also expressed concerns that a large, low-income population in the neighborhood will raise safety issues for existing residents.

39. The final commenter resides near the project and owns a bail bond business on West Pensacola Street, a mile or so east of the project site and near the Kearney Center. Based upon her experience operating a bail bond business near the Kearney Center, she testified that the number of arrests in that area of

town has "skyrocketed" since the shelter opened. She added that there has been an adverse impact on businesses located near the Kearney Center because its residents simply hang out in the area during the day. She fears that an influx of former homeless persons into the tiny homes will lead to a similar increase in the crime rate around the project site. The commenter also serves as a part-time volunteer at the Kearney Center several days a week and noted that no background checks, identification checks, or drug checks are performed on persons entering the shelter. She is concerned that no checks will be performed on the persons who will occupy the tiny homes. She added that many of the shelter residents are drug addicts and do not want to work. If they move into the tiny homes, she believes they will simply hang around the project site and create safety issues for residents in the neighboring properties. She intends to sell her home if the project is approved.

CONCLUSIONS OF LAW

40. There is no dispute by the parties that all Petitioners have standing to file this appeal.

41. The burden is on the landowner who is seeking site plan approval to demonstrate that the application complies with the reasonable procedural requirements of the applicable ordinance and that the use sought is consistent with the applicable comprehensive plan and code requirements. See, e.g.,

Alvey v. City of North Miami Bch., 41 Fla. L. Weekly D1028 (Fla. 3d DCA, April 27, 2016), citing Bd. of Cnty. Comm'rs of Brevard Cnty. v. Snyder, 627 So. 2d 469, 472 (Fla. 1993). As such, Floresta has the burden of demonstrating that the project was properly approved with conditions, and that its project complies with all applicable requirements. Fla. Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778, 787 (Fla. 1st DCA 1981).

42. Section 10-7.407 provides that the County shall determine the following in deciding whether to approve, approve with conditions, or deny a site and development plan application:

- a. Whether the applicable zoning standards and requirements in Article VI of Code have been met;
- b. Whether the applicable provisions of the Environmental Management Act in Article IV of the Code have been met; and
- c. Whether the requirements of chapter 10 of the Code and other applicable regulations or ordinances which impose specific requirements on-site and development plans and development have been met.

43. Pursuant to section 10-7.108, all proposed development must be consistent with the adopted Plan.

44. The County is permitted to approve a site and development plan with conditions pursuant to section 10-7.403(f). There is no evidence that the conditions imposed by

the County are inadequate or will not correct all deficiencies in the original application.

45. A preponderance of the evidence demonstrates that upon satisfaction of all conditions in the Department's Written Preliminary Decision dated February 5, 2016, the project is consistent with and meets all zoning, Code, and Plan requirements and should be approved.

RECOMMENDATION

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

RECOMMENDED that the Leon County Board of County Commissioners enter a final order approving the project, subject to confirming that the applicant's revised site plan satisfies all conditions imposed by the County on February 5, 2016.

DONE AND ENTERED this 25th day of May, 2016, in Tallahassee, Leon County, Florida.



D. R. ALEXANDER
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Filed with the Clerk of the
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this 25th day of May, 2016.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within ten calendar days of the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the clerk of the Board of County Commissioners. See § 10.7.414(K), Land Development Code.