

# AGENDA ITEM VII.

**PUBLIC MEETING OF THE DESOTO COUNTY PLANNING COMMISSION  
HELD ON TUESDAY, October 3rd, 2017 AT 5:30 PM  
IN THE COUNTY COMMISSIONERS' MEETING ROOM  
ARCADIA, FLORIDA**

**I. CALL TO ORDER**

Chairperson William Martin called the October 3<sup>rd</sup>, 2017 Commission Meeting during the Board of Adjustments at 5:30 pm.

**II. PLEDGE OF ALLEGIANCE**

Chairperson Martin led the Planning Commission in the pledge of allegiance.

**III. ROLL CALL**

Chairperson Martin requested Ms. McEwen call the roll and the following persons were in attendance:

Members in Attendance

Chairperson, William "Bill" Martin  
Vice Chairperson, Larry Hudson  
Commissioner, Judy Kirkpatrick  
Commissioner, Melinda Masters  
Commissioner, Mike Provau  
Commissioner, Mel Jackson

Others in Attendance

Development Director, Earl R. Hahn  
Planning Technician, Kathy Heitman  
Admin. Assistant, Stevee McEwen  
County Attorney Don Conn

**IV. SET OR AMEND THE AGENDA**

Chairperson Martin requested a motion to approve or amend the agenda. Commissioner Provau moved to approve, which motion was seconded by Commissioner Jackson, and which motion was approved unanimously.

**V. PUBLIC FORUM FOR NON-AGENDA ITEMS**

Chairperson Martin opened the floor to the public so that they could address the Planning Commission on any items that was not on this evening's agenda. There being no request to address the Planning Commission, Chairman Martin closed the floor for non-agenda items.

**VI. PROOF OF PUBLICATION**

Chairperson Martin requested a motion to approve filing the proof of publication. Commissioner Kirkpatrick moved to approve and file proof of publication. Vice Chairperson Hudson seconded the motion, and the motion was approved unanimously.

# AGENDA ITEM VII.

## VII. PLANNING COMMISSION MEETING MINUTES

Chairperson Martin requested a motion to approve or amend the Planning Commission meeting minutes. Commissioner Provau moved to approve the August 10, 2017 minutes, which motion was seconded by Commissioner Masters, and approved unanimously.

## VIII. DEVELOPMENT DIRECTOR COMMENTS

Development Director Hahn stated he had no comments this evening.

## IX. ACTION ITEMS

- A. *An ordinance of the DeSoto County Board of County Commissioners amending the Code of Ordinances Chapter 20, Land Development Regulations (LDR), and pertaining to banquet and rental halls (LDR 2017-02); amending LDR Article II, Zoning Districts, Section 20-129 to allow within the Residential Mixed Use district agri-tourism related development and banquet hall as a permitted use under certain circumstances; amending Section 20-137 to allow within the Commercial General (CG) zoning district a banquet hall as a permitted use and a rental hall as a special exception use; amending Section 20-1650 and adding definitions for agri-tourism related development, banquet hall, and rental hall; and providing for codification, conflicts, severability, and an effective date. @ \**

Development Director Hahn read the title of the ordinance into the record and made a Power Point presentation summarizing the information contained in the Development Review Report. Director Hahn concluded his presentation and inquired whether the Planning Commission had any questions on the application.

Commissioner Masters inquired how bona fide agricultural activities are determined. Development Director Earl Hahn deferred the response to County Attorney Don Conn who explained that state law empowers the Property Appraiser to make that determination.

Commissioner Kirkpatrick questioned if the adjoining property owners were notified. Director Hahn explained that it is a text amendment and not a site specific amendment. Thus, t property owners would not have to be notified for this type of application. Notwithstanding, the Ordinance was published in a newspaper of general circulation within DeSoto County.

There being no further questions, Chairperson Martin closed the hearing and requested a motion on the application. Vice-Chairperson Hudson moved to

## AGENDA ITEM VII.

approve the motion. Commissioner Provau moved to second the motion, and the motion carried unanimously.

Attorney Don Conn explained that the next three items on the agenda are quasi-judicial hearings opposed to the first item on the agenda which was a text amendment not specified for a specific piece of property. The next three items are for a specific piece of property. He explained that if anyone would like to speak on any of the items, they would need to stand at that time and be administered under oath. Ms. McEwen administered the oath.

- B. *A Resolution of the Desoto County Board of County Commissioners granting to Applicant Jennette Behnke, doing business as (Unavailable) a special exception use development order with conditions to allow within the Commercial Neighborhood (CN) zoning district a pool hall and on-premises sales and consumption of alcoholic beverages (beer and wine) at 5990 NE Cubitis Avenue, Arcadia, Florida, the Property Identification Number being 08-37-25-0000-0017-0000; incorporating the whereas clauses; incorporating the Development Department Report; and providing an effective date.*

Development Director read the title of the resolution into the record and gave a Power Point presentation summarizing the information contained in the Development Review Report. Director Hahn stated that the application is in accordance with eight of the twelve conditions of approval provided that conditions are imposed to ensure compliance. The conditions included paving existing parking spaces, providing a loading space, adding a gate to the dumpster enclosure, securing the certificate of use, posting signs that state no gambling and no drugs, along with a no trespassing sign. Based on the findings, the Director recommended the application be approved with conditions. Director Hahn indicated he was ready to entertain any questions the Planning Commission had on the application.

Vice Chairperson Hudson questioned whether the Board has the authority to close the business down once it is approved. Director Hahn stated that due process of law requires that the Board hold a public hearing to determine what action, if any, should be taken on the application. He noted that actions could include: doing nothing, amending the conditions, suspending operation of the business for a number of days, or revoking the approval.

Vice Chairperson Hudson asked if the building was occupied or unoccupied. Director Hahn stated it was unoccupied. Vice Chairperson Hudson noted that pool halls serving alcohol have a reputation of being boisterous and he

## **AGENDA ITEM VII.**

expressed concern how noise would be controlled so that it doesn't adversely affect the surrounding areas.

Director Hahn explained that the Development Review Report noted that the activity that would generate the loudest sounds from the business is indoor live entertainment. The report found that a typical band would generate musical sounds of about 110 decibels but that sound would degrade to less than 70 decibels at a distance of 300 feet. Normal conversation at a distance of 3 to 5 feet operates between 60 and 70 decibels. Director Hahn noted that although DeSoto County does not establish any maximum noise level, a typical noise ordinance establishes a 65 decibel maximum when abutting non-residential property and a 55 decibel level when abutting residential property. He noted that decibel levels would be substantially lower since the music will occur indoors. Moreover, indoor live entertainment would not occur daily.

Commissioner Masters inquired what notice about the special exception use application was given to the park residents across the street. Planning Technician Kathy Heitman explained that the LDR requires the park office be notified but it is the responsibility of the office to notify the individual occupants. In addition to mailed notice, the LDR requires a sign be posted on the property and that the public hearing dates on the application be published in the newspaper.

Commissioner Masters questioned how the 70 person maximum occupancy was determined. Director Hahn explained that the application contained that number but the actual number will be determined by subsequent approval agencies. The County's Building and Public Safety Officials will establish a maximum occupancy but the Florida Bureau of Alcohol and Tobacco could establish an even lower number.

Commissioner Masters pointed out that if the maximum is 70 people and 100 people show up, a number of people will be left standing outside in the parking lot waiting to get inside. Director Hahn noted that it would be the bouncers responsibility to monitor the number of people inside the building as well as to ensure outdoor noise levels are kept to a minimum.

Commissioner Masters questioned if outdoor live entertainment will be allowed. Director Hahn responded that outdoor live entertainment would not be allowed absent some subsequent approval.

## **AGENDA ITEM VII.**

Commissioner Masters inquired about the Power Point slide showing the proximity of the recreational vehicles to the site. Director Hahn responded that from the front door of the business to the nearest recreational vehicle, the distance exceeds 300 feet. He noted again the noise volumes from the indoor live entertainment would be less than 70 decibels.

Commissioner Masters inquired whether any type of food will be offered in the bar. Director Hahn stated that bars typically offer snacks and not food. In addition, if the owner desired to serve food, no further approvals would be necessary because a restaurant is a permitted use in the CN zoning district.

Commissioner Masters questioned whether a food truck would be allowed to operate on the site. Director Hahn responded that DeSoto County has no regulations governing food trucks.

Commissioner Masters explained that she is trying to get a sense of the activities that may occur in the parking lot. Director Hahn added that if she had concern about activities occurring in the parking lot, she could offer a condition to address that concern. In addition, Director Hahn noted that condition 8 was added to address unforeseen circumstances. It provides that if 3 or more verified complaints are received from three or more different addresses, that the Board can hold a public hearing to reconsider the application.

Vice Chairperson Hudson inquired about the maximum occupancy. He questioned whether patrons who were temporarily refused entry due to maximum occupancy being reached, whether patrons can alcohol in the parking lot? Director Hahn responded the Desoto County Code of Ordinance prohibits outdoor consumption of alcoholic beverages. There being no further question of the Development Director, Chairperson Martin requested the applicant to come forward make her presentation.

Applicant Jennette Behnke, who gave her address as 1073 NE Brownville St, addressed the Commissioner's concerns about the business operations. First, she explained that she owned the Longhorn Saloon & Sports Bar, Inc., for six years and that she operated a respectful business. Second, she stated she had zero tolerance for fighting, drugs, and other shenanigans. Ms. Behnke noted that within 6 months of first operating her business, she already had banned a number of persons from entering her establishment due to poor behavior. Third, with regard to noise, she offered to install a barrier on the west side of the property to buffer the sound. She proposed a 6 to 7 feet high buffer. Finally, Ms. Behnke stated that the community was supportive of the business. She noted

## **AGENDA ITEM VII.**

that some residents already had inquired about when her business would be opening and that others even requested that the business provide for golf cart parking.

Ms. Behnke explained that the majority of the indoor live entertainment would consist of karaoke and a disc jockey because bands are expensive – they charge between \$500 and \$600 per evening. Consequently, bands would be restricted to a few times per year. With regard to the maximum occupancy, Ms. Behnke stated she met with the Building Official and the Fire Inspector and they determined that a maximum occupancy of 70± people was a good estimate of the occupancy, the final determination being made upon filing for the Certificate of Occupancy. She noted the cameras have been installed and are currently operating, four inside and four outside. The building has been pressure washed and cleaned. Upon the conclusion of her presentation, Ms. Behnke stated she would entertain any questions the Commission had on her application.

Vice Chairperson Hudson inquired how the 70 person maximum occupancy would be enforced. Ms. Behnke suggested that although enforcement lies with the Fire Inspector, she ultimately would be responsible for ensuring compliance. She did not want any liability associated with over occupancy and the bouncer would help her to maintain conformance. There being no further questions, Chairperson Martin opened the floor to the public to give their comments and questions.

Thomas Whitmore, who gave his address as 6168 NE Cubitis Ave, explained that he lives north of the site and he had several concerns about the business. First, he noted that there are three mobile home parks in the community (i.e., Little Willies RV Resort, Cross-Creek RV Resort, and Shady Oaks of Arcadia, Inc. Mobile Home Park) and that there are residents that walk their dog, ride their bikes, and ride their golf carts down NE Cubitis Avenue. He suggested the business would increase traffic along that roadway, thereby creating a dangerous condition for the residents. Second, he questions whether the location of the business was suitable given the number of places of worship in the vicinity. Third, Mr. Whitmore suggested littering will increase as well. Fourth, he stated that the parking lot does not seem large enough to accommodate the number of spaces required by 70 persons. Fifth, Mr. Whitmore expressed his concern about liability, that is, if someone stumbles into his yard and his dog bites them, would he be liable for it? Based on those factors, it was Mr. Whitmore's opinion that the business was not suitable given the surrounding environment.

## **AGENDA ITEM VII.**

Commissioner Masters inquired about the access to the business. Director Hahn stated that there are two different ways to access the property: off of NE Cubitis Avenue and CR 660.

Vice Chairperson Hudson requested the Chairman to allow the Applicant to be questioned again, which request was approved. Vice Chairperson Hudson inquired whether it was her intention to close the NE Cubitis Avenue as a way to mitigate noise. Ms. Behnke responded she was not going to be closing any of the entrances. Instead, she intended to construct a fence along the east side of NE Cubitis Avenue just south of the accessway. She noted the possibility of extending the fence along the south property line to help buffer noise.

Mr. Thomas Whitmore requested permission to address the Commission again and Chairperson Martin granted such permission. He shared an incident that happened in the past when the applicant was at Longhorn. He explained that there were people on motorcycles doing burnouts in the parking lot. He questioned if it would happen again at the new location.

Ms. Jennette Behnke approached the podium to explain the past incident stated by Mr. Whitmore. She explained that she was sponsoring a charity event and that the persons riding the motorcycles were stunt drivers. There being no further questions, Chairperson Martin closed the public hearing and requested the Commission begin their deliberations.

Commissioner Provau commented he knew the applicant and that problems would be unlikely but he was concerned what would happen if the business were sold to another person. Chairperson Martin asked Director Hahn whether the special exception use approval could be transferred. Director Hahn explained that the LDR places no restriction on the transferability of approvals but the Commission could impose a condition limiting the approval to a single person. Director Hahn further noted that if a new owner failed to properly operate and the business such that it generated complaints, condition 8 would allow the application approval to be revisited. Commissioner Masters stated that an abandoned building is depressing, creates conditions favorable to vandalism, and that a new business could create favorable conditions. Although she had some reservations about the business and its location, she stated she could support the application with conditions. Commissioner Kirkpatrick highlighted the abandoned building as well and concluded she could support the application. Commissioner Jackson stated he could support the application as well.

## AGENDA ITEM VII.

Subsequent to the deliberations. Commissioner Jackson moved to approve the motion with the eight conditions from the staff report, seconded by Commissioner Masters, and which motion was approved by a 5 to 1 vote with, Vice Chairperson Hudson dissenting.

- C. *An Ordinance of the DeSoto County, Florida Board of County Commissioners amending the Official Zoning District Atlas identified in Code of Ordinances Chapter 20, Land Development Regulations Article II, Zoning Districts and Requirements, Section 20-31, Establishment of Zoning Districts; granting to Thomas L. and Lorraine L. Rheinlander an Official Zoning District Atlas amendment to change from Residential Single-Family 1 (RSF-1) to Agricultural 10 (A-10) the zoning district of an 11.54-acre (RZ 2017-05) tract located at 3751 NE Highway 17, the Property Identification Number being 19-37-25-0000-0120-0000; and providing for an effective date.*

Development Director Hahn read the title of the Ordinance into the record and gave a Power Point presentation summarizing the information contained in the Development Review Report. Director Hahn concluded that the application is in conformance with twelve of the fifteen factors and he recommended the application be approved. He then stated he would entertain questions from the Commission.

Chairperson Martin opened the floor to the Commissioners to ask any questions or make any comments. There being no questions or comments, he asked for the applicant to approach the podium to give their statement.

Ryan Rheinlander gave his address as 3751 NE Highway 17 and stated he supported the Development Director's recommendation.

Commissioner Kirkpatrick stated that it would be in his best interest to talk to the Property Appraiser's office to assure he is doing everything correct.

Commissioner Masters questioned if there was currently a house on the property and if he is currently living there. Mr. Rheinlander stated that there is a house there and he is living there.

There being no further comments, Chairperson Martin opened the floor to the public for comments. There being no public comments, Chairperson Martin requested the Commission commence their deliberations or make a motion. Commissioner Kirkpatrick moved to approve the application, which motion was seconded by Commissioner Provau, and which was carried unanimously.



## AGENDA ITEM VII.

- D. *An Ordinance of the DeSoto County, Florida Board of County Commissioners amending the Official Zoning District Atlas identified in Code of Ordinances Chapter 20, Land Development Regulations Article II, Zoning Districts and Requirements, Section 20-31, Establishment of Zoning Districts; granting to Frank Palermo and Cathy Scaglione an Official Zoning District Atlas amendment (RZ 2017-06) changing from Agricultural 5 (A-5) to Commercial General (CG) the zoning district of a 5.0-acre site generally located on the east side of SW Kings Highway/CR-769 about 370 feet north of SW Agnes Street, the Property Identification Number being 29-39-23-0000-0041-0000; and providing for an effective date.*

Development Director Hahn read the title of the Ordinance into the record and gave a brief Power Point presentation on the application. He concluded the application was in conformance with twelve of the fifteen factors and recommended the application be approved. At the conclusion of his presentation, Director Hahn stated he was ready to entertain any questions.

Commissioner Masters inquired about the issue of traffic on Kings Highway. She noted that although the application met twelve of the fifteen factors, two of the three factors that were not met pertained to traffic impacts. Director Hahn stated that a draft copy of the Development Review Report was provided to the Applicant and the Applicant stated they were in the process of providing that data and analysis but such information has yet to be made available. Director Hahn also noted the traffic data for a rezoning is based on the maximum allowable development and not the actual development and, therefore, the rezoning analysis frequently overestimates the actual traffic impacts on the roadway. He noted that the actual impacts on roadways are determined at the time an Improvement Plan is filed. If roadway capacity is not available at that time, then the project could be constructed phases to coincide with the widening of the roadway. As a consequence, Mr. Hahn was of the opinion that failure to address the LOS impacts of the rezoning were not sufficient to warrant a recommendation of denial.

Vice Chairperson Hudson questioned if there were any reports that indicated what the traffic count is in and out of such facilities. Director Hahn explained that although the Applicant is proposing a moving and storage company, which generates minimal traffic impacts, the rezoning will allow commercial uses that generate substantially more traffic and there is no way to know what will actually be constructed. For this reason, the rezoning traffic data and analysis must address the worst case scenario.

## AGENDA ITEM VII.

Commissioner Kirkpatrick inquired about the future land use and whether it is suitable for commercial use. Director Hahn responded the Interim 2040 FLUM shows the property is designated for Commercial use and the CG zoning district is one of the zoning districts intended to implement the Commercial designation.

There being no further questions for the Development Director, he requested that the applicant or applicant's agent make their statement on behalf of the application.

Geri Waksler with McCrory Law Firm stated she represented the applicant, Frank Palermo and Cathy Scaglione. Ms. Waksler stated she agreed with the Development Director's recommendation but took exception to his conclusion concerning the three factors that were not met. She argued that based upon the surrounding land uses, the existing A-5 zoning district was illogical. Ms. Waksler further argued that a traffic generation and distribution study was not submitted because this application is for a straight rezoning and because the traffic study concluded capacity is available over the long-term. She noted the more detailed traffic information requested by the Development Director is appropriate at the time an Improvement Plan is filed. Ms. Waksler gave a description of the proposed business and explained how it will operate. She noted it will not be a retail storage operation that generates traffic to and from the facility. Instead, it will be a facility where the operator solely generates the traffic. Ms. Waksler concluded her presentation and asked for approval for the rezoning from Agricultural 5 to Commercial General.

There being no questions, Chairperson Martin opened the floor to the public. There being no public questions or comments, he closed the hearing and requested the Commission to deliberate on the application or make a motion. Vice Chairperson Hudson moved to approve the application, which motion was seconded by Commissioner Kirkpatrick, and which was carried unanimously.

### X. DISCUSSION ITEMS

- A. The Cost of Development, One Example @
- B. The Cost of Development, Local Roads Edition @

Development Director Hahn introduced the discussion items. He highlighted how the construction of public roadways to accommodate new development can create fiscal difficulties to the local government if the costs of maintenance are not considered in the analysis.

## **AGENDA ITEM VII.**

Vice Chairperson Hudson questioned whether the County could refuse to accept a developer's offer of a public roadway. Director Hahn noted that during the platting process, the Board could refuse to accept the dedication. Commissioner Masters inquired about privately and publicly maintained. Director Hahn explained that private roads must be built to County standards in order to be accepted but the Board is not under any obligation to accept the roadway. Vice Chairperson Hudson compared the process with Sunny Breeze Harbor and that generated additional comments from the Planning Commission.

**XI. INFORMATIONAL ITEMS -NONE**

**XII. NEW BUSINESS – NONE**

**XIII. OLD BUSINESS – NONE**

**XIV. PLANNING COMMISSION MEMBER REMARKS**

Commissioner Masters wanted to discuss the agenda materials the Development Department provides to the Planning Commissioners. She noted that this month's agenda materials were large and she had difficulty absorbing all the material in such little time. She questioned whether there is some way the Department could provide the Commission some relief.

Director Hahn stated he understood the Commission's frustrations. First, the number of agenda items that are placed on an agenda depends upon the number of applications that have been submitted and how quickly staff can get to reviewing them and placing them on an agenda. He noted staff has little control over the number of applications that get filed. Second, Director Hahn explained that the Planning Commission gets more time to review the agenda materials than the Board of County Commissioners. Commissioners get seven days to review their package while the Board gets five. He suggested that if Commissioners are pressed for time, read the "Findings and Conclusion" portion of the Development Review Report first. That gives you a quick summary of the application and if you need additional information, then you can go back and read those portions of the report that address your information need. Third, Director Hahn noted when a report is completed, it is held until such time as the whole agenda package is ready. He suggested he could release the report as they become completed rather than at once.

Director Hahn also addressed concerns about Commission procedures. He stated he could prepare a draft Rule of Procedure for the Commission to vote upon which could address such things as the length of meeting.

# AGENDA ITEM VII.

XV. ADJOURNMENT

The meeting was adjourned at 7:21 p.m.

PLANNING COMMISSION  
DESOTO COUNTY, FLORIDA

\_\_\_\_\_  
William "Bill" Martin, Chairperson

\_\_\_\_\_  
Date