

AGENDA ITEM VII.

**PUBLIC MEETING OF THE DESOTO COUNTY PLANNING COMMISSION
HELD ON TUESDAY, May 1st, 2018 AT 5:37 PM
IN THE COUNTY COMMISSIONERS' MEETING ROOM
ARCADIA, FLORIDA**

I. CALL TO ORDER

Chairperson William Martin called the May 1st, 2018 Planning Commission meeting to order at 5:37 pm.

II. PLEDGE OF ALLEGIANCE

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

III. ROLL CALL

Chairperson Martin requested Mrs. Heitman call the roll and the following persons were in attendance:

Members in Attendance

Chairperson, Bill Martin
Commissioner, Judy Kirkpatrick
Commissioner, Mike Provau
Commissioner, Melinda Masters

Others in Attendance

Development Director, Earl R. Hahn, ACIP
Planning Technician, Kathy Heitman
Admin. Assistant, Donna Smith
County Attorney, Donald D. Conn

Mrs. Heitman announced a quorum was present. Commissioners Larry Hudson and Mel Jackson were absent.

IV. SET OR AMEND THE AGENDA

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

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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 April 3rd, 2018 minutes. Motion was seconded by Commissioner Kirkpatrick, and approved unanimously.

VIII. DEVELOPMENT DIRECTOR COMMENTS

Development Director Hahn had no comments and gave the floor to County Attorney Donald D. Conn.

County Attorney Conn stated the first two items on the agenda are quasi-Judicial matters and he briefly discussed the applicable requirements.

Kathy Heitman gave the oath to Steve Game, Robert Casey and Director Earl Hahn. All agreed to state the truth.

IX. ACTION ITEMS

- A. *A Resolution of the Desoto County Board of County Commissioners regarding Black Wolf Industries, Inc. doing business as Harley's Sports Bar & Grill special exception use application to allow within the Industrial Light (IL) zoning district a package store (i.e., the on-premises sales and off-premises consumption of alcoholic beverages) at 4141 SW Highway 17, a bar (i.e., the on-premises sales and consumption of alcoholic beverages) at 4141 SW Highway 17, and the on-premises consumption of alcoholic beverages at 4137, 4139, and 4143 SW Highway 17, Arcadia, Florida, the Property Identification Numbers being 23-38-24-0000-0180-0000, 23-38-24-0000-0181-0000, and 23-38-24-0000-0182-0000, the legal description being provided in Exhibit 1; incorporating the whereas clauses; incorporating the Development Department Report; and providing an effective date.*

At the duly noticed May 1st, 2018 Planning Commission public hearing, Development Director Hahn gave a PowerPoint Presentation on the proposed special exception use application. He noted that subsequent to the distribution the staff report, the Fire Inspector requested an additional condition on crowd managers. Director Hahn explained that the Florida Life Safety Code already imposes this requirement on public assembly uses but since most persons are unfamiliar with this code, it would be a good idea to add it so that the operator does not inadvertently violate it. Upon the conclusion of the presentation, Director Hahn stated he was prepared to entertain any questions the Commission had on the application.

Chairman Martin inquired whether the Commission had any questions of Director Hahn. Commissioner Masters inquired whether the crowd manager was similar to a bouncer. Development Director responded it is not. He noted

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crowd manager training is required by all national fire code standards in public assemblies such as nightclubs, auditoriums, ballrooms and arenas and that the purpose of the two-hour training is for employees to be knowledgeable about their role and responsibilities as it pertains to audience safety in assembly occupancies

Commissioner Masters questioned why the LDR no longer identifies any zoning districts where a package store is allowed. Development Director Earl R. Hahn explained that the LDR previously included a matrix displaying all the land uses and in which zoning districts those uses were allowed. That matrix was inconsistent with the land uses displayed in those sections of the LDR dealing with zoning districts. To resolve the inconsistency, the matrix was repealed when the LDR was codified. Since LDR Section 20-3 authorizes the Development Director to interpret the LDR, he concluded that the package store should be interpreted as a special exception use in the IL zoning district due to the similarity of the uses.

Commissioner Kirkpatrick questioned whether the report had an inconsistency as to the hours of operation as it states in one part that the use can operate 24 hours per day while in another part there is a table restricting operating hours. Development Director Hahn stated there is no inconsistency: the restaurant is open 24 hours but the bar is restricted to the hours of operation displayed on the table.

Commissioner Masters inquired whether there is a limitation on the number of liquor license issued in DeSoto County and whether a liquor license has already been approved for this site. Director Hahn responded there is a limitation on the number of liquor licenses issued and that the state has issued a liquor license for this establishment.

Commissioner Masters noted the site development plan displays twenty five (25) semi-truck and trailer spaces for parking overnight and questioned whether the vehicles could park in those spaces overnight. Development Director Hahn stated yes and that he envisioned that sometime in the future the site development plan would be amended to provide for a small hotel where truckers could stay overnight.

Chairman Martin noted that the floor plan shows an elevated stage with chairs surrounding the stage and questioned whether an adult entertainment establishment is being proposed on the premises. Development Director Hahn stated the elevated stage is to allow for indoor live entertainment. He noted that although the LDR allows sexually-oriented entertainment establishments as a permitted use in the IL zoning district, the LDR imposes additional

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requirements, one of which is that such establishment cannot be within a 2,500 linear feet radius of any residential use or alcoholic beverage establishment. To avoid any confusion, Director Hahn noted that conditions were imposed prohibiting public nudity and adult entertainment.

Chairman Martin noted there appears to be several inconsistencies in the report with regard to public nudity, including the condition on indoor live entertainment that allows "without limitation dancing performed by one or more persons who are nude." Development Director Hahn agreed that is an inconsistency and recommended that the indoor live entertainment condition be amended to repeal that clause.

Commissioner Masters stated she wants to understand why this application has detailed condition in terms of public nudity, wet tee shirt contests, and adult entertainment when a previous special exception use for alcoholic beverages did not have such requirements. Development Director Hahn explained that the previous application was for a person who had more than six years' experience operating a bar in DeSoto County and had a proven track record. In contrast, this is a new corporation without a similar track record. Moreover, Director Hahn implied that since adult entertainment uses are allowed in the IL zoning district subject to certain requirement, he wanted to make sure there were no ambiguities about what types of activities are allowed and which are prohibited. For that reason, conditions were imposed concerning indoor live entertainment, public nudity, and sexually oriented entertainment.

County Attorney Donald D. Conn concurred noting that although the LDR allows as a permitted use in the IL zoning district sexually oriented establishments, in order to secure a permit for such use the establishment must be at an authorized location that meets specified distance restrictions. In this case, the location is not authorized because it is not consistent with the distance requirements. Consequently, he agreed it was appropriate to include conditions clarifying what kind of activities is allowed.

With regard to public nudity, Development Director Hahn noted that he has personally observed on more than one occasion public nudity on premises with indoor live entertainment where alcoholic beverages are served.

Commissioner Provau opined that a truck stop historically has a tougher reputation for public nudity and prostitution and concurred that it was appropriate to have conditions clarifying what activities are allowed.

Commissioner Masters expressed concern with the wording of the indoor live entertainment condition noting that the language could be interpreted as

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allowing indoor live entertainment between the hours of 2:00 am and 10:00 am.

County Attorney Conn stated that the intent of that condition is to allow those activities that are listed except between the hours of 2:00 am and 10:00 am. County Attorney Conn asked Director Hahn to explain why they cannot get a permit for nudity in this area. Director Hahn stated that you have to be 2,500 linear feet away from a residential area and there are residences within this radius.

Chairman Martin inquired whether the Commission had any other questions of the Director. There being none, the Chairman asked whether the owner or his agent wanted to make a presentation.

Mr. Steven Game introduced himself as the property owner, stated his address is 5443 NE Cubitis St., Arcadia, and made a brief presentation supporting his application. At the conclusion of the presentation Chairman Martin asked if Commission had any questions for Mr. Game.

Commissioner Masters inquired whether any food oriented businesses would be operating from the premises. Mr. Game responded affirmatively, noting the premises previously have operated as both a restaurants and a bar.

County Attorney Conn asked Mr. Game if he read the conditions Director Hahn has proposed for the approval and if those conditions were acceptable. Mr. Game responded in the affirmative but believed one of the conditions is far fetch. The idea of hanging a "No Nudity" sign outside of the convenience store, which is proposed to include a Jersey Mike's Sub Shop, is a little much. Further, Mr. Game stated that it will be hard for a parent to explain to their child why nudity isn't allowed inside a restaurant. Mr. Game affirmed he had no objection to installing "No Drugs" and all other signs on the premises.

County Attorney Conn asked Director Hahn if there is way to address Mr. Game's concern about the "No public nudity sign." Director Hahn stated the "No public nudity sign" is only intended to be placed within those portions of the premises where alcoholic beverages will be consumed on-site. As such, it would not apply to the convenience store or the office space.

County Attorney Conn asked Mr. Game that as long as the signage location is limited as described, could he support the conditions. Mr. Game responded affirmatively. There being no further questions of the Owner, Chairman Martin inquired whether the applicant's agent would like to make a presentation.

Mr. Robert Casey introduced himself as the owner's authorized alcoholic license

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agent and stated his address is 3780 Esplanade Avenue, Port Orange, Florida. Mr. Casey stated he has been working with Mr. Game on compliance of alcohol beverage end of things and the restaurant licensing. He stated he wanted to clarify the floor plan. The Convenience Store, office and storage space is located at the north side of the building. Two offices, a storage room, and an electrical room are located at the south side of the building. A bar/lounge area with two service areas and the kitchen are centrally located and the restaurants are located around the centralized bar/lounge and kitchen. Mr. Casey noted that under the alcoholic beverages and tobacco regulation, all the building addresses would be licensed with the 7CPO quota license except for the 2CPO license for the package store. Mr. Casey wanted to clarify for safety reasons that the office end was left off of the license premise. There will be no alcoholic consumption in the offices but there will be storage.

Commissioner Masters noted the floor plan displayed an elevated stage surrounded by chairs and noted it was an odd configuration for indoor live entertainment. Mr. Casey replied it was a movable stage and the floor plan displayed one location where the stage could be accommodated. He noted that such stage configuration was not unusual for comedians.

Commission Masters inquired whether gambling was going to occur on the premises. Mr. Casey responded the establishment did not have a gaming license and that gambling would not occur but that there might be allowable video games that reward skill.

Commissioner Kirkpatrick asked Mr. Game if they were going to have a gas station. Mr. Game responded affirmatively, noting that they currently are negotiating with Roger's Petroleum for the purposes of installing a Marathon gas station. There being no further Commission questions to the applicant, Chairman Martin open the floor to the public. There being no public comments, Chairman Martin closed the public hearing and request the Commission to begin their deliberation.

Subsequently, Commissioner Provau moved to approve the staff recommendation. Development Director Hahn inquired whether the motion included the proposed amendment to condition 15 on indoor live entertainment and Commissioner Provau responded in the affirmative. Commissioner Masters, seconded the motion, and the Commission unanimously recommended approval.

- B. *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*

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Requirements, Section 20-31, Establishment of Zoning Districts; an Official Zoning District Atlas amendment application (RZ 2018-05) filed on behalf of the Southwest Florida Water management District and changing from Agricultural 5 (A-5) to Commercial General (CG) the zoning district of a 21.29-acre tract located at 10797 SW Peace River Street, Arcadia, Florida,; incorporating the whereas clauses and the staff report; providing for severability and an effective date.

Development Director Hahn stated this is an ordinance granting to the Southwest Florida Water Management District (SWFWMD) a re-zoning from A-5 to CG on a 21.29 acre site located at 10797 SW Peace River Street. The Director noted the Board adopted the Ordinance approving an Interim 2040 Future Land Use Map (FLUM) amendment for the property and that the amendment package has been transmitted to the Department of Economic Opportunity. Consistent with the FLUM amendment to Commercial, the SWFWMD has filed a rezoning application for the same property to Commercial General (CG) district.

Chairperson Martin requested confirmation that the property being rezoned is the same one the Commission reviewed as a FLUM amendment and Director Hahn answered in the affirmative. There being no further questions of the staff and there being no applicant or public, Chairperson Martin closed the public hearing and requested a motion.

Commissioner Master moved to approve the resolution, which motion was seconded by Commissioner Kirkpatrick, and which was approved unanimously.

- C. *An Ordinance of the DeSoto County Board of County Commissioners amending the Land Development Regulations (LDR) and pertaining to principal and accessory uses, structures and buildings; amending LDR Section 20-1650 by revising the definitions of accessory building, mobile home, principal use or structure, private garage, residentially designed manufactured home, and townhouse/rowhouse and addition definitions for attached, breezeway, and connected; amending LDR Section 20-656(a)(6) to add as exceptions to the maximum height and size limitation of accessory structures a private garage or carport and a screen enclosure; and providing for codification, conflicts, severability, and an effective date.*

Development Director Hahn gave a brief PowerPoint Presentation on the proposed Ordinance and explained the recommendations for the proposed changes were recommended by the Board at their April 10th, 2018 workshop. Director Hahn requested that the Ordinance be amended to create an exception for private garages and screen enclosures in the Planned Unit Development (PUD) and PUD Overlay zoning districts. At the conclusion of Mr. Hahn's

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presentation, Chairperson Martin inquired whether the Commission had any questions.

Commissioner Kirkpatrick asked how this would affect agriculture. Development Director Hahn responded there is not impact on agriculture because it is already exempt.

Commissioner Masters noted she has observed persons who park their RV in a garage that has an attached apartment. She inquired whether this Ordinance addresses that situation.

Director Hahn replied in the affirmative and requested that Planning Technician Heitman respond to the inquiry. Ms. Heitman noted that if the garage and the apartment were located in the same building or under a common roof, then the building would be a principal building. If the garage and apartment are located in two separate buildings, then the apartment would be the principal building and the garage would be the accessory building. The LDR presently provides that an accessory building cannot exceed the height of the principal building or one-half its size. The proposed amendment would create an exception for a garage so that it could be taller than and more than one-half the size of the principal building.

Chairperson Martin asked if there were any other questions for staff or any more comments from the Commission on this matter. There being no further questions of the staff and there being no public comments, Chairperson Martin closed the public hearing and requested a motion.

Commissioner Kirkpatrick moved to accept the recommendation but asked if we were taking action or making recommendations.

Director Hahn stated that the Commission is making recommendations to the Board to adopt the ordinance with the amendment to the condition on item number eight (8) to add the PUD and PUD Overlay. Commissioner Provau seconded the motion, and the motion was approved unanimously.

- D. *An Ordinance of the DeSoto County Board of County Commissioners amending the Land Development Regulations (LDR) and pertaining to fences, hedges and walls; amending LDR Section 20-659 on fences, hedges, and walls; and providing for codification, conflicts, severability, and an effective date.*

Development Director Hahn gave a brief PowerPoint Presentation on the proposed Ordinance and explained that at their April 10th, 2018 workshop, Mr. Weston Smith, the new Owner of the Historic Fort Ogden School, complained

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that the Land Development Regulations (LDR) prohibited him from erecting a six foot high fence along SW River Street. This is because the property has frontage on two streets and the LDR provides that property with frontage on both streets are limited to a maximum fence height of four (4) feet along the frontage. The Board directed that staff draft an Ordinance to address this issue.

Director Hahn advised the proposed LDR amendment lists six (6) criteria used for determining whether the four (4) feet height can be exceeded. Chairperson Martin asked if there were any questions for staff or any comments from the Commission on this matter. There being no questions of the staff and there being no public comments, Chairperson Martin closed the public hearing and requested a motion. Commissioner Kirkpatrick moved to accept the resolution, which motions was seconded by Commissioner Master, and which was unanimously approved.

X. DISCUSSION ITEMS - NONE

XI. INFORMATIONAL ITEMS – The Board approved the LDR amendments and those were sent to Tallahassee for review. We are waiting on them to issue a notice that they are in conformance.

XII. NEW BUSINESS – The Development Department received a rezoning application for Bridlewood of Arcadia, LLC, a community with 1.5 million square feet of industrial uses, commercial uses, and over 1,300 dwelling units. In conjunction with the rezoning application, a comprehensive plan text amendment has been filed to allow residential uses within the Employment Center designation. Staff is currently reviewing the applications.

XIII. OLD BUSINESS – Next meeting is scheduled for two evenings: June 5th and 6th, 2018.

County Attorney Conn stated he appreciates the time the Planning Commission members devotes to hearing applications and thanked the members for consistently attending Commission meetings. County Attorney Conn stressed the need for a quorum at the June meeting and stated he will work with both the Development Department staff and the County Administrator to contact the other two (2) Planning Commission members to see if they can attend the next meetings which are very important meetings for the County.

Ms. Heitman stated that the Development Department staff also is going to reach out to members of the Community to see who if we can fill Commission vacancies. Presently we have one regular and two alternate member positions available.

XIV. PLANNING COMMISSION MEMBER REMARKS - NONE

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XV. ADJOURNMENT - The meeting adjourned at 6:32 p.m.

**PLANNING COMMISSION
DESOTO COUNTY, FLORIDA**

By: _____
William "Bill" Martin, Chairperson

_____ Date