

**PLANNING AND LAND DEVELOPMENT REGULATION COMMISSION
PUBLIC HEARING HELD
NOVEMBER 11, 2014**

The Public Hearing of the Volusia County Planning and Land Development Regulation Commission was called to order by **Frank Severino**, at 9:02 a.m., in the County Council Meeting Room of the Thomas C. Kelly Administration Center, 123 West Indiana Avenue, DeLand, Florida. On roll call, the following members answered present, to-wit:

**FRANK SEVERINO
JEFF GOVE
WANDA VAN DAM
JEFFREY BENDER
JAY YOUNG
RONNIE MILLS**

Member Joseph Alleva - Absent

STAFF PRESENT:

**IAN WILLIAMS, Assistant County Attorney
SCOTT ASHLEY, AICP, Senior Zoning Manager
BECKY MENDEZ, AICP, Senior Planning Manager
WILLIAM GARDNER, Activity Project Manager
SUSAN JACKSON, AICP, Planner III
CAROL MCFARLANE, AICP, Planner II
SHERRI LAROSE, Zoning Technician
YOLANDA SOMERS, Staff Assistant II**

APPROVAL OF MINUTES

- None.

Ian Williams, Assistant County Attorney, provided legal comment.

Disclosure of Ex Parte Communications

Members of the Volusia County Planning & Land Development Regulation Commission Board were asked to please disclose, for the record, the substance of any ex parte communications that had occurred before or during the public hearing at which a vote is to be taken on any quasi-judicial matters. All members present disclosed any communication as listed below.

Chair Severino and Members Mills, Gove and Bender stated they had communications with Mr. Alex Ford and Mr. Fleming regarding V-14-069.

Member Van Dam stated she had communications with Mr. Ford and from another attorney from his office regarding V-14-069.

ITEMS TO BE CONTINUED OR WITHDRAWN

PUD-14-080 - Application of James S. Morris, applicant for DD Corner, LLC, owners requesting a Major Amendment to Resolution No. 2004-100 Business Planned Unit Development (BPUD) to expand the list of permitted principal uses. The property is located on the northeast corner of U.S. Highway 1 at its intersection with I-4, Ormond Beach; \pm 52 acres; 3125-04-00-0001, 3125-04-00-0010, 3125-04-00-0020, 3125-04-00-0030, 3125-04-00-0040, 3125-04-00-0050, 3125-04-00-0060, and 3125-04-00-0070.

Scott Ashley, Senior Zoning Manager, advised the commission that issues with the due public notice requirements exist requiring staff to request continuance of the application to the December 9, 2014, PLDRC public hearing.

James S. Morris, 750 Oak Heights Court, Unit 304, Port Orange, Florida 32127, represents DD Corner, LLC, owners, and supports staff's request of continuance to the December 9, 2014, PLDRC public hearing.

Member Young moved to APPROVE the continuance of case PUD-14-080 to the December 9, 2014, PLDRC public hearing.

Member Gove seconded the motion. Motion carried 6:0 (Member Alleva absent).

PUBLIC HEARING ON APPLICATIONS

V-14-076 - Application of Darren Elkind, attorney for Jack B. and Joyce A. Shuman, owners, requesting a variance to separate a nonconforming parcel on Prime Agriculture (A-1) zoned property. The property is located on the north side of Lake Winona Road, DeLeon Springs; \pm 7.69 acres; 5925-00-00-0160, 5925-00-03-0010.

Scott Ashley, Senior Zoning Manager, presented the staff report.

Darren S. Elkind, 505 Deltona Boulevard, Deltona, Florida 32725, attorney for the owners, provided a visual aerial exhibit for discussion. The development pattern in this area is residential. Mr. Elkind stated he has spoken with the adjacent owners to north and south of the subject property and they are in full support of the variance so the contract purchaser can build a residence. Mr. Elkind concluded he is in support of the staff recommendation of approval.

Public participation.

Sam Trivett, 721 CR-305, Seville, Florida 32190, was in support of the staff recommendation of approval.

Member Gove moved to APPROVE V-14-076 subject to the following recommended condition:

- 1
2 **1. The configuration of parcel 5925-00-00-0160 shall be limited to what is**
3 **depicted on the submitted survey, prepared by Blackwell & Associates**
4 **Land Surveyors, Inc., and dated September 10, 2014.**
5

6 **Member Young seconded the motion. Motion CARRIED (6:0) (Member Alleva**
7 **absent).**
8

9 **S-14-077** - Application of James S. Morris, applicant for Miami Corporation, Inc.,
10 owners, requesting a special exception for a communication tower exceeding 70 feet
11 above ground level and a waiver to Section 72-293(h)(2) and (3) to the landscaping
12 buffer requirements on Forestry Resource (FR) and Resource Corridor (RC) zoned
13 property. The property is located on the north side of Osteen Maytown Road, Osteen; ±
14 619.22 acres; 9322-01-01-0010, 9323-00-00-0010.
15

16 Scott Ashley, Senior Zoning Manager, presented the staff report.
17

18 Member Van Dam expressed concerns with the first paragraph located on page 5 of 35
19 in the staff report that referenced that the trees could be removed making the proposed
20 tower site more visible from Osteen Maytown Road. Ms. Van Dam inquired if the
21 Osteen Local Plan had any buffer requirements that would affect this development.
22

23 Mr. Ashley responded that the applicant has requested to use the existing vegetation
24 along Osteen Maytown Road in lieu of new plantings around the site tower and all
25 wetlands and wetland buffers will be preserved.
26

27 James S. Morris, 750 Oak Heights Court, Unit 304, Port Orange, Florida 32127, on
28 behalf of Miami Corporation, Inc., owners, noted on the visual display that the proposed
29 tower site is located more southerly than depicted in the staff report. There are
30 jurisdictional wetlands and wetland buffers that environmental staff identified requiring
31 the site to be slightly relocated. Mr. Morris clarified that existing trail systems will be
32 utilized to access the site while maintaining the existing buffers along Osteen Maytown
33 Road. The communication tower will meet the service needs of their customers and will
34 be respectful to the Green Key provisions by providing for utilities and to allow
35 silvicultural activities to continue. Mr. Morris reiterated the waiver request to allow
36 existing vegetation to remain in lieu of the planted landscape buffer requirement. Mr.
37 Morris concluded he was in support of the staff report.
38

39 Member Gove expressed concerns with plan sheet C-3 as it indicated the landscape
40 buffer was proposed outside of the 100-foot by 100-foot compound, as referenced on
41 page 21 of 35 in the staff report.
42

43 Mr. Morris responded that was incorrect. If the plan sheet depicted the incorrect
44 location, then the site plan will be amended.
45

46 Member Van Dam inquired if a monopole or flag pole was considered by his clients.
47
48

Mr. Morris responded the lattice design provides for a greater height which is necessary for wind load construction.

There was no public participation.

Member Young moved to FORWARD special exception case S-14-077 to the county council for a communication tower exceeding 70 feet (230 feet) in height above ground level on Forestry Resource (FR) and Resource Corridor (RC) zoned property with the following conditions:

- 1. The special exception approval is for a single, self-supported lattice tower with a maximum height not to exceed 230 feet (AGL), and structurally designed for collocation of at least five carriers.**
- 2. All permits shall be obtained from the Federal Aviation Administration (FAA), and Federal Communications Commission (FCC) and/or any other applicable federal, state, or local governmental agencies as required and submitted to the Growth and Resource Management Department (GRM). The facility shall be maintained and operated in full accordance with all applicable federal, state, and local regulations and permits.**
- 3. Development of the parcel shall be subject to submittal of a site plan to the Land Development Division for review and approval prior to building permit application. The site plan must comply with applicable zoning and land development code requirements. The tower site shall be developed in accordance with the site plans prepared by Kimley-Horn and Associates, Inc., dated October 28, 2014, as may be modified by these conditions and/or modified by further county review and/or modified by the FAA/FCC and/or other permitting requirements.**
- 4. A waiver to Section 72-293(h)(2) and (3), *Landscaping*, is approved, foregoing the requirements for planting a row of trees and a continuous hedge row of shrubs in lieu of preserving existing native vegetation.**
- 5. Special exception application S-14-013 is withdrawn by the applicant.**

Member Bender seconded the motion. Motion CARRIED (6:0) (Member Alleva absent).

Z-14-078 - Application of James S. Morris, applicant for Ronnie L. Williams, Sr., Ronnie L. Williams, Jr. and House of Gold and Diamonds Wholesale, Inc., owners requesting a rezoning from the Rural Agriculture (A-2) and Resource Corridor (RC) to Prime Agriculture (A-1) and Resource Corridor (RC) zoning classification. The property is located at 560 N. CR-415, New Smyrna Beach; ± 67 acres; 7211-00-00-0100, 7211-00-00-0220, 7211-00-00-0111.

Scott Ashley, Senior Zoning Manager, presented the staff report.

1 Member Van Dam inquired if outdoor activities, like special outdoor
2 entertainment/events, were permitted if this rezoning request was granted.

3
4 Mr. Ashley responded yes. There is an outdoor entertainment permit that shall be
5 submitted for review and approval. The permit would outline the time and length of the
6 proposed event, traffic control, security, and what sanitary facilities would be provided.
7 There are two types of permits available. An applicant can submit an application per
8 each event or they can submit an application for an annual permit that would
9 accommodate any event during the calendar year.

10
11 Member Gove asked for further clarification of the outdoor entertainment permitting
12 process.

13
14 Mr. Ashley responded that the outdoor entertainment use is not permitted in the A-2
15 zoning classification; this use is restricted in the A-1 zoning classification. The applicant
16 is operating as a temporary campground under the approved special exception.
17 Outdoor events and/or vendors are permitted when associated with the campground
18 primarily for scheduled racing events at the Daytona International Speedway for
19 Speedweek, Biketoberfest, the Pepsi (Coke Zero) 400 and Bike Week.

20
21 Member Gove inquired if an outdoor entertainment permit is required during those
22 racing events.

23
24 Mr. Ashley responded no. The temporary campground is operating under the approved
25 special exception. If the zoning classification is changed to A-1, this would allow the
26 applicant to hold additional outdoor entertainment events which would require a permit.

27
28 James S. Morris, 750 Oak Heights Court, Unit 304, Port Orange, Florida 32127, on
29 behalf of the owners, stated the rezoning request is consistent with the comprehensive
30 plan. Mr. Morris requested staff to display a zoning map of the area and noted there is
31 significant A-1 zoning classification in the vicinity. The A-1 zoning classification allows
32 for outdoor entertainment. The rezoning request is not a significant change in character.
33 Mr. Morris confirmed the property will remain rural when the temporary campground is
34 not in use; the agricultural exemption granted by the Property Appraiser's office will be
35 maintained and inspected regularly to ensure compliance with the requirements.

36 Member Bender inquired if there was any tree clearing proposed.

37
38 Mr. Morris responded no. The RC zoning classification follows the tree line along the
39 western portion of the property and there is existing wooded buffering along CR-415.
40 Mr. Morris used a visual exhibit to note the wooded areas of the property that will
41 remain.

42
43 Member Bender expressed concerns with the increase of outdoor entertainment/events
44 due to the rural character of the area.

45
46 Mr. Morris responded the A-1 zoning classification is the lowest intensity, other than the
47 RC zoning classification. Code requirements have been met historically to ensure public
48 safety needs are met and facilities are available.

1 Public participation.

2
3 Susan Boulton, 3930 Pioneer Trail, New Smyrna Beach, Florida 32168, expressed
4 concerns with the traffic generated by the outdoor entertainment/events.

5
6 Richard Boulton, 3930 Pioneer Trail, New Smyrna Beach, Florida 32168, expressed
7 concerns with the traffic and noise generated by the outdoor entertainment/events. Mr.
8 Boulton also expressed concerns with the outdoor entertainment permitting process; an
9 annual pass would allow those properties to have outdoor events all the time without a
10 restriction as to how many per year that would be.

11
12 Chair Severino asked Mr. Boulton if he knew what his property was zoned.

13
14 Mr. Boulton responded that he believed his zoning classification was A-2.

15
16 Mr. Morris responded to the concerns of the public. Mr. Morris clarified that his client did
17 not own the property across the street, aka "The Cabbage Patch". The rezoning request
18 is consistent with the comprehensive plan and the existing zoning classification with the
19 adjacent properties. Mr. Morris concluded that his client would speak with Mr. and Mrs.
20 Boulton to find an amicable resolution to their concerns.

21
22 Mr. Ashley confirmed the Boulton's property is zoned A-2.

23
24 Member Young inquired if restrictions can be placed on this property as to the hours of
25 operations.

26
27 Mr. Ashley responded that in Chapter 10, *Outdoor Entertainment* of the county's code,
28 specifies the hours of operation, the decibel level during the night-time hours, and the
29 official cut-off time of those events must meet certain requirements.

30
31 Mr. Williams added that in Chapter 10-62, the application for the outdoor event needs to
32 disclose the dates and hours of operation (acceptable hours are from 8am-2am,
33 permitted daily), the site shall not be located within 1,000 feet of a footprint of a
34 dwelling, and submission of a sound plan is required just to name a few. There is no
35 limitation of the number of events for the annual outdoor entertainment permit. Mr.
36 Williams concluded the zoning enforcement official reviews and approves the outdoor
37 entertainment permit.

38
39 Member Young inquired as to how far in advance should an annual outdoor
40 entertainment permit be applied for.

41
42 Mr. Ashley responded the application should be submitted a minimum of 30 days prior
43 to the outdoor event. Mr. Ashley clarified the application is reviewed and approved at
44 staff level. Staff works together with the Sheriff's office, traffic engineering staff, and the
45 code compliance staff.

46
47 Member Young expressed concerns of the public not being notified of such events or
48 considered for approval.

1 Member Van Dam inquired if the outdoor events are allowed across the street from the
2 subject property.

3
4 Mr. Morris responded yes. Outdoor entertainment/events are allowed in the A-1 zoning
5 classification.

6
7 Member Bender expressed concerns if the rezoning request is approved, there would
8 be more outdoor events in the neighborhood making these issues worse.

9
10 Mr. Morris responded that his client can currently have the outdoor
11 entertainment/events when they are associated with the approved special exception for
12 the temporary campground. Mr. Morris clarified the rezoning request is consistent with
13 the comprehensive plan and the A-1 zoning classification of the adjacent properties.

14
15 Member Mills stated the permitting process needs to be re-evaluated; the rezoning
16 request is consistent with the comprehensive plan.

17
18 Member Van Dam stated the rezoning request to the A-1 zoning classification is
19 considered compatible.

20
21 Mr. Ashley mentioned the Samsula Local Plan requires the agricultural characteristics of
22 the community shall be maintained. The A-1 and A-2 zoning classification supports this.
23 The A-1 zoning classification is required in order for the applicant to use the property in
24 this manner.

25
26 Chair Severino stated he supports the request.

27
28 Member Gove agreed with the agricultural characteristics of the area, but does not
29 support year-round activities.

30
31 Member Young stated we need something in place to control and place restrictions on
32 the property in order to limit the number of outdoor entertainment/events.

33
34 Mr. Williams responded the outdoor entertainment/events are permitted and exempt
35 from the permitting process as they were approved with the special exception for the
36 temporary campground.

37
38 Mr. Morris objected to Members Gove and Young requesting the limitation of year-round
39 activities on the property.

40
41 **Member Mills moved to FORWARD rezoning case Z-14-078 to the county council**
42 **to rezone from the Rural Agriculture (A-2) and Resource Corridor (RC) zoning**
43 **classification to the Prime Agriculture (A-1) and Resource Corridor (RC) zoning**
44 **classification with a recommendation of approval.**

45
46 **Member Van Dam seconded the motion. Motion FAILED (3:3) (Members Young,**
47 **Bender, and Gove in opposition; Member Alleva absent).**
48

1 **V-14-069** - Application of Alex Ford, Jr., attorney, for Robert C. Fleming, owner,
2 requesting a variance to the minimum lot size on Prime Agriculture (A-1) zoned
3 property. The property is located at 735 Johnson Lake Road, DeLeon Springs; \pm 8.65
4 acres; 5936-00-00-0030 and 5936-00-00-0011.
5

6 Scott Ashley, Senior Zoning Manager, presented the staff report. A handout was given
7 to the commission with an amended staff recommended condition #2 for consideration.
8

9 Chair Severino clarified the handout is to replace staff recommended condition #2, as
10 referenced in the staff report.
11

12 Member Mills inquired if the language in the amended staff recommended condition #2,
13 given to the commission for consideration, is to address the lot status in the future.
14

15 Mr. Ashley responded yes.
16

17 Member Van Dam inquired if the parcels were unofficially combined in order to establish
18 the homestead parcel.
19

20 Mr. Ashley responded by code, the parcels are combined because they are two
21 nonconforming lots. If an owner owns one or more adjacent nonconforming lots, the
22 parcels will require to be combined with the Land Development office in order to meet
23 minimum dimensional zoning requirements.
24

25 Member Van Dam inquired if back in 2001 when the property was developed, if the
26 boundary survey submitted with the building permit depicted the overall acreage.
27

28 Mr. Ashley responded yes.
29

30 Member Mills inquired if the intent of the code is to combine the parcels prior to
31 development.
32

33 Mr. Ashley responded yes.
34

35 Alex Ford, 145 E. Rich Avenue, DeLand, Florida 32720, representing the owners,
36 thanked staff for their efforts and that his client was in support of the two staff
37 recommended conditions, as amended. Mr. Ford stated his client was unaware of the
38 acreage issue until the permitting process for the inground pool began. This is not a
39 self-imposed hardship as inaccuracies exist from past surveyor work of lot boundaries.
40 Mr. Ford continued to state that his client understands that they have an undeveloped
41 parcel and will provide the written statement, as requested. Mr. Ford concluded that his
42 client is not asking for anything more than the parcels that they own.
43

44 Robert Fleming, 735 Johnson Lake Road, DeLeon Springs, Florida 32130, stated that
45 the property was purchased in 1998 with an existing dwelling. The other parcel was
46 purchased in 2001. The agricultural parcel was purchased in 2006. We cleared out the
47 old fernery and now it is pastureland.
48

1 Ms. Van Dam inquired how the property was being used. An aerial map indicates
2 several vehicles parked near an out-building.

3
4 Mr. Fleming responded the property is being used agriculturally with some grading
5 equipment associated with his landscaping business on-site.

6
7 Member Mills stated that the code requires the parcels be combined prior to
8 development. It appears the owner is attempting to correct an issue and the variance
9 will address this. Member Mills inquired if a mortgage exists on the homestead parcels.

10
11 Mr. Ford responded yes.

12
13 There was no public participation.

14
15 Member Van Dam expressed concerns with the hardship. Member Van Dam stated the
16 parcels can be combined therefore there is no need for the variance.

17
18 Member Mills expressed concerns with requiring the owner to combine the homestead
19 parcel with a parcel that doesn't have any encumbrances. Member Mills stated the
20 variance approval will resolve the issue for the owner.

21
22 Chair Severino stated the baseline hardship is that errors that occurred at the
23 professional and review level prior to development. Chair Severino agreed with Member
24 Mills and is in support of the amended staff recommended conditions of approval.

25
26 **Member Mills moved to APPROVE V-14-069 subject to the following amended**
27 **staff recommended conditions:**

- 28
29 **1. Prior to the issuance of any building permits on parcel numbers 5936-00-**
30 **00-0030 and 5936-00-00-0011, the applicant or property owners shall submit**
31 **and obtain approval of a subdivision application through the county Land**
32 **Development Office to combine the two referenced parcels under the**
33 **provisions of Chapter 72, Article III, Land Development Code.**
34
35 **2. As a condition of approval, the applicant shall acknowledge in writing that**
36 **the Ag Parcel, parcel number 5031-00-00-0190, is not currently a legal lot**
37 **for development, and the granting of this variance does not alter that**
38 **status. In order to become a legal lot, parcel number 5031-00-00-0190 would**
39 **have to be recombined with the rest of Lot 1, Campbell Unrecorded**
40 **Subdivision (05-S-EXM-0777), or combined with some other property in**
41 **compliance with the Volusia County Zoning Ordinance and Land**
42 **Development Code, or subjected to some other action to bring it into**
43 **compliance with the requirements of the Zoning Ordinance and Land**
44 **Development Code (e.g. rezoning).**

45
46 **Member Bender seconded the motion. Motion CARRIED (5:1) (Member Van Dam**
47 **in opposition; Member Alleva absent).**
48

CPA-15-001 - Comprehensive Plan Large Scale Administrative Text Amendment to the Intergovernmental Coordination Element to reference the Interlocal Service Boundary Agreement with the City of Ormond Beach.

Becky Mendez, AICP, Senior Planning Manager, presented the staff report.

There was discussion about the Interlocal Service Boundary Agreement in general, and in regards to annexation, property owner notification, utility service provisions and development of properties within the service area. For clarification, this amendment adds reference in the comprehensive plan of an agreement that the county and city previously adopted.

There was no public participation.

Member Young moved to find CPA-15-001 consistent with the comprehensive plan and forward to county council for transmittal to Department of Economic Opportunity (DEO) and the Volusia Growth Management Commission (VGMC) with a recommendation of APPROVAL.

Member Gove seconded the motion. Motion CARRIED 6:0 (Member Alleva absent).

OTHER PUBLIC ITEMS

None.

STAFF ITEMS

None.

STAFF COMMENTS

None.

COMMISSION COMMENTS

None.

PRESS AND CITIZEN COMMENTS

None.

ADJOURNMENT

Having no further comments from the public, staff, or commissioners, Chair Severino thanked everyone and adjourned the meeting at 11:22 a.m.