

**MINUTES  
PLANNING COMMISSION MEETING  
CITY OF DUNNELLON  
20750 RIVER DRIVE  
APRIL 19, 2016, 5:30 P.M.**

Chairwoman Brenda D'Arville called the meeting to order and led the Pledge of Allegiance.

Roll Call

Members Present: Brenda D'Arville, Lisa Sheffield, Wilbur Vanwyck, Paul Cowan, Mary Ann Hilton

Members Absent: Tracy Fero

Staff Present: Eddie Esch, Lonnie Smith, Attorney Andrew Hand, Teresa Malmberg

Proof of Publication: The agenda was posted on City's website and City Hall bulletin board on Thursday, April 14, 2016.

**1. Approval of Minutes:** no minutes presented.

**2. Chairman's Report from Council:**

Eddie Esch reported that Councilman Dillon requested Lots of Record be on the PC agenda for discussion. DEO found themselves with excess funds and opened up the opportunity to the City for an additional \$24K in grant funds to be included in the current cycle. There will be public workshops planned leading up to adoption, and flyers will be posted around town as well as public noticing on the website. Tentative dates are the regular PC meeting May 17, then June 1 and 7, with the adoption at the Council meeting June 13. Members discussed the dates, times and availability. Brenda D'Arville noted that she would not be able to make the June 7 meeting unless it is scheduled much earlier in the day. Mr. Esch noted that he is waiting to hear from everyone that he emailed before finalizing the dates and times.

**3. Quasi-judicial Hearing:** Site Plan SPL2016-01/PZ1516-045, Ziegenfuss for Dunnellon Real Estate LLC

Chairwoman D'Arville closed the regular meeting and opened the Quasi-judicial Hearing at 5:40 p.m.

At this time, we will not have the meeting due to noticing to surrounding property owners. I need a motion to extend this public hearing to date and time certain which will be May 2, 2016 at 5:30 p.m. Wilbur Vanwyck made the motion to extend the public hearing to May 2, 2016, at 5:30 p.m. Paul Cowan, seconded.

Chairwoman D'Arville closed Quasi-judicial Hearing and reopened the regular meeting at 5:41 p.m.

4. Resolution 2016 - 11 Request For Site Plan Approval #SPL2016 - 01, Ziegenfuss For Dunnellon Real Estate LLC – This item will carry forward to the May 2, 2016 hearing as scheduled in Item 3 above.

#### 5. Comprehensive Plan Consistency Review

Little League Ball Field, review and letter for application of sublease for Board of Trustees of the Internal Improvement Trust Fund of the State of Florida

Lonnie Smith presented the staff report. In the requirements, a letter of comprehensive plan consistency is needed from the Planning Commission acting as the LPA. The overall finding is the use is consistent. The letter is prepared for signature following this presentation, discussion and motion of finding. Members asked follow-up questions. Paul Cowan made the motion to approve the letter for signing. Wilbur Vanwyck seconded. The motion was passed by unanimous vote, 5-0.

#### 6. Lots of Record:

Chuck Dillon noted that he will provide background, and there are things that I am going to say that staff disagrees with, and I think I'm right and staff is wrong. I have been building in Dunnellon for thirty years. I have always been able to build on lots less than 85-feet wide. I have built on lots less than 85-feet within the last two years. All of a sudden, there has been an interpretation that the lots have to be 85-feet wide and you can't have more than 5 units per acre. That effectively shuts down the city. It does shut down the historic district altogether. It shuts down Dunnellon Heights. My premise is, and I was on the Council when the first Comprehensive Plan was devised so that we would have a benchmark of level of services. So basically, they took all the lots in Dunnellon, and said these are the level of services for schools, roads, recreation and everything which was the baseline for the first comprehensive plan. The interpretation today is if you make a comprehensive plan change, and it goes to Council and we pass it, it is retroactive. It goes back to the founding of the city. Logically, that makes sense to me. It's always been my premise and a planners premise that when you make a comprehensive plan change, it goes forward, it doesn't go backward. What I am trying to ask is that, effectively we are shut down, and we need to address this as quickly as possible. Andrew and I have discussed this, and I think this is a taking when you take 75% of the lots in town and say you cannot build on them, it's draconian. This is the first time a staff member has ever interpreted the comprehensive plan that way. I've dealt with planners for the last thirty years and this is the first time it's been this way. Brenda D'Arville recapped that what is being said is we haven't made a change, we've changed an interpretation of what we presently have. Mr. Dillon said that he believes comprehensive plan changes go forward. If not, then you are taking property rights away. Ms. D'Arville requested legal counsel's view. Andrew Hand reported that when you have a comprehensive plan change, it really depends on what the new amendments say. Quite frequently, comprehensive plan amendments, without a specific carve out, are going to apply across the board. So in other words, yes, the retroactive in the sense that it creates non-conformities. Those, over time, are usually extinguished when the property changes hands or the use no longer exists if it's a use type of issue. In this case, you have a density issue. What it appears happened here is an oversight in not including lots of record and carve-out language. So you have a density requirement that applies across the board. What that does is creates a non-

conformity, and the existing uses per that acreage are allowed to continue. But, if a house is destroyed or something else, then they would not be able to rebuild except to the new density requirements. That creates a particular problem in Dunnellon, and something that clearly was not intended. But that is the way it reads right now, so it is something that needs to be remedied. As Mr. Dillon says, it certainly does create two different issues and puts Dunnellon in a losing situation until it is fixed. On the one hand, you have the potential for takings if people are not allowed to change their property and that wasn't the anticipated result, and that is bad. On the other hand, you have someone who is going to make a modification or do something with their property and they are allowed to do it, with the way the comprehensive plan is currently written, it would make the development inconsistent. It is not what was intended, but it is the way it was written, unfortunately. It would make the development illegal and subject to being torn down, which also places the property owner in a position to be able to file a lawsuit. There is a remedy. It requires a comprehensive plan change, and that is something that is on a schedule to accompany the EAR-based amendments. Assuming that there isn't any hold up going through the workshops, or something that extends the process, this could be remedied as early as June 13 adoption and an effective date somewhere around six weeks following, approximately mid-August. In the interim, there is a problem and not really a way to fix it. Mrs. D'Arville recapped, this can be remedied through a comprehensive plan change, part of the EAR-based amendments, could be as early as adoption on June 13<sup>th</sup> and effective approximately six weeks later. In the meantime, until this is done, we would have to hear anything that comes up on a case-by-case basis, say on a variance. Andrew Hand clarified that a variance is limited to code issues. When it comes to comprehensive plan, it's different. You cannot have a variance on a comprehensive plan. If someone comes in on a development, it is up to staff to deny or review and move forward. Lonnie Smith clarified that what staff did was instead of making an interpretation of that, basically, staff discovered a flaw in the plan where the lots of record was not properly put in to protect those. It really wasn't based on interpretation. It was based on fact and staff also put that out to attorney review to make sure.

Louis Kenny discussed the matter of lots of record and that it should be handled in the LDRs, not in the comprehensive plan. The comprehensive plan is the vision, and the LDRs are the regulations that guide the vision. Any planner who is hired to come in and assist the city should be focused on the LDRs. Appreciates everything that the Planning Commission does, and requests to have identified what the problems are in the comprehensive plan and thinks Mr. Metcalf can help us with it.

Mrs. Hilton discussed lots of record, finds it inconceivable that it be said someone cannot build on their lot, and has not seen anything in the comprehensive plan that precludes building on these lots.

Mrs. Kenny noted that in a comprehensive plan when you're doing different land use categories, you are, with limitations and restrictions, which should be in your LDRs. The integrity of the district is extremely important. Usually, those different land use elements are thought of as districts. Went on to discuss technical aspects of requirements for each district such as buffers of various types. Perplexed as to the problem in the comprehensive plan, and wants it to be a verbal public records request to how this problem exists in the comprehensive plan.

Lonnie Smith read from the future land use element, medium density land use, which is where the problem exists for requirement. The restrictions are in the comprehensive plan. Discussion of the change that needs to be made to deal with the density issue.

Andrew Hand anticipates that Mr. Metcalf will take one of two approaches, make lots of record an exception and remove it from acreage requirements all together or to change its designation within the FLUM into something specific to lots of record to identify a certain area. In a way, a whole new category, but it's still residential. This problem doesn't just affect lots of records, there are likely other small lots affected. The decision that ultimately has to be made is classifying the lots of record, just as such or how are the small lots going to be addressed. As I've heard it being discussed, it's just going to be lots of record exception. Discussion of how lots of record will be defined.

Brenda D'Arville recapped that because it is a flaw in the comprehensive plan, it requires a change. Mr. Metcalf has been notified and has changed the Evaluation and Appraisal Letter so this could be included in the amendments. Other than for educational purposes, we cannot do anything until the amendment is presented to us by Mr. Metcalf. The workshops will be to iron out the language. Andrew Hand underscored the importance of getting this remedied as soon as possible. It is of grave concern, be aware of what the solutions are and work toward them quickly.

## **7. Public Input:**

Paul Cowan asked Lonnie Smith and Eddie Esch about Blue Gator and concern of water runoff into the Withlacoochee River. SWFWMD was not concerned and issued an exemption letter. Were we aware that SWFWMD is over the water quality aspect or was State EPA over the water quality? Did we question that as a city or did we not know that as a city? Because this is still a concern. Eddie Esch described SWFWMD as having oversight for water retention requirements for treatment. Typically, if SWFWMD, has issues they pull FDEP into it. We are not required to have a FDEP permit for the site. Mr. Cowan asked if this could happen on that property or any property in the City, why do we do all this work and worry about the river when the State doesn't care what goes into the river? Teresa Malmberg defined FDEP involvement in water quality mainly in regards to Public Supply. However, in code enforcement, SWFWMD or the jurisdiction will contact FDEP when there is runoff from a construction, industrial or other site and an investigation will take place. Mr. Esch noted that over the next five years, we are tasked with a new permitting process where the city has to develop and enforce construction regulations that prevent runoff. Discussion continued regarding enforcement by local jurisdiction when other agencies do nothing directly. The purpose was to bring up the point that the city is going to all this effort when others outside the city do not care or do anything about it.

Lisa Sheffield noted that everyone is on the same page, but the river is there and we're taking care of it. If we have this much passion about what is going on in the city as we do the River, we would get a lot done.

Brenda D'Arville called attention to the resignation letter from former Council and former commission member and they had some good points. Going forward, we need to discuss some of these points and how we can be more effective as a board. We need to develop the vision statement that was mentioned in one of the letters. It was

saddening to see this happen as there were great skill sets that would be a help to us. We need to take this as constructive criticism and look to take some of the points to heart and grow this commission where we can be a viable part of planning for the city going forward.

**8. Adjournment:** The meeting was adjourned 6:49 p.m.

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Brenda D'Arville, Chairwoman

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Teresa Malmberg, Admin. Coordinator