



POLK COUNTY

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COMMUNITY DEVELOPMENT

AUSTIN M. GUIGAN
Director

MEMORANDUM

TO: Board of Commissioners

FROM: Sidney Mulder, Planning Manager
Polk County Community Development

DATE: December 1, 2020

SUBJECT: Deliberation for Comprehensive Plan Amendment 18-01 and Zone Change 18-02

BOC Public Meeting, Deliberation – December 9, 2020

ISSUE:

Should the Polk County Board of Commissioners move to adopt the Comprehensive Plan Amendment and Zone Change presented in PA 18-01 and ZC 18-02?

The applicants, represented by Wallace W. Lien, are requesting a Comprehensive Plan Map amendment and a Zoning Map amendment for an area approximately 228 acres in size, comprised of seven (7) contiguous parcels adjacent to Best Road NW, Salem. The subject properties are currently designated Agriculture on the Comprehensive Plan Map and Exclusive Farm Use (EFU) on the Zoning Map. The applicants are proposing to change the Comprehensive Plan designation of the subject properties to Rural Lands and the zoning to Agriculture and Forestry-10 Acre (AF-10).

RECOMMENDATION:

Staff recommends that the Board of Commissioners adopt the Hearings Officer's findings and conclusions to deny the applications.

BACKGROUND:

The subject properties consist of seven (7) contiguous parcels adjacent to Best Road NW, Salem (Assessment Map T7S, R4W, Section 14, Tax Lots 601, 602, 603, 604 and 605 and T7S, R4W, Section 23, Tax Lots 100 and 101). The subject properties are currently designated Agriculture on the Comprehensive Plan Map and Exclusive farm Use (EFU) on the Zoning Map. The applicant is proposing to change the Comprehensive Plan designation of the subject properties to Rural Lands and the zoning to Agriculture and Forestry-10 Acre (AF-10). The applicant's request requires an exception to Statewide Planning Goal 3 (Agricultural Lands) and Goal 4 (Forest Lands). The applicant has requested an exception to these Goals under the "irrevocably committed" goal exception criteria.

The same proposal was applied for by the subject property owners in 2014 (planning applications PA 14-01 and ZC 14-02). In the previous case, after conducting a public hearing the Hearings Officer recommended denial of these applications. The applicants withdrew their applications prior to conducting a public hearing before the Board of Commissioners.

The criteria for a Comprehensive Plan amendment and a Zone Change are listed in Polk County Zoning Ordinance (PCZO) Sections 115.050 and 111.275. These types of applications require

that the Hearings Officer hold a public hearing, pursuant to PCZO 115.030 and 111.190 and make a recommendation to the Board of Commissioners. The Board of Commissioners then hold a public hearing, pursuant to PCZO 115.030 and 111.200, and make a final local decision.

For the current case, a public hearing was conducted by the Hearings Officer on October 15, 2019. The Hearings Officer issued a recommendation of denial on June 1, 2020 (Exhibit A). A public hearing before the Board of Commissioners was conducted on July 22, 2020 at 9:00 A.M. At the hearing, the Board announced that additional evidence could be submitted into the record until August 5, 2020, at 5:00 P.M.; rebuttal of any new evidence could be submitted into the record until August 12, 2020 at 5:00 P.M.; and final arguments by the applicant could be submitted into the record until August 19, 2020 at 5:00 P.M. At the Board's public hearing, a deliberation date and time of October 7, 2020, at 9:00 A.M. was announced. At the scheduled deliberation date, Polk County's Legal Counsel read a statement from Commissioner Mordhorst declaring ex parte communication that occurred on September 26, 2020, when a constituent individually contacted Commissioner Mordhorst after the record was closed. The contents of that ex parte communication were included in the record. Commissioner Ainsworth and Commissioner Pope moved to re-open the record to allow additional testimony in response to the ex parte communication. On October 14, 2020, staff sent notice to all interested parties specifying the new open record period timeline, which allowed for new evidence and testimony to rebut the context of the ex parte communication between October 15, 2020 – October 22, 2020 at 5:00 PM; rebuttal of any new evidence that was submitted during the first week of this open record period until October 29, 2020 at 5:00 PM; and the applicant's final arguments until November 5, 2020 at 5:00 PM, at which time the record closed. Additional testimony that was submitted during this open record period is included as Exhibit F.

Since the Hearings Officer's recommendation of denial was issued, additional evidence has been submitted into the record by the applicant and other interested parties. However, staff finds that the additional evidence does not adequately demonstrate compliance with all of the review and decision criteria; specifically, the deficiencies identified by the Hearings Officer. Additional evidence submitted by the applicant's representative, which was submitted after the Hearings Officer's recommendation, is included as Exhibits B-E. Additional testimony that was submitted during the latest open record period is included as Exhibit F. The full record for these applications is available for your review in the Board of Commissioners Office, under the care of Polk County Legal Counsel.

These applications were submitted together and are dependent on each other. Approval of only the Comprehensive Plan map amendment but not the zone change, or the zone change but not the Comprehensive Plan amendment would create a situation where the zoning of the property would not implement the Comprehensive Plan designation of the property, or vice versa. As a result, staff recommends that these applications be approved or denied together.

DISCUSSION/ALTERNATIVES:

The Board of Commissioners' options include the following:

1. Adopt the Hearings Officer's recommended findings and conclusions, included as Exhibit A, and **deny** the applications for Plan Amendment (PA) 18-01 and Zone Change (ZC) 18-02; or
2. Other action.

FISCAL IMPACTS:

No fiscal impacts to the County have been identified.

EXHIBITS:

Exhibit A - Hearings Officer's Recommendation issued June 1, 2020

- Exhibit B - Additional evidence submitted by Wallace W. Lien on July 9, 2020
- Exhibit C - Additional evidence submitted by Wallace W. Lien on August 12, 2020
- Exhibit D - Additional evidence submitted by Wallace W. Lien on August 13, 2020
- Exhibit E - Additional evidence submitted by Wallace W. Lien on August 17, 2020
- Exhibit F - Additional evidence submitted during open record period (October 15, 2020 through November 5, 2020)