



DEVELOPMENT DEPARTMENT REPORT

The agenda request before the Land Development Review Board (LDRB) is an Ordinance amending the Land Development Code Chapter 5 on rezonings, variances and special exceptions. The agenda request is before the LDRB because the Land Development Code (LDC) § 3.06.01.1 provides the LDRB shall recommend to the city council the adoption of ordinances promoting orderly development in conformance with the adopted Comprehensive Plan. *The Development Department recommends the LDRB forward to the City Council a recommendation the Ordinance be adopted as submitted.*

I. BACKGROUND

Land Development Code (LDC) Chapter 5 establishes the procedures for processing rezoning, variance, and special exception use applications. While LDC § 5.02 provides guidelines for granting a special exception use and LDC § 5.03 provides guidelines for granting a variance, LDC § 5.01 does not provide any guidelines for granting a rezoning. In addition, the LDC does not contain any regulations governing LDC amendments.

The proposed Ordinance addresses these omissions by adding guidelines for granting a rezoning and LDC amendment. It also repeals what appears to be a codification error in LDC § 5.03.03B. Paragraph B references special exception use guidelines but LDC § 5.03 addresses variances and not special exception uses.

II. PROPOSED ORDINANCE

Attachment A is an Ordinance of the City of New Port Richey, Florida amending Land Development Code (LDC) Chapter 5, Rezonings, Variances, and Special Exceptions; amending the LDC Chapter 5 title to add LDC amendments; adding LDC § 5.01.10, Guidelines for Granting a rezoning; repealing LDC § 5.03.03B; adding LDC § 5.04.00, LDC amendments and adding five subsections; providing for conflicts; providing for severability; and providing for an effective date.

III. DATA & ANALYSIS

Land Development Code amendments should be based upon data and analysis that support findings and conclusions to justify a change. This staff report is intended to provide the factual findings and conclusion of law to support adoption of the ordinance.

A. Section-by-section analysis. The Ordinance contains four substantive sections and three procedural sections (conflicts, severability, and effective date). This part of the staff report addresses the four substantive sections.

1. *Section 1.* This section amends the title to LDC Chapter 5 by adding the words “Land Development Code amendments.” The title change is needed to facilitate locating those

provisions addressing the initiation of a LDC amendment. It also lays the foundation for the specific requirements in Ordinance Section 4.

2. *Section 2.* This section amends LDC § 5.01.00 by adding a new section that establishes 11 guidelines that the Development Department, Development Review Committee, Land Development Review Board, and City Council must consider when evaluating a LDC amendment application. An analysis of each of the 11 guideline follows:

a. Whether the proposed zoning district is one of the zoning districts intended to implement or be consistent with the Future Land Use Map designation of the property. State law requires each local government adopt a Comprehensive Plan, which includes a Future Land Use Map (FLUM) showing the designation of each property within its jurisdictional limits. State law also requires that Comprehensive Plans be implemented and the FLUM is implemented through the adoption of an Official Zoning District Map (OZDM). This guideline ensures that any change to the OFZM be consistent with or further the FLUM designation.

b. If more than one zoning district implements or is consistent with the FLUM designation, whether the proposed zoning district is the most suitable. The FLUM is intended to be a general map while the OZDM is a specific map. It is not uncommon for a local government to have multiple zoning district that are consistent with or that implement the FLUM designation. For example, the City's FLUM has a designation for Low Density Residential (LDR). This

designation is implemented by three different zoning districts, these being R-1, R-2 and R-3. This guideline ensures that when evaluating an OZDM amendment the most appropriate zoning district is considered.

- c. Whether there are substantial reasons why the property cannot be used in accordance with its present zoning district, that is, why the existing zoning is unsuitable. This guideline places the burden of proof on the applicant to explain why the property can no longer be used based on its existing zoning district. The fact that the property may be worth more if it had a different zoning would be an insufficient reason to support the rezoning so long as some use can be made of the property.

- d. Whether the proposed zoning district is premature based on the character of the existing land use pattern. The FLUM is intended to be the appropriate designation for land in the future but not necessarily today. In contrast, the OZDM is intended to address the highest and best use of land at the present time. An area that might be appropriate for redevelopment in the future may not be appropriate today. The City's Comprehensive Plan is based on the year 2030 and will need to be updated to reflect conformance with the recently adopted Pasco County Metropolitan Planning Organization's 2045 Long Range Transportation Plan. This guideline allows the consideration of the timing of a rezoning amendment.

- e. Whether the proposed zoning district abuts property with a zoning district similar in intensity to the proposed

zoning district, or serves as a suitable transition zoning between two or more different abutting zoning districts. The purpose of this guideline is to avoid illegal “spot” zoning, which may be defined as the process of singling out a small parcel of land for a zoning district that is different from that of the surrounding area for the benefit of the property owner and to the detriment of the general welfare. This guideline helps avoid “spot” zoning by requiring that the proposed zoning district be similar in intensity, i.e., by number of dwelling units per acre or floor area ratio, to a property that abuts or shares a contiguous boundary with the property being rezoned. This guideline also helps reduce the conflicts or incompatibilities between two or more adjacent zoning districts by allowing for a transitional zoning district. For example, where a single-family zoning district abuts a commercial zoning district, a rezoning to multiple-family zoning district can create a transition that helps reduce potential incompatibilities.

- f. Whether there are substantial changed or changing conditions in the character of the area where the property is located so that the proposed zoning district is now suitable. This guideline recognizes that changes in the existing land use pattern may make the existing zoning district of the property unsuitable provided the change is substantial. For example, the repaving of a two-lane roadway is a changed condition but is not substantial; however, the expansion of the two-lane road to four lanes may be a substantial changed condition. Likewise, a natural disaster that devastates an area or the widespread abandonment of property

within an area may constitute a substantial changed condition.

- g. Whether based upon the property's size, shape, and characteristics the proposed zoning district is out-of-scale with the surrounding area. This guideline allows the consideration of the property's size, shape and characteristics in determining whether to rezone a property. The rezoning of a large tract to a single-use zoning district, as opposed to a mixed use zoning district, may generate a significant number of trips on the surrounding roadway and negatively impacting the level of service. Likewise, an irregular shape, such as creating an enclave, may also be inappropriate. In addition, the property's characteristics, such as location adjacent to a water body, may be inappropriate for industrial use.
- h. Whether there is a substantial public need or purpose for the proposed zoning district consistent with the public health, safety, and general welfare. This guideline recognizes that there are situations where a rezoning is needed to serve the public good. For example, the siting of a locally unwanted land use (LULU) such as a municipal dump or sewage treatment plant may require a rezoning but because the rezoning is not similar in intensity to the surrounding land uses, it may be considered "spot" zoning. This guideline provides a basis for supporting such a rezoning.
- i. Any other factors that may be relevant to the rezoning, such as its location within an enclave, recent annexation into the City, or to conserve the value of buildings and

natural resources. This is a catchall guideline that allows a decision-maker to consider factors that may be unique.

j. The totality of the circumstances. This guideline recognizes that each situation is unique, and that one guideline or group of guidelines may outweigh others. For example, a proposed zoning district that is inconsistent with its FLUM designation is enough reason to justify a denial, even if it complies with the remaining guidelines. This guideline allows a decision-maker to consider all the guidelines in their totality when making a recommendation or decision.

k. Any competent substantial evidence presented at the public hearings. No matter how thorough professional staff can be in researching a rezoning application, there are times when the public provides new information that was not available to staff when conducting their research. This additional information, especially if significant, may change staff's recommendation. In addition, due process requires that a decision-maker consider such decision when making a final decision. This guideline memorializes such requirement.

3. *Section 3*. This section amends LDC § 5.03.00 on variances by repealing LDC § 5.03.00B which deals with special exception uses and not variances.

4. *Section 4*. This section amends LDC Chapter 5 by adding LDC § 5.04.00 on LDC amendments. Specifically, it establishes the process and procedures for amending the LDC. This section

has five subsections: application initiation, staff review, guidelines, staff report, and council action.

- a. Application initiation. This subsection contains two paragraphs. Paragraph A identifies the parties that may initiate a rezoning amendment application while paragraph B describes what information is required.
- b. Staff review. This subsection has three paragraphs. Paragraph A requires the application be complete before it can be accepted. Paragraph B provides the complete application be submitted to the DRC for review and comments. Paragraph C requires the Development Department to prepare a staff report with recommendation and to schedule the application for a public hearing before the Land Development Review Board.
- c. Guidelines. This subsection identified the two guidelines to be considered when evaluating a LDC amendment. The first guideline is the need and justification for the amendment. The second is whether the proposed amendment is consistent with the Comprehensive Plan, other laws, and LDC.
- d. Staff report and recommendations. This section makes clear the recommendations of the Development Department and the Land Development Review Board are advisory and are not binding on the City Council.
- e. City Council action. This section requires the City Council to hold a public hearing on the application and to build a record to support their final action.

B. Comprehensive Plan consistency. Although the Comprehensive Plan does not have any specific goal, objective or policy regarding land development regulation and rezoning applications, the Development Department concludes the Ordinance is generally consistent with Future Land Use Element Objective 1.1, which provides “Manage future growth and development through the implementation and enforcement of the Land Development Code in a manner consistent with the Comprehensive Plan and Future Land Use Map.” More specifically, the Ordinance provides guidelines for ensuring that a rezoning application for property is consistent with the Future Land Use Map designation of that property. It also provides guidelines for adopting LDC amendments and one of the guidelines requires that amendment be consistent with and further the Comprehensive Plan.

C. Land Development Code consistency. The Development Department finds and concludes the Ordinance is consistent with the following LDC provisions:

1. LDC § 1.02.02A.1, which provides “A single set of administrative procedures for making all land use decisions promotes efficiency, predictability, and citizen participation.”
2. LDC § 1.02.02A.6, which provides “Review of planning decisions should be independent of review of land development decisions to avoid ad hoc planning on a site-by-site basis.”
3. LDC § 1.03.02A.1, which provides “To assure that all development proposals be thoroughly and efficiently reviewed for compliance with the requirements of this code.”

4. LDC § 1.03.02A.2, which provides “To promote efficiency, predictability and citizen participation.”

D. Public notice. Florida Statutes § 166.041(2) provides each ordinance shall be introduced in writing and shall embrace but one subject and matters properly connected therewith. The subject shall be clearly stated in the title. No ordinance shall be revised or amended by reference to its title only. Ordinances to revise or amend shall set out in full the revised or amended act or section or subsection or paragraph of a section or subsection.

Florida Statutes § 166.041(3) provides a proposed ordinance may be read by title, or in full, on at least 2 separate days and shall, at least 10 days prior to adoption, be noticed once in a newspaper of general circulation in the municipality. The notice of proposed enactment shall state the date, time, and place of the meeting; the title or titles of proposed ordinances; and the place or places within the municipality where such proposed ordinances may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance. The required public notice was published in the legal section of the Sunday, February 9th, 2020 edition of the Tampa Bay Times or 11 days before the Land Development Review Board public hearing. A copy of the proof of publication is included as a separate agenda request and is incorporated herein by reference.

E. Development Review Committee (DRC) comments. A draft copy of the Ordinance was provided to the DRC and briefly discussed at their duly noticed January 16th, 2020 public meeting. The DRC was requested to submit any comments they had on the draft Ordinance by January 23rd, 2020. The DRC comments, if any, are included as an attachment to the staff report.

IV. ATTACHMENTS

Attachment A: Proposed Ordinance

V. FINDINGS AND CONCLUSIONS

Based upon the information contained in this Development Department Report, the following findings of fact and conclusions of law are offered:

- A. The LDC lacks regulations providing guidelines for amending the LDC and for amending the Official Zoning District Map. There is a need for providing persons with clear guidance on what guidelines the City will use when evaluating an application for a LDC amendment and an Official Zoning District Map amendment. The justification for this ordinance is to provide such guidance.
- B. The Ordinance addresses these needs by adding guidelines for granting a rezoning and LDC amendment
- C. The Ordinance is consistent with the Comprehensive Plan's Future Land Use Element.
- D. The Ordinance is consistent with the Land Development Code, specifically, sections 1.02.02 and 1.03.02

VI. ALTERNATIVE ACTIONS

The LDRB has one of the following alternative actions at its disposal:

- A. Forward the record to the City Council with a recommendation the Ordinance be adopted as submitted.
- B. Forward the record to the City Council with a recommendation the Ordinance be adopted with conditions, such as:
 - 1. The guideline on the property's size, shape, and characteristics be eliminated; or
 - 2. The guideline on any other factors should be eliminated.
- C. Forward the record to the City Council with a recommendation the Ordinance not be adopted for the following stated reasons:
 - 1. The ordinance includes too many rezoning guidelines which places an inordinate burden on persons desiring a rezoning amendment and the entire regulatory scheme should be reconsidered
- D. Forward the record to the City Council with a recommendation there is insufficient data and analysis to support adoption of the Ordinance currently and that the Development Department provide additional data and analysis (*Add stated additional information here*).

VII. RECOMMENDED ACTION

- A. Recommendation. The Development Department Director recommends the Land Development Review Board forward the record to the City Council with a recommendation the Ordinance be adopted as submitted.

- B. Land Development Review Board (LDRB) action. A draft copy of the Ordinance was provided to the DRC and briefly discussed at their duly noticed January 16th, 2020 public meeting. The LDRB could not take any action on the Ordinance at that meeting because the Ordinance had not been legally noticed. Consequently, the LDRB will be requested to make a recommendation at their duly noticed February 3rd, 2020 special public hearing.

At the duly notice special LDRB meeting held on February 3rd, 2020, Director Hahn read the title of the Ordinance into the record and made a PowerPoint Presentation summarizing how the Development Department became aware of the fact the LDC did not have any guidelines for reviewing Zoning District Map (i.e., rezoning) and LDC text amendments. He stated that to address this omission, the proposed Ordinance was drafted and a section-by-section description of the proposed changes in the Ordinance was presented. Mr. Hahn subsequently requested the LDRB move to recommend to the City Council the proposed Ordinance be adopted. At the conclusion of the presentation, Director Hahn stated he would entertain any questions.

Discussion ensued over the need for the ordinance and concern was raised over the appropriateness of the guidelines. Subsequently, Ms. McDonald moved to recommend approval, which motion was seconded by Dr. Cadle, Jr. Further discussion ensued and some LDRB members stated they had not received the agenda package and they were not prepared to make a recommendation at this time. City Manager Debbie Manns was granted the floor and stated that if the LDRB was not prepared to consider the ordinance, it could be tabled to the following meeting. After further discussion, Ms. McDonald and Dr. Cadle, Jr. withdrew their motions. Ms. Barnett moved to table the Ordinance to the February 20th, 2020 meeting, which motion was seconded by Dr.

Cadle, Jr. and which passed unanimously 5-0.

Director Hahn read the title of the Ordinance into the record and made a PowerPoint Presentation summarizing how the Development Department became aware of the fact the LDC did not have any guidelines for reviewing Zoning District Map (i.e., rezoning) and LDC text amendments. He stated that to address this omission, the proposed Ordinance was drafted. He noted the staff report includes a section-by-section description of the proposed changes to the Ordinance. Mr. Hahn noted that guidelines are necessary to ensure recommendations and final action are not made in an arbitrary and capricious manner. He also noticed that an informational item has been provided showing how the guidelines would be applied to an actual rezoning application. Finally, Mr. Hahn explained the format for the staff report assists the LDRB in making their own recommendations by offering them alternative recommendations.

At the conclusion of the presentation, Mr. Hahn subsequently requested the LDRB move to recommend to the City Council the proposed Ordinance be adopted and stated he would entertain any questions.

The LDRB briefly discussed the ordinance, sought some clarification on how the guidelines would be applied, and expressed support of having clear guidelines for making recommendations. There being no further LDRB inquiries or deliberation, the Chairman opened the floor to the public.

There being no further comments from the public, the Chairman closed the floor and requested the LDRB begin their deliberations. Dr. Cadle, Jr. moved to approve the staff recommendation, which motion was seconded by Mr. Smallwood, and which passed

unanimously 5-0.

- C. City Council action. This Ordinance is scheduled for first reading before the City Council at their duly noticed March 3rd, 2020 public hearing and for second reading and adoption at their duly noticed March 17th, 2020 public hearing.