

RESOLUTION NO. 2911-14

A RESOLUTION OF THE CITY OF OVIEDO, FLORIDA, RELATING TO CITY COUNCIL MEETINGS AND PROVIDING FOR A PROCEDURE TO MAKE A FUNDAMENTAL DEVELOPMENT DECISION RELATING TO THE TWIN RIVERS (PROJECT NUMBER: 14-0095) DEVELOPMENT PROPOSAL AND RELATED MATTERS; PROVIDING FOR FINDINGS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE AND ACTIONS UPON EFFECTIVENESS.

WHEREAS, the City Council of the City of Oviedo is an elected legislative and deliberative public body, serving the citizens of Oviedo Florida and the property owners and business owners of the City of Oviedo; and

WHEREAS, in accordance with the requirements of controlling law, the City Council of the City of Oviedo is a quasi-judicial body and acts upon, after full deliberation, land use/development applications; and

WHEREAS, in accordance with the requirements of controlling law, quasi-judicial generally involve a determination of the rights, duties, or obligations of specific individuals on the basis of the application of presently existing legal standards or policy considerations to past or present facts developed at a hearing conducted for the purpose of resolving the particular interests in question; and

WHEREAS, in simpler terms, a quasi-judicial case is one in which the City Council Members are acting as judges rather than legislators or administrators and the Council is not making new laws, but rather applying existing laws to specific facts, concerning one person or a small number of people rather than the entire City, at a public hearing; and

WHEREAS, the City Council has taken great care in enacting the provisions of the City's *Comprehensive Plan* and the City's *Land Development Code* to afford all persons with administrative due process in the development review context; and

WHEREAS, Section 163.3194, *Florida Statutes*, relates to the legal status of comprehensive plans adopted by local governments in the State of Florida and provides, in pertinent parts, that:

(1)(a) After a comprehensive plan, or element or portion thereof, has been adopted in conformity with this act, all development¹ undertaken by, and all

¹ Section 163.3164 (14), *Florida Statutes*, defines the term "development" as having the same meaning as in Section 380.04, *Florida Statutes*, which defines development as follows:

. . . carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels.

actions taken in regard to development orders² by, governmental agencies in regard to land covered by such plan or element shall be consistent with such plan or element as adopted.

(2) The following activities or uses shall be taken for the purposes of this chapter to involve "development," as defined in this section:

(a) A reconstruction, alteration of the size, or material change in the external appearance of a structure on land.

(b) A change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or on land or a material increase in the number of businesses, manufacturing establishments, offices, or dwelling units in a structure or on land.

(c) Alteration of a shore or bank of a seacoast, river, stream, lake, pond, or canal, including any "coastal construction" as defined in s. 161.021.

(d) Commencement of drilling, except to obtain soil samples, mining, or excavation on a parcel of land.

(e) Demolition of a structure.

(f) Clearing of land as an adjunct of construction.

(g) Deposit of refuse, solid or liquid waste, or fill on a parcel of land.

(3) The following operations or uses shall not be taken for the purpose of this chapter to involve "development" as defined in this section:

(a) Work by a highway or road agency or railroad company for the maintenance or improvement of a road or railroad track, if the work is carried out on land within the boundaries of the right-of-way.

(b) Work by any utility and other persons engaged in the distribution or transmission of gas, electricity, or water, for the purpose of inspecting, repairing, renewing, or constructing on established rights-of-way any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks, or the like. This provision conveys no property interest and does not eliminate any applicable notice requirements to affected land owners.

(c) Work for the maintenance, renewal, improvement, or alteration of any structure, if the work affects only the interior or the color of the structure or the decoration of the exterior of the structure.

(d) The use of any structure or land devoted to dwelling uses for any purpose customarily incidental to enjoyment of the dwelling.

(e) The use of any land for the purpose of growing plants, crops, trees, and other agricultural or forestry products; raising livestock; or for other agricultural purposes.

(f) A change in use of land or structure from a use within a class specified in an ordinance or rule to another use in the same class.

(g) A change in the ownership or form of ownership of any parcel or structure.

(h) The creation or termination of rights of access, riparian rights, easements, covenants concerning development of land, or other rights in land.

(4) "Development," as designated in an ordinance, rule, or development permit includes all other development customarily associated with it unless otherwise specified. When appropriate to the context, "development" refers to the act of developing or to the result of development. Reference to any specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular

² Section 163.3164 (15) and (16), *Florida Statutes*, defines the terms "development order" and "development permit" as follows:

(15) "Development order" means any order granting, denying, or granting with conditions an application for a development permit.

(16) "Development permit" includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.

(b) * * *

(2) * * *

(3)(a) A development order or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.

(b) A development approved or undertaken by a local government shall be consistent with the comprehensive plan if the land uses, densities or intensities, capacity or size, timing, and other aspects of the development are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.

(4)(a) A court, in reviewing local governmental action or development regulations under this act, may consider, among other things, the reasonableness of the comprehensive plan, or element or elements thereof, relating to the issue justiciably raised or the appropriateness and completeness of the comprehensive plan, or element or elements thereof, in relation to the governmental action or development regulation under consideration. The court may consider the relationship of the comprehensive plan, or element or elements thereof, to the governmental action taken or the development regulation involved in litigation, but private property shall not be taken without due process of law and the payment of just compensation.

(b) It is the intent of this act³ that the comprehensive plan set general guidelines and principles concerning its purposes and contents and that this act shall be construed broadly to accomplish its stated purposes and objectives.

(5) * * *

(6) * * *

; and

WHEREAS, comprehensive plans have, accordingly, been viewed as land use constitutions, a body of land use policy goals stating minimum requirements for subsequent zoning regulations, and enforceable as a substantive standard for zoning decisions and, thus, all land use decisions must be made “in accordance with a comprehensive plan” as a planning standard and zoning actions not in accordance with a comprehensive plan are *ultra vires* acts; and

³ Section 163.3161, *Florida Statutes*, relating to the short title; intent and purpose of the pertinent provisions of Part II, Chapter 163, *Florida Statutes*, provides in Subsection (1), that “[t]his part shall be known and may be cited as the ‘Community Planning Act.’”

WHEREAS, the owner of certain real property located in the City of Oviedo has filed a rezoning application relating to the Twin Rivers site which application has been assigned the reference of Project Number: 14-0095 by the City staff; and

WHEREAS, early on in the review of Project Number: 14-0095, City staff sought legal counsel relative to the consistency of the proposed uses set forth in Project Number: 14-0095 with regard to the City's *Comprehensive Plan* and related matters; and

WHEREAS, on April 3, 2014, the City Attorney issued a detailed analysis of the Twin Rivers development proposal and determined that the proposal would be inconsistent with the City's *Comprehensive Plan*; and

WHEREAS, if the City Attorney is correct, the Twin Rivers development proposal may not be approved as outlined in the controlling law set forth in prior recitals; and

WHEREAS, the City Council desires to make an initial determination in order to determine whether Project Number: 14-0095/the Twin Rivers development proposal may proceed through the City's development review process and be considered for approval on the basis of other considerations aside from consistency with the City's *Comprehensive Plan*; and

WHEREAS, the City Council has determined that it would conserve public and private resources and provide for administrative due process for all parties and be in accordance with the essential requirements of law to hear and determine the issue of consistency with the City's *Comprehensive Plan* with regard to Project Number: 14-0095/the Twin Rivers development proposal as set forth herein.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF OVIEDO, FLORIDA:

SECTION 1. Findings.

(a). The foregoing findings are incorporated herein by reference and made a part hereof and the City Council has the power and authority to proceed in accordance with procedures which conserve both the efforts of City staff and the expenses of property owners.

(b). The City Council is vested with the responsibility and power to make land use decisions relative to properties located within the jurisdictional boundaries of the City of Oviedo and has determined that it would be fair and in accordance with administrative due process and the essential requirements of law to address the matter of consistency with the City's *Comprehensive Plan* with regard to Project Number: 14-0095/the Twin Rivers development proposal as set forth herein.

(c). The City Council has taken any and all requisite and necessary actions relative to notice in order to act upon this Resolution.

SECTION 2. Hearing Processes.

(a). In order to determine the matter of consistency with the City's *Comprehensive Plan* with regard to Project Number: 14-0095/the Twin Rivers development proposal, the City Council has determined to hear the matter as follows:

(1). This matter shall be heard at the City Council's meeting of October 20, 2014. The issue before the City Council shall be solely the legal issues as to whether Project Number: 14-0095/the Twin Rivers development proposal is consistent with the City's *Comprehensive Plan* and whether the April 3, 2014 legal analysis (attached) of the City Attorney is correct.

(2). On or before October 13, 2014, any party desiring to present a written legal argument relative to the matter shall be entitled to present such legal argument by delivering one (1) electronic copy and one (1) hard copy of the written materials to the City Manager who shall cause the materials to be distributed to the City Council and appropriate City staff as well as making such documents available to the public as public records.

(3). At the City Council's meeting of October 20, 2014, any party desiring to make legal argument as to the limited issues before the City Council may do so. Only legal arguments will be relevant and material to the consideration of the matter. The property owner or its legal counsel shall be entitled to make the initial argument to the City Council and shall be afforded a fifteen (15) minute period in which to do so. Each legal counsel representing a group or other individual shall be provided with a fifteen (15) minute period in which to make legal arguments to the City Council. Any other person desiring to provide legal argument shall be afforded a three (3) minute period in which to do so. The property owner or its legal counsel shall be afforded a five (5) minute rebuttal period in which to rebut the arguments made by others. Time expended by any questions asked by the City Council shall not count against the time allotted to a party.

(b). At the conclusion of all legal arguments being made, the City Council shall deliberate and make a decision and direct the City Attorney to draft an order implementing that decision in accordance with controlling law. If the City Council does not concur with the legal analysis of the City Attorney, a resolution will be adopted terminating the action in Section 5(b) of this Resolution and the development review process will resume. If the City Council determines that the legal analysis of the City Attorney is correct, a denial development order shall be issued in accordance with the provisions of Section 166.033, *Florida Statutes*.⁴

SECTION 3. Conflicts. All resolutions or part of resolutions in conflict with this Resolution are hereby repealed.

⁴ Section 166.033, *Florida Statutes*, relating to development permits, provides in Subsection (2) as follows:

When a municipality denies an application for a development permit, the municipality shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit.

SECTION 4. Severability. If any section, sentence, phrase, word, or portion of this Resolution is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word, or portion of this Resolution not otherwise determined to be invalid, unlawful, or unconstitutional.

SECTION 5. Effective Date; Effectiveness On Process.

(a). This Resolution shall take effect immediately upon its passage by the City Council of the City of Oviedo, Florida.

(b). Unless and until Project Number 14-0095/the Twin Rivers development proposal is found to be consistent with the provisions of the City's *Comprehensive Plan*, the processing of the subject Project is hereby suspended until such time as either the City Council finds the Project to be in compliance with the City's *Comprehensive Plan* or an adjudication of such matter by an agency of controlling legal authority is final and conclusive in order to bring this matter to rest.

PASSED AND ADOPTED this 6th day of October, 2014.

ATTEST:

DOMINIC PERSAMPIERRE
MAYOR of the City of Oviedo, Florida

Barbara J. Barbour
CITY CLERK