

MEMORANDUM

TO: Tom Harmer, Town Manager

FROM: Allen Parsons, AICP,
Director – Planning, Zoning and Building Department

REPORT DATE: September 13, 2022

MEETING DATE: October 3, 2022

SUBJECT: Ordinance 2022-14 – Comprehensive Plan Batch 2
Amendments – Future Land Use Element

Recommended Action

Adopt Ordinance 2022-14.

Background

At their July 1, 2022 Regular Meeting the Town Commission held the first reading for Ordinance 2022-14, and voted to transmit the ordinance to local, regional and state agencies, including the Department of Economic Opportunity (DEO) for review and comment. The Town Commission also voted to recommend scheduling the second reading, public hearing and adoption of Ordinance 2022-14 following DEO review.

The DEO, along with other State and regional agencies, reviewed Ordinance 2022-03, which contains a number of amendments the Future Land Use (FLU) Element primarily derived from the Town's Evaluation and Appraisal Report. The DEO and reviewing agencies did not identify any objections or recommendations to the proposed amendments.

During the July 1, 2022 discussion, the Town Commission provided feedback on Policy 1.2.1:

“FLU Policy 1.2.1: Proposals for development within the floodplains will be approved only if significant alteration of the functions of the floodplain will not occur (i.e., no increase in flood hazards will be permitted) and if the proposed development is consistent with the regulations of the appropriate agencies regulating development within floodplain areas.”

The Town Commission requested staff to review and potentially suggest language that would call for stormwater management requirements that would create a net benefit of floodplain functions in the pre vs. post development conditions.

Staff investigated this concept and ran into a significant legal impediment. In considering whether the Town can require a net improvement to a property's current floodplain function, as opposed to not making current conditions worse, the concern from a legal perspective would be that such a requirement [to improve a condition not caused by the property owner], could be considered an “exaction” under Florida law. Florida Statutes 70.45 prohibits the government from imposing prohibited exactions which is defined as follows:

“Prohibited exaction” means any condition imposed by a governmental entity on a property owner’s proposed use of real property that lacks an essential nexus to a legitimate public purpose and is not roughly

proportionate to the impacts of the proposed use that the governmental entity seeks to avoid, minimize, or mitigate.

Violations of this statute provide a property owner with a takings (Bert Harris) type cause of action against a government.

Due to the legal implications related to exactions, staff does not recommend revising the current policy and requirements for stormwater management.

The Commission also requested information on the possibility of prohibiting the use of additional fill on properties to change ground levels and potentially create off-site impacts. A similar prohibition was noted in New Jersey following impacts from Hurricane Sandy in 2012. The Town currently allows properties to utilize fill, provided that offsite impacts are managed.

In staff's investigation it was found that the Federal Emergency Management Agency (FEMA), actually encourages the use of fill (provided off-site impacts are managed) as a long-term mechanism to reduce flood risk for properties. This is particularly true in Coastal Flood Hazard zones (for example, on coastal barrier islands) where flood elevations are based on storm surge and wave run-up. There are also benefits related to elevating properties over time with the use of fill. The Town is currently completing two studies that address flood mitigation strategies: The Comprehensive Adaptation Plan study and the Neighborhood Drainage Assessments (for the areas including the Village, Sleepy Lagoon, and Buttonwood neighborhoods). These studies will include recommendations that are related to infrastructure improvements related to utilizing fill, such as elevating roadways and enhanced neighborhood drainage systems. There may be issues with future projects related to elevating roadways if there are properties that are not elevated to FEMA requirements. Tying roadway infrastructure to properties that are at a lower elevation than the recommended adjacent roadway heights will create situations that will add to project costs and complexity (by requiring additional fill to be placed on private properties). In addition, these improvements may not function properly. Staff is of the opinion that the combination of fill (properly mitigated on private properties and in public rights-of-way) and drainage projects can result in a more resilient condition in providing future increases in elevation that would allow for safe access to and from the island. Therefore, staff does not recommend a new or amended policy to prohibit or discourage the use of fill. Town consultants are developing mitigation options, with graphics, that can be used to describe the benefits of partial fill and flow through alternatives for developers and home builders.

One additional change has been incorporated into Ordinance 2022-03. At the Planning and Zoning Board's (P&Z Board) Comprehensive Plan Workshop on the Infrastructure Element, the P&Z Board made a recommendation that was found to be more appropriate for the Future Land Use Element. The P&Z Board recommended that the Comprehensive Plan include a policy that addresses the provision of energy and telecommunications infrastructure such as cable and internet. Even though these services are provided by utilities and private companies (i.e. not the Town), the P&Z Board felt that the Comprehensive Plan should reflect that these are services provided to the public, similar to water, wastewater, solid waste and stormwater management. Per the P&Z Board's recommendation, the following policy has been added in the FLU Element:

“FLU Policy 1.4.8: The Town will encourage providers to maintain safe and efficient access to telecommunications infrastructure including but not limited to multichannel video programming, internet and to reliable energy.”

Two versions of the Comprehensive Plan are included in the agenda packet. The first version is the draft shown with edits. The second version includes all edits, but the edits are not shown in strike-thru/underline.

The Planning & Zoning Board held a public hearing on June 21, 2022, recommended approval of Ordinance 2022-14, and forwarded to the July 1, 2021 Regular Meeting for Commission consideration and first reading.

Staff Recommendation

Adopt Ordinance 2022-14.

Attachments

- A. Ordinance 2022-14 and Exhibit A: Future Land Use Element (version shown with edits) (Available in Town Clerks Office)
- B. Exhibit A: Future Land Use Element (clean version without edits) (Available in Town Clerks Office)

End of Agenda Item