

AT A REGULAR MEETING OF THE
PLANNING & ZONING COMMISSION
HELD IN AND FOR GADSDEN COUNTY,
FLORIDA, ON APRIL 10, 2008, THE
FOLLOWING PROCEEDINGS WERE HAD,
VIZ

PRESENT:

John Yerkes, Chair
Larry Ganus
Dr. Tony Arnold
Frank Rowan
Dr. Gail Bridges-Bright
Mari VanLandingham
Dick Hollahan
Bill McCord, Growth Mgt. Dir.
Jean Chesser, Deputy Clerk

ABSENT:

Alonzo McBride
Diane Sheffield
Eric Hinson (School Bd.)
Willard Rudd

CALL TO ORDER:

Chair Yerkes called the meeting to order and led in the pledge of allegiance to the U.S. Flag. He requested the minutes reflect a quorum present.

ROLL CALL:

Each commissioner present stated his/her name and district for the record.

DECLARATIONS OF CONFLICT:

There were no conflicts declared by any of the members present.

CHANGES TO THE AGENDA:

Mr. McCord stated there were no changes to the agenda

APPROVAL OF MINUTES:

UPON A MOTION BY COMMISSIONER ROWAN AND A SECOND BY COMMISSIONER ARNOLD TO ACCEPT THE MINUTES OF THE MARCH 13, 2008, PLANNING & ZONING COMMISSION MEETING AS PRESENTED, THE BOARD VOTED 7-0, BY VOICE VOTE, IN FAVOR OF THE MOTION.

NEW BUSINESS:

5. Public Hearing - Comprehensive Plan Amendment - Albritton Future Land Use Map Amendment - CPA-2008-01 (Small Scale Amendment)

Location of Property: Located on the Northwest side of Point Milligan Road, (CR 262) South of Dogtown Road and North of Willacoochee Creek in the Branchville Community in Township 3 North, Range 3 West, Section 24

Tax ID#: 2-24-3N-3W-0000-00120-0000

Type of Hearing: Quasi-Legislative

Mr. McCord explained this parcel, consisting of 93.82 acres (which includes the 10 acre subject portion) currently has three separate land uses RR, AG-2, AG-3 Mining. He said staff has proposed to change all of the applicant's property to AG-2 at the County's next administrative land use amendment cycle in 2010. The applicant is requesting to change a small portion of the parcel (10 acres) to AG-2 from Mining for the purpose of building a home on this portion of the property. Mr. McCord said the applicant has no mining lease, nor any mining interest in the property. According to the Property Appraiser's records, the property is shown as timber use with pasture/crops, natural area and a single family home. He also said staff has no knowledge of any past mining activity on this property.

In Policy 1.1.5 (M) Mining -- Future Land Use Map - Mining does allow at least one residential unit on land under that category, but only after reclamation. He explained that no information has been provided to indicate the land has ever been mined and reclaimed. If reclaimed vs. not previously used, the single family home would be permitted and in that type of situation staff would make administrative land use changes on the property.

There is no central water or sewer available to this property and neither is required for properties or densities in AG-2. The site would be served by a septic tank and private water well. He said the soil on this property is consistent with non-hydric, and should support a septic system without concern.

After further explanation of the applicant's request, Mr. McCord stated it was the recommendation of staff for Option # 1 to

approve the Albritton small scale amendment as shown in the attached agenda report (page 13).

After a brief discussion, Chair Yerkes called for anyone from the public wishing to speak for or against the request and no one appeared.

UPON A MOTION BY COMMISSIONER ROWAN FOR OPTION ONE TO APPROVE THE ALBRITTON SMALL SCALE FUTURE LAND USE MAP COMPREHENSIVE PLAN AMENDMENT (CPA-2008-01) AS RECOMMENDED BY STAFF, AND UPON A SECOND BY COMMISSIONER BRIDGES-BRIGHT, THE COMMISSION VOTED 7-0, BY VOICE VOTE IN FAVOR OF THE MOTION.

6. **Public Hearing:** (Rehearing) - AP-2007-04, Appeal of the Denial of Mr. Nathaniel Cunningham's Housing Permit Application, Tax ID # 3-03-2N-0000-000122-0200

Location of Property: Located on the south side of Post Plant Road, east of Point Milligan Road (CR 161) and east of Grace Cunningham Road, in the Rural Residential Land Use Category

Tax ID# 3-03-2N-0000-000122-0200

Type of Hearing: Quasi-Judicial Administrative Decision Appeal

Mr. McCord was sworn by Deputy Clerk Jean Chesser.

Mr. McCord explained staff had denied Mr. Cunningham's request for a housing permit application (2nd home on parcel containing 1.5 acres --one dwelling unit per acre) on September 10, 2007 and Mr. Cunningham appeared before the Board of County Commissioners on September 18, 2007 requesting a variance to build a second home on his property. Staff prepared an analysis and on October 16, 2007, the Board directed Growth Management Director to discuss the issue and obtain an opinion from the County Attorney concerning the ability to consider the property as a single parcel or two separate parcels as shown in the attached agenda packet. On November 6, 2007, Mr. Charles Roberts a neighboring property owner appeared before the Board of County Commissioners in opposition to the proposed housing development by Mr. Cunningham. On March 4, 2008, the Board then voted unanimously to reverse the administrative decision by the Growth Management Director and granted Mr. Cunningham's appeal which would allow for one house to be placed on each of the non-contiguous portions of the parcel with certain conditions as shown in the agenda packet. Mr. Roberts then wrote a letter to

the Board of County Commissioners on March 11, 2008, expressing concern with the Board's action and the fact that he was not notified of the meeting. Mr. McCord said after a thorough review of the public notice procedures for an appeal, this item was then scheduled for return to the Board because it was not advertised as required by Section 7500 of the Land Development Code, as well as this item having not been first heard by the Planning Commission as required by Section 7302, Gadsden County Land Development Code. After further explanation by Mr. McCord on the request and the County Attorney's opinion (also shown in the attached agenda packet) it was staff's recommendation for Option # 4 - Discretion of the Planning Commission.

Commissioner Ganus inquired as to how they had gotten to this stage without the impact fee of \$500.00 not having been paid and Mr. McCord said he had been asked to put it back on the agenda because the mistake was on his part. He also said he would recommend in this process, the fee be waived.

Chair Yerkes asked if it would be normal to have three deeds on this and Mr. McCord said that is the reason they are discussing it again tonight as the applicant did not file a deed on the eastern portion of the parcel.

There was discussion as to whether or not it was the intent to create a lot that would be considered non-conforming and Mr. McCord explained it could not be grandfathered in because there is only one deed for the lot, unless the Board decides it was the intent of the applicant to create three lots when the middle lot was sold.

Commissioner Ganus pointed out corrections in staff's report as follows: First page of report, change the Date September 18, 2006 to read September 18, 2007; Page 7 change the September 18, 2006 date to September 18, 2007; Page 10, Change Recommendation: Option # 3, to Option # 4. Recorded Corrections so Noted.

Chair Yerkes asked the applicant to come forward.

Mr. Nathaniel Cunningham, Applicant, was sworn by Deputy Clerk Jean Chesser and he explained he had inherited the property from his mother when she died. He said his mother had sold the middle lot to Mr. Roberts. He also said he does not live in the home currently on the western portion of the parcel; that he rents it out and all he wants to do is put a mobile home on the eastern portion and rent it out also. At some point in time, Mr. Cunningham said the eastern and western lots would probably be

given to his son and daughter. He said he has no intention to build another home and explained the rest of the land (40 acre parcel) had been sold, and most of it in ½ acre lots. He said he and Mr. Roberts had been friends for years and he was not even aware of Mr. Robert's concerns until recently, and he would like to be able to work with Mr. Roberts on this.

Mr. Charles Roberts was sworn and addressed the Board, stating he had rented from Mr. Cunningham's mother for several years before she sold him the lot he now owns. He expressed concern with Mr. Cunningham already renting the one house and the traffic problems they are already having, and if he is allowed another house on the eastern portion, it will be even worse.

After a brief discussion the following action was taken:

COMMISSIONER ROWAN MADE A MOTION FOR APPROVAL OF OPTION #2 TO DENY THE APPLICATION FOR APPEAL AND SEND IT BACK TO THE COUNTY COMMISSION, BASED ON FINDINGS AS IDENTIFIED IN STAFF'S REPORT.

THE MOTION FAILED FOR LACK OF A SECOND.

Chair Yerkes said they could have a flood of this type situation throughout the County and that would create a lot of inconsistencies, and Mr. McCord stated that could occur.

Commissioner Ganus asked Mr. McCord how exhaustive this process would be - if he was going to try to go through the entire county to review these situations or what.

Mr. McCord said they will try to go through the entire County but it will take a great deal of time to go through all of these types of mistakes in the FLUM and he said there are probably 30,000 parcels of this nature throughout the County.

Commissioner VanLandingham said she has a hard time trying to justify the "intent".

Commissioner Arnold said this happened before the Comp Plan went into effect and it was legal under the preceding plan and this would be a grandfathering in - progressive series of steps - logical progression - create three lots.

COMMISSIONER BRIDGES-BRIGHT MADE A MOTION FOR OPTION # 3 WITH UNDERLINED CHANGES TO READ: RECOGNIZE THAT THE INTENDED EFFECT OF SELLING THE CENTER PORTION (0.50+ACRES) OUT OF THE CENTER OF A 2.0 ACRE LOT WAS TO CREATE THREE LOTS OF 0.90 ACRES, 0.50 ACRES, AND 0.60 ACRES THAT WERE LEGAL UNDER THE CONDITIONS

PREVAILING AT THE TIME, EVEN THOUGH A SUBDIVISION WAS NOT APPROVED AND SEPARATE DEEDS WERE NOT RECORDED ON THE THREE LOTS. THIS WOULD RECOGNIZE THE EASTERLY AND WESTERLY PORTION OF THE SINGLE DEEDED PARCEL AS TWO VESTED, SEPARATE NON-CONFORMING PARCELS FOR PURPOSES OF DEVELOPMENT. THE TWO SEPARATE PORTIONS OF THE PARCEL SHALL BE DEEDED AS SEPARATE PARCELS AND ASSIGNED A SEPARATE TAX ID NUMBER FOR THE PURPOSE OF OBTAINING HOUSING PERMITS AND BUILDING PERMITS. THIS SHALL ALSO BE RECORDED AS RECOMMENDED BY THE COUNTY ATTORNEY, AND UPON A SECOND BY COMMISSIONER ARNOLD, THE BOARD VOTED 6-1 IN FAVOR OF THE MOTION.

COMMISSIONER ROWAN VOTING AGAINST MOTION.

UPON A MOTION BY COMMISSIONER BRIDGES-BRIGHT AND UPON A SECOND BY COMMISSIONER VANLANDINGHAM TO WAIVE THE APPLICATION FEE OF \$500.00 FOR MR. CUNNINGHAM, THE BOARD VOTED 7-0, BY VOICE VOTE, IN FAVOR OF THE MOTION.

7. DISCUSSION ITEM: Comprehensive Plan Amendment - Public School Facilities Element - CPA-2008-02 (Text Amendment)

Mr. McCord explained the Public School Facility Element is new and will be coming to the P&Z Commission on May 15 as part of the Comprehensive Plan Text Amendments. He briefly explained the amendment and asked that the members review the proposed element as shown in the attached agenda packet prior to the May 15 meeting and jot down any questions, comments, etc, for discussion at that time. He said this is a place to start and explained some of the issues other counties throughout the State are having in their urban areas. He said this element would not allow schools to be located in areas without central water and sewer being provided, they would not be allowed in certain land uses, and all counties and cities are required to adopt a Public School Facilities Element. He said Amy has been doing the main work on this element and Amy said the general provisions are in the inter-local agreements, but putting them in the Comp Plan makes them a "stronger" set of rules and it will promote better coordination between the county, school board, etc. She explained a pilot program has been done throughout the State and a lot of the language is already in the inter-local agreements.

Mr. McCord again urged the members to try and review this element prior to the May 15 meeting.

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION AT THIS TIME, THE MEETING WAS ADJOURNED.

Let the record reflect there was no audio recording of this meeting due to equipment failure.

John Yerkes, Chairman

Jean Chesser, Deputy Clerk

