Board of County Commissioners
Agenda Request 26

Date of Meeting: July 8, 2008
Date Submitted: July 2, 2008

To: Honorable Chairman and Members of the Board
From: Herbert W.A. Thiele, Esq.
County Attorney
Subject: Conduct First and Only Public Hearing for an Ordinance Repealing Text Amendment 2007-1-T-020, the 2007 Capital Improvement Element update to the Comprehensive Plan

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Statement of Issue:
Conduct first and only public hearing for an ordinance to repeal Section 8 of Ordinance 07-13 which adopted text amendment 2007-1-T-020, the 2007 Capital Improvement Element update to the 2010 Tallahassee-Leon County Comprehensive Plan. (Attachment # 1).

Background:
On May 8, 2007 the Board adopted Ordinance 07-13 containing the Cycle 2007-1 Comprehensive Plan Amendments. Subsequently, the Department of Community Affairs ("DCA") issued a finding of "not in compliance" for amendments 2007-1-T-020, containing the City and County's updates to the Capital Improvements Element ("CIE"), and 2007-1-T-15, amending the Lake Jackson SDZ policies. DCA and the City and County, entered into settlement negotiations on the CIE update and eventually severed the CIE litigation from the ongoing litigation involving the SDZ amendment.

At its April 22, 2008 meeting, the Board adopted revisions to its process for approval of the Five-Year Schedule of Capital Improvements (Attachment #2). This action was recommended by staff in an effort to address some of the issues raised by DCA during settlement negotiations. The 2008 CIE update is now being prepared by Planning staff and will be before the Board for consideration concurrent with the Schedule of Capital Improvements during the 2008-2009 budget hearings. To date, staff has been unable to satisfactorily resolve the perceived shortcoming in the 2007 CIE, despite multiple meetings between DCA representatives and City and County Planning, Legal, and Budget staffs.

Analysis:
DCA objected to the 2007 CIE because it believed that the City and County failed to meet the legislative requirement that CIEs demonstrate "financial feasibility" for capital improvements. Initially, DCA's concerns appeared to be largely focused on the presentation of the information and less focused on its substance. This led staff and DCA to believe that the issues would be easily resolvable. However, time constraints ultimately required that Planning staff begin preparing the 2008 CIE before DCA could be satisfied that the 2007 CIE met the financial feasibility requirement of the new statutes. The 2008 CIE update is now being prepared by Planning staff and will be before the Board for consideration concurrent with the Schedule of Capital Improvements during the 2008-2009 budget hearings. Due to this fact, staff believes that its efforts would be more efficiently directed towards ensuring that the 2008 CIE is found "in compliance," rather than pressing forward with negotiations over the 2007 CIE update.

The statutory financial feasibility requirements do not become mandatory until December of 2008. Thus, the County will not be penalized for withdrawing the 2007 CIE update. DCA has assured the County that the litigation involving amendment 2007-1-T-020, adopting the 2007 CIE update, would be resolved by the withdrawal of this amendment and voiced no opinion regarding the proper procedure by which the withdrawal should be accomplished. Due to the inability to resolve the litigation surrounding the CIE amendment and the anticipated adoption of an updated 2008 CIE, staff recommends that the Board adopt the attached ordinance withdrawing 2007-1-T-020 from review by the Department of Community Affairs. On June 17, 2008, the City adopted Ordinance No. 08-O-46 repealing its 2007 CIE

update.

Options:

1. Conduct first and only public hearing and adopt the proposed ordinance repealing Section 8 of Ordinance 07-13, regarding Comprehensive Plan Amendment 2007-1-T-020.
2. Conduct first and only public hearing and do not adopt the proposed ordinance repealing Section 8 of Ordinance 07-13, regarding Comprehensive Plan Amendment 2007-1-T-020.
3. Board direction.

Recommendation:

Option #1.

Attachments

1. Proposed Ordinance.
2. Agenda Request 12 from April 22, 2008 Regular Meeting of the Board of County Commissioners.
3. Notice of Public Hearing.

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