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Transcript of Hearing

Date: November 15, 2023

Case: ZMA 2022-003 DR Horton - Smith Lake Estates

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In re:

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ZMA 2022-003 DR HORTON - SMITH LAKE ESTATES

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HEARING

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Wednesday, November 15, 2023

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20 Job No.: 515885

21 Pages: 1 - 11

22 Transcribed by: Lauren Bishop

1 HEARING EXAMINER MAUREEN MCNEIL: Thank
2 you. Good morning, everyone. I'm Maureen McNeil this
3 zoning hearing examiner today. And today is November
4 15, 2023. And we are here today on a hearing that was
5 required because of a technicality that I'll address
6 further in one second. So we had to continue it
7 because we did not advertise this matter in the
8 newspapers of record. And the matter is ZMA 2022-003,
9 application named Smith Lake Estates, and it's a
10 Rezoning map amendment to rezone the property from
11 the RR Zone to the RPD Zone. But before I ask council
12 to identify themselves and to make sure who all is
13 attending here today, I would like to do something
14 that fortunately I haven't had to do and nearly 25
15 years as a hearing examiner and ask you all for a
16 moment of silence on behalf of a member of the zoning
17 bar that we all knew and loved, Dan Lynch, and then
18 we can start this proceeding.

19 Okay. Thank you all. If Council would
20 identify themselves for the record?

21 MATTHEW TEDESCKO: I am going to let Stan
22 go first so I can compose myself.

1 STAN BROWN: That would be fine. I need to
2 compose myself as well. You know, God bless Dan. I
3 mean God bless him and his family. Stan Brown,
4 People's Only council. Good morning.

5 MATTHEW TEDESCKO: Good morning, Madam
6 examiner, People Zoning Council, Matthew Tedeskco
7 (phonetic) of the law firm of Macamey Hosey
8 (phonetic) here on behalf of the applicant DR Horton
9 Inc. And thank you for that moment of silence.

10 HEARING EXAMINER MAUREEN MCNEIL: Yeah. As
11 I look at everyone that seems to be in attendance, I
12 don't see anyone that is not affiliated with the
13 applicant, but I will ask for the record, is there
14 anyone signed on here today that did not appear? That
15 is not here on behalf of the applicant and did not
16 appear at the last hearing in August? Yeah. I'm
17 hearing silence. And Mr. Tedescko, am I correct that
18 everyone here is with you?

19 MATTHEW TEDESCKO: Yes, madam examiner. And
20 just -- just real quick by way of roll call, Matthew
21 Lake (phonetic) and Christine Gillette (phonetic),
22 Charlie Howell (phonetic), Matt Muttamen (phonetic)

1 and Alex Jagagis (phonetic) and Michael Lenhardt
2 (phonetic) are all either with the applicant or with
3 Roger's Consulting who are the consultants of record
4 who were present and most of whom testified at the
5 August 9th, 2023 hearing on this matter.

6 HEARING EXAMINER MAUREEN MCNEIL: Did you
7 include Mr. Swam?

8 MATTHEW TEDESCKO: Oh, I'm sorry. And yeah,
9 Mr. Sw -- Rob Swam is with Roger's Consulting.
10 Although he was not present at the August 9th
11 hearing, he is in their Environmental Group. Mr.
12 Steve Allison testified at the August 9th hearing and
13 Mr. Swam is here just should there be any additional
14 questions by you or People's Only council with
15 respect to Mr. Allison's testimony, but he would be
16 the only additional person that was not here or not
17 with us on the 9th but is here today as a backup role
18 for Mr. Allison. Sorry. Thank you for that.

19 HEARING EXAMINER MAUREEN MCNEIL: Okay.
20 Then two procedural things and then I'm going to make
21 a statement and if council disagrees, let me know,
22 but the procedural things are that we marked -- we

1 marked a statement of justification as exhibit 33 in
2 the August hearing and it was your revised SOJ. And I
3 said that hearing that we were going to make it 2B
4 right after 2A, which was your prior SOJ, but because
5 of technicalities with making binders of all these
6 exhibits, it would be too confusing. So we're going
7 to leave it as exhibit 33, but we're going to mark it
8 as your revised SOJ, statement of justification.
9 That's number one. Number two is what I referred to
10 earlier. The -- the zoning ordinance was recently
11 revised as you all know, and we just added these PD
12 zones and even though so many eyes have looked at
13 that zoning ordinance over the past two years, we
14 miss the fact -- well, we ask that we remove a
15 requirement in there that PD zones be advertised in
16 newspapers of record and we thought it was removed.
17 But after your hearing, both the planning board and
18 the office of the ZHE realized that it wasn't removed
19 and neither of us had had the hearing -- the --
20 neither of us had advertised in the newspaper of
21 record, which required us to have an additional
22 hearing. This is our hearing today. It's my

1 understanding the planning board had a hearing last
2 Thursday. It's my understanding that no -- no new
3 person showed up at the planning board hearing. I'm
4 leaving this record open to get a copy of their
5 resolution which should come shortly because they
6 just heard it on Thursday and they're in the middle
7 of moving their offices so there's a little lag time.
8 And having said all of that and there's no person
9 here that came as a result of advertising in the
10 newspaper of record, I'm ready to just close this
11 hearing leaving the record open for the planning
12 boards resolution in issuing a decision shortly
13 thereafter, unless either Mr. Tedesco or Mr. Brown
14 believes I should do something else.

15 MATTHEW TEDESCO: No objection by me,
16 Madam examiner. Just to -- just clarify the record
17 and I think you did an excellent job. I just want to
18 state a couple of dates just in a certain transcript
19 may make it easier for me in the future to go back
20 and look updates. But you are correct. We did have
21 the original planning board hearing back on May 18th
22 of this year, 2023, as well as your hearing back on

1 August 9th, 2023. Subsequently to both of those we
2 were notified that the newspaper advertisement had
3 not been done in either of those hearings and we
4 subsequently had another planning board hearing as
5 you mentioned, last Thursday, which would have been
6 November 9th. The resolution for that corrected
7 resolution was also adopted by the planning board on
8 November -- I mean -- did I say August? November 9th
9 and was adopted on November 9th, the same day. That
10 should be transmitted to you this week
11 notwithstanding their current situation with their
12 move, but I do expect that you will receive that
13 soon.

14 All proper notifications in this matter,
15 whether it was subsequent to those hearings or not
16 were remade. In other words the newspaper
17 advertisements for both the planning board hearing
18 and this hearing published timely the properties. The
19 property was posted for both hearings timely for the
20 statutory period as well as written notifications of
21 the -- of this hearing as well as the planning board
22 hearing were remailed to all parties that are

1 required to receive those. So there's been an
2 abundance of notification in this case
3 notwithstanding the inadvertent lack of newspaper
4 notification for the prior to hearings. We have
5 since, in my opinion, shared that with both the
6 planning board hearing last Thursday and this hearing
7 here today. And with that being said Madam examiner,
8 we would for whatever it may be needed, incorporate
9 and adopt all oral and written testimony that was
10 provided to you at the August 9th hearing as well as
11 we had one additional item that we submitted to park
12 and planning which I think has been marked as exhibit
13 34. I've got multiple screens up, but I think it was
14 exhibit 34 which is the public benefits memorandum
15 and that's more of a belt suspenders additional
16 testimony from what you've already heard. So with
17 that Madam examiner, Mr. Brown, we are happy to
18 submit on the record as presented in all the hearings
19 that have occurred in this case and respectfully
20 request your ultimate of recommendation of approval
21 for this rezoning, but we do have the team here if
22 there are any further questions. Thank you.

1 HEARING EXAMINER MAUREEN MCNEIL: Mr.
2 Brown?

3 STAN BROWN: I have no objection to
4 anything that either of you said.

5 HEARING EXAMINER MAUREEN MCNEIL: Okay. And
6 thank you for that. Mr. Tedesco. I would also add
7 that there was no -- my understanding is there was no
8 additional staff report. Had there been an additional
9 staff report, we might have to continue the matter,
10 but there was not. Go ahead. I'm sorry.

11 MATTHEW TEDESCKO: Yeah. I'm sorry, Madam
12 examiner. Yeah. Just to confirm that there was no
13 additional staff report, there was just the adopted
14 corrected or amended resolution. I think it's
15 amended. It's the same resolution with an A that was
16 adopted on Thursday the 9th. And then I do also want
17 to confirm your understanding from the planning board
18 hearing last Thursday that there were no additional
19 or really -- there weren't any citizens or parties of
20 record outside of the applicant and the applicant's
21 team that participated in that hearing on Thursday as
22 well. So --

1 HEARING EXAMINER MAUREEN MCNEIL: Okay.
2 Thank you all for being here and I wish you all a
3 Happy Thanksgiving. The record will close you know
4 right after I get the resolution from the planning
5 board. I thank everyone.

6 MATTHEW TEDESCKO: Thank you.

7 (The recording was concluded.)
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CERTIFICATE OF TRANSCRIBER

I, Lauren Bishop, do hereby certify that the transcript was prepared from the digital audio recording of the foregoing proceeding; that said proceedings were reduced to typewriting under my supervision; that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; and that I am neither counsel for, related to, nor employed by any of the parties to the case and have no interest, financial or otherwise, in its outcome.

Lauren Bishop

LAUREN BISHOP
Planet Depos,
November 29, 2023

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 Conducted on November 15, 2023

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