

MEMORANDUM

From: Gregory T. Stewart, Nabors Giblin & Nickerson, P.A.
To: William D. Wells, Deputy City Attorney
Date: October 2, 2019
Re: Review of WRD-1 Zoning District Proposal

You have requested that I review the proposed creation of a WRD-1 Zoning District within an area of the City of Pensacola (the “City”) and whether there are any potential legal issues relating to the creation of the District. I have been provided various material including the current City Code provisions relating to that area, a map of the District, relevant provisions of the City’s Comprehensive Plan and the September 2, 2019 modified version of the proposed amendment to the District.

Background

Based upon my review of the material, it appears that in 1988, the City created a zoning district designated as the Waterfront Redevelopment District (“WRD”). The provisions governing that District have been amended on several occasions since that time. The WRD consists of approximately one half mile of waterfront property fronting the Pensacola Bay and bounded on the north by Main Street, a key downtown connector thoroughfare. The eastern third of the WMD is fully developed as a park, office, and waterfront residential uses under a long term lease with the City. The western third of the WMD is largely undeveloped at present, with the City currently considering various plans and financing to develop that area as a waterfront park, pavilion, and beach for public use. The middle third of the WMD, which is the focus of the proposal by a local developer, is currently known as the Community Maritime Park. The developer has proposed a new zoning district which would be designated as the WRD-1 District.

In evaluating the proposal and any potential issues, it is important to consider the extent of changes in relation to the current Comprehensive Plan and the City Code. The Comprehensive Plan provisions governing the WRD area is set forth in the Future Land Use Element, under Policy FLU-1.1.5 governing Redevelopment Districts. The Comprehensive Plan provisions set forth that the purpose of the area is to provide for the orderly development along Pensacola Bay

to enhance its visual appearance, preserve shoreline vistas, provide public access to the shoreline and related purposes. A variety of office, residential, and commercial uses are allowed under the Comprehensive Plan, with residential uses capped at sixty units per acre in the WPD area and commercial uses capped at seventy-five percent occupancy of lot size and height of sixty feet in the WRD Zoning District. The Comprehensive Plan allows for density bonuses that could allow the increase of density within the WRD to a total of sixty-six units per acre which are to be provided subject to the discretion and approval by the City Planning Board.

Under the City's Code, the existing WRD Zoning District allows residential uses ranging from single family units to multi-family units with a maximum density of sixty units per acre. Lot coverage cannot exceed seventy-five percent nor buildings exceed sixty feet in height with a graduated limitation of thirty-five feet in height at thirty feet from the shoreline or bulkhead increasing by one foot in height per each one foot away from the shoreline, to a maximum of sixty feet in height at a distance of sixty feet from the shoreline. The provisions of the existing Code provide that the WMD Zoning District sets forth that its purpose is to promote uses that are compatible with water-related uses that preserve the unique shoreline vista and scenic opportunities that provide public access.

The developer proposed WRD-1 Zoning District would create a new area within the WRD Zoning category. Under the proposed WRD-1 Zoning District, lot coverage limits would be increased from seventy-five percent to ninety-five percent and height requirements would change from sixty feet to six stories with no stated footage limitation. This modification would allow a greater than sixty foot height in that the six story classification would not include any floors that are attributed for parking purposes and would not include the lowest habitable floor elevation. A Comprehensive Plan amendment is not contemplated.

In reviewing the proposal, one particular concern is whether it constitutes "spot zoning." Spot zoning generally consists of the piecemeal rezoning of parcels to use at a greater intensity and density which would adversely impact and create disharmony to the surrounding area. Spot zoning is normally considered as giving preferential treatment to one parcel at the expense of the zoning scheme as a whole. The primary legal impediment to spot zoning is that the modification of the zoning for the parcel constitutes an arbitrary and capricious determination and, as such, unlawful.

There are no specific guidelines to determine what zoning might constitute spot zoning, however there are certain criteria that are frequently reviewed in determining whether the proposed zoning change is arbitrary and capricious. One of the most significant factors to be considered is whether the proposed change is consistent with the Comprehensive Plan. In this case, the Comprehensive Plan sets forth specific criteria related to lot coverage and height which would be exceeded by the proposal and therefore does not appear to be consistent with those restrictions. Further, the proposal would appear to be inconsistent with the stated goals for the WRD Zoning District. Under both the Comprehensive Plan and the City Code, a significant purpose of these provisions was to enhance the visual appearance of Pensacola Bay, preserve shoreline vistas and provide public access to the shoreline. Arguably, those purposes are not furthered by the proposal.

Additionally, based upon the information that has been provided, it appears that the WRD-1 proposal is a unique and specific land use classification that applies only to this parcel. From a review of the City Code, there currently exists a procedure for the obtaining of a variance from the land development regulations within the WRD upon satisfaction of the specific guidelines and criteria. In the context of evaluating a claim of spot zoning, the creation of a unique and specific land use classification, when there is an available administrative procedure to address the development issues, appears to raise a concern.

Ultimately, in determining whether a zoning category or reclassification is arbitrary and capricious depends on the determination as to whether there has been a valid exercise of the City's police powers, which normally requires a determination as to whether the public health, safety and welfare have been served. Merely maximizing the potential development of a parcel does not in and of itself constitute a valid exercise of police powers and serve a public purpose. Rather, the proposed development and modification of the zoning district needs to be considered in light of the specific needs of the property, whether development of that property is consistent with the provisions and goals of the Comprehensive Plan and the nature and extent of the impact of the reclassification on adjoining properties. Based on my review, I have been unable to identify whether such a public purpose is served and therefore, it appears that there is a potential legal issue that the new WRD-1 classification is arbitrary and capricious and constitutes spot zoning from this rezoning.