

**CITY COUNCIL
CITY OF PALM BAY, FLORIDA
CASE NO.: CU23-00007**

**IN RE: CONDITIONAL USE APPLICATION OF
ASCOT PALM BAY HOLDINGS, LLC**

ORDER

During a regular council meeting held on October 19, 2023, the Palm Bay City Council conducted a public hearing to consider the application for a conditional use permit. After the hearing, the City Council voted to deny the application by a vote of 3 to 1. In support of its decision to deny the conditional use application, the City Council makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Palm Bay is a municipality in Brevard County. The City is subject to the Part II Chapter 163 Growth Policy; County and Municipal Planning; Land Development Regulation.
2. The City amended the Future Land Use in its most recent Comprehensive Plan, City of Palm Bay 2045 Comprehensive Plan May 1, 2023, which became effective 31 days later.
3. The City has not amended the Land Development Code (LDC) to implement the changes to the Comprehensive Plan.
4. Ascot Palm Bay Holdings, LLC is a limited liability company and the owner of the property that is the subject of the conditional use application.
5. Section 163.3194, Florida Statutes requires that all government actions taken in regard to development orders must be consistent with its comprehensive plan.
6. All development orders issued by City must be consistent with the City's Comprehensive Plan.
7. The subject property is a 3.57-acre parcel located south of and adjacent to Emerson Drive NW, in the vicinity east of St. Johns Heritage Parkway.

8. The Property's current zoning is CC, Community Commercial District and the Property's current land use is COM, Commercial.
9. The Property is bordered to the north by CC, Community Commercial District; Vacant Land; to the east by PUD, Planned Unit Development; Vacant Land; to the South by PUD, Planned Unit Development; Vacant Land; and to the west by CC, Community Commercial District; Vacant Land.
10. The Applicant has requested a conditional use to allow self-storage to be developed on land zoned community commercial.
11. Self-storage is a conditional use in the Community Commercial District. Section 185.043(D)(9), Palm Bay Code of Ordinances. The Land Development Code (LDC) also contains additional requirements in Section 185.088(F), Palm Bay Code of Ordinances.
12. The proposed project is located on Emerson Drive NW, between Jupiter Boulevard NW and St. Johns Heritage Parkway. This section of Emerson Drive is classified as a major collector, urban roadway in the City of Palm Bay 2045 Comprehensive Plan.
13. During the public hearing the Applicant testified that "there's several subdivisions being built out in the northwest part of town and they're going to need commercial services. The site is zoned commercial. It's part of a commercial node at the intersection of the Parkway and Emerson.
14. The Applicant indicated that if the conditional use was granted the site would employ two or maybe three people.
15. Objective FLU-1.3 of the Comprehensive Plan was adopted to "promote the development of sustainable neighborhoods that provide a diverse range of housing options, are supported by public facilities, and maintain access to commercial areas for goods, services, and employment."
16. The Comprehensive Plan must be based upon data and analysis that may include surveys, studies, community goals and vision, and other data available at the time of adoption of the comprehensive plan or plan amendment. Support data or summaries may be used to aid in the determination of compliance and consistency. § 163.3177(1)(f), Fla. Stat.

17. The supporting data and summaries used in preparation of the Comprehensive Plan were included and adopted as part of the Comprehensive Plan.
18. One significant purpose of the future land use objective and policies in the Comprehensive Plan is shaping the future of commercial within the City and transforming the City from its bedroom community roots.
19. The data collected in support of the Comprehensive Plan revealed the City had a “commuting culture” resulting from General Development Corporation’s influence on the City’s rapid population growth and “its lack of vision for establishing strong commercial and industrial centers.” (Future Land Use page 3, Comp. Plan).
20. The studies also indicated that less than 15% of the City’s total land area is currently utilized for commercial and industrial development. *Id.* As a result, the City’s large residential population must travel to other communities (such as the neighboring Cities of Melbourne and Titusville) to meet their needs for goods, services, and employment. *Id.* at 3-4.
21. In implementing the Comprehensive Plan, the City is seeking to increase commercial that increases goods, services and employment so that its residents can live, work and play within the City.

CONCLUSIONS OF LAW

22. “All land development regulations enacted or amended shall be consistent with the adopted comprehensive plan, or element or portion thereof, and any land development regulations existing at the time of adoption which are not consistent with the adopted comprehensive plan, or element or portion thereof, shall be amended so as to be consistent. [...] During the interim period when the provisions of the most recently adopted comprehensive plan, or element or portion thereof, and the land development regulations are inconsistent, the provisions of the most recently adopted comprehensive plan, or element or portion thereof, shall govern any action taken in regard to an application for a development order.” § 163.3194 (1)(b), Fla. Stat.
23. Each municipality is required to adopt or amend and enforce land development regulations that are consistent with and implement the adopted comprehensive plan within 1 year after submission

of its comprehensive plan or revised comprehensive plan for review pursuant to Section 163.319.

§ 163.3202, Fla. Stat.

24. A development order is consistent with the comprehensive plan “if the land uses, densities or intensities, capacity or size, timing, and other aspects of the development are compatible with and further the objectives, policies, land uses, and densities and intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.” §163.3194(3)(a), Fla. Stat.
25. A development approved or undertaken by a local government shall be consistent if it “further(s) the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.” § 163.3194 (3)(b), Fla. Stat.
26. The comprehensive plan sets “general guidelines and principles concerning its purposes and contents . . . shall be construed broadly to accomplish its stated purposes and objectives.” § 163.3194(4)(a), Fla. Stat.
27. The City Council finds that the request for a conditional use to allow a self-storage facility on property at the intersection of a commercial node, and bordered by land zoned PUD is inconsistent with Objective FLU-1.3 of the Comprehensive Plan. The proposed self-storage would not support the development of sustainable neighborhoods by providing access to commercial areas for goods, services, and employment. Moreover, the conditional use would not further the objectives and principles of the comprehensive plan aimed at counteracting the bedroom community that compels residents to travel to neighboring cities to meet their needs for goods, services and employment.

DONE AND ORDERED in Palm Bay, Brevard County, Florida this 6th day of December 2023.

Rob Medina, Mayor

Date filed with the City Clerk_____