TO: Adam Mengel, Planning Director  
FROM: Sean Moylan, Assistant County Attorney as Counsel to the TRC  
CC: Planning Board; Sally Sherman, Growth Management Director; Gina Lemon, Development Review Planner; Wendy Hickey, Planner; Susan Graham, Development Engineer  
DATE: January 8, 2019  
RE: Application #3150, Beachwalk Rezoning to PUD  

This supplemental memo regards the application to rezone a parcel of land north of Jungle Hut Road between State Road A1A and Hammock Dunes Parkway from R/C to PUD (Beachwalk). Please add it to the record for this evening’s Planning and Development Board meeting. (Apologies to the Planning Board, but I did not know this item was going to be on tonight’s agenda. We had expected it to be further postponed because items from the TRC remain incomplete.)

The Technical Staff Report quotes Land Development Code (LDC) Section 3.03.20.A and attaches the Technical Review Committee (TRC) comments, which likewise reference this LDC provision. As I mentioned at the TRC meeting for this project on September 19, 2018 and in writing for the October and November 2018 TRC meetings for this project, LDC Section 3.03.20.A indicates that the purpose of a PUD zoning district is to provide innovative urban design, creative and flexible concepts, and protection of natural features and open spaces that a strict interpretation of zoning regulations would otherwise prohibit. This is a threshold legal issue that must be addressed in order to approve the rezoning to PUD.

As stated by the applicant at the TRC meetings, the desire to rezone the subject parcel to PUD is to allow for smaller lot sizes, thereby making the project more economically feasible. Without more, this does not meet the purpose of a PUD zoning under the LDC. A PUD cannot be used solely as a vehicle to gain a blanket set of variances. Ultimately, the applicant has the burden of demonstrating to the Planning Board’s and the County Commission’s satisfaction that the proposed rezoning satisfies the purpose outlined in LDC Section 3.03.20.A.
In addition, the density of a proposed PUD must comply with the Comprehensive Plan. In this regard, the Technical Staff Report compares the proposed development with the most intense possible development allowed under the Future Land Use Map (FLUM) for the subject parcel. While this is a relevant point, it does not end the analysis. Landowners are not automatically entitled to the most intense development allowed under the FLUM and, in fact, are often approved for something less based on compatibility with nearby uses and a variety of other planning considerations.

This proposed project adjoins two designated Scenic Byway corridors, State Road A1A and Jungle Hut Road. The proposed rezoning, therefore, should also be viewed in light of the Scenic A1A Overlay District and associated Management Plan. These are expressly applicable to developments along Jungle Hut Road. This was pointed out to the applicant in at least one TRC meeting with the applicant present. Further, the Growth Management Director, at the TRC meeting, directed that this analysis be undertaken based on judicial precedent applicable to Flagler County. I have not, however, reviewed the Management Plan to evaluate how its standards may apply, and I realize Overlay District requirements may be more relevant to analysis of the Site Plan, but nevertheless mention them to suggest that they be specifically addressed on the record where appropriate. There is no analysis in the Technical Staff Report of these issues.

Lastly, there was an internal meeting of County staff regarding this project, which meeting included the Growth Management Director, the County Administrator, the Planning Director, and myself. The instruction from the meeting was that the Planning Director was to stop drafting the ordinance for the applicant. The applicant had attempted to turn over this task to the Planning Director, which we do not think is appropriate. Even otherwise, this application is not ready to be heard. The applicant has not satisfactorily addressed a number of issues that arose during TRC review. For instance, the buffer along State Road A1A and Jungle Hut Road appear to be too small, as does the open space amenity for the number of potential residents, and the emergency secondary access needs to be identified.

Additionally, scheduling this item for the action of the Board of County Commissioners only six days after the Planning Board does not provide adequate time to address issues that may arise. The January 14th Board of County Commissioners meeting is expected to be a complex, contentious meeting, and we should ensure that the Board of County Commissioners has adequate time to review this proposed rezoning on the Scenic Byway. I do not believe that this item is ready to be heard and respectfully believe it should be postponed.