



CITY OF FORT PIERCE PLANNING BOARD

Planning Board Minutes

OF THE REGULAR MEETING OF THE FORT PIERCE CITY PLANNING BOARD HELD ON TUESDAY, DECEMBER 10th, 2013, IN FORT PIERCE CITY HALL, COMMISSION CHAMBERS, 100 NORTH US HIGHWAY 1, FORT PIERCE, FLORIDA.

Chairman Weaver called the meeting to order.

The Pledge of Allegiance was recited.

The next item considered -- **Item #2 Roll Call**

Upon Roll Call, those present were: Ms. Castro, Ms. Cummings, Ms. Slep, Mr. O'Connell, Mr. Clancy, Mr. Poitier, Mr. George, Ms. Ganzi, Ms. Baker, Mr. Burdge and Chairman Weaver.

Those not present: Mr. Paul.

Staff Present: Ryan Sweeney, Senior Planner; Clarissa Davis, Planning Specialist; Rebecca Grohall, Planning Manager; James Walker, Assistant City Attorney.

The next item considered – **Item #3 Consideration of Absences**

Ms. Castro was excused from her previous absence. Mr. Paul's absence was excused.

The next item considered – **Item #4 Certification of Alternate Member Voting Status**

All regular seated Board members were present.

The next item considered – **Item #5 Approval of the November 12th 2013 Minutes.**

Mr. Clancy made a motion and was seconded Mr. Poitier- To approve.

A voice vote is taken.

Motion passes unanimously.

The next item considered – **Item # 6 Future Land Use Map Amendment (LPA Hearing) - 1110 North 29th Street - Pine Creek Village:** A request for approval to change the Future Land Use designation from RM, Medium Density Residential to RH, High Density Residential. The owner is SP Pine Creek Village LP, represented by Dennis Murphy of Culpepper & Terpening, Inc. The Planning Board, as the Local Planning Agency, to review and provide a recommendation.

Ryan Sweeney: This presentation for item 6 will also be for item 7. The subject site is located at 1110 North 29th street, southeast of the intersection of 29th and Avenue L. The site currently has a Future Land Use designation of RM, *Medium Density Residential* and is zoned R-4, *Medium Density Residential*. The subject site was originally constructed in 1970 and 1971. It pre-dates the former Land Development Code which was adopted in 1981. Currently the site consists of 13 multifamily buildings. 12 of which are 8 unit buildings and 1 is a 12 unit building with a centralized community club house. The total density is 108 dwelling units. The site has been recently purchased and completely renovated with improvements to the interior and exterior of all of the multifamily buildings as well as considerable site improvements around the exterior of the site. Based on the existing zoning and the existing units, the site is considerably nonconforming with regards to density, therefore the applicant would like to amend the Future Land Use designation and the zoning of the site in order to reflect what's actually on the ground. Additionally, the applicant would like to have the ability to rebuild at its current density should the site become damaged or destroyed 50% or more than the replacement value. The applicants also indicated that they would be amiable to entering into a developer's agreement to cap the overall density of the site at its current density of 108 dwelling units. That instrument would be separate and would be approved by the City Commission.

Before an amendment can be approved, the following standards per Section 22-131 of the City Code must be met: The amendment is consistent with the Comprehensive Plan, the amendment will not have an adverse effect on the ability to satisfy land and water use needs and to make transportation demands and provide community facilities and services, and the amendment will promote and protect the public health, safety and general welfare. As the proposed amendments meet the above standards and as the proposed amendments serve to administratively cure an existing nonconforming situation, staff recommends that the Planning Board forward a recommendation of approval with the condition that the property owner shall enter into a developers agreement so as to cap the maximum residential density of the existing parcel at a total of 108 residential units.

Ms. Castro states that the property record card states that it was purchased over a year ago for \$5 million. Then the improvements were done and yet it's assessed at \$3.44 million. It is not understood why the variance between purchasing it at this time and having it assessed at such a significantly low rate.

Mr. Sweeney states that values are certified with a affective date of January 1st. The improvements were not done until after January 1st. They were done in this calendar year. It is assumed a significant increase will occur for the assessed value by January 1st. The

improvements that were done were a considerable investment. It was roughly a \$2 million dollar renovation that was done this year.

Chairman Weaver asks what the range is for RM and for RH. What is the maximum density for each?

Mr. Sweeney states that R-4 and RM are 12 units per acre while R-5 and RH are 18 units per acre. The current site density is roughly 16 and a half. The applicant is considerably over the existing zoning and is not much below the maximum density of the proposed land use and zoning change.

Dennis Murphy (applicant representative): We have talked to staff about the application process and have been at this for quite some time. Basically, we're trying to restore, retain or at least hold the current value that we have in terms of unit numbers on the property. We have made a considerable investment in the property and it does look better than it was. We think it is helping the entire neighborhood. I will entertain any questions the Board may have.

Ms. Baker asks if it is the intention of the developer and the new owner to have this completely residential.

Mr. Murphy states that at the best of his knowledge there are no commercial intentions on the property.

Ms. Baker asks if there may be a long-term facility or other type of housing.

Mr. Murphy states that at the best of his knowledge it is strictly going to be regular housing.

Mr. Poitier states that whoever bought it did a very good job with it. It needed the improvement 30 years ago. They did a very good job.

Mr. Murphy states that he will pass that along.

Chairman Weaver asks if the driving force behind the land use and future land use change is for insurance purposes and rebuild ability.

Mr. Murphy states that is correct. If something were to happen to the property today, since it is technically a nonconforming use, under the rules the owner would not be able to restore what is there today. Financing and improvements have been made predicated upon a certain number of dwelling units on the property. This would be to protect that investment. That is why the applicant is not opposed to entering into the developer agreement which would cap the unit numbers on the property as of today.

Chairman Weaver asks Mr. Murphy how long he has been in the process since the applicant has made the first application.

Mr. Murphy states that the application was submitted in the middle of the summer. Around 5 months; this is about right for this kind of a process. It gives time to prep the applications and then there's the process itself.

Mr. Clancy makes a motion and is seconded by Ms. Poitier - to approve the land use map amendment with staff's recommendation.

Those in favor: Ms. Castro, Ms. Cummings, Ms. Slep, Mr. O'Connell, Mr. Clancy, Mr. Poitier, Mr. George, Ms. Baker, Mr. Burdge and Chairman Weaver.

Those opposed: None.

Motion is approved unanimously.

The next item considered – **Item # 7 Zoning Atlas Amendment (Rezoning) – 1110 North 29th Street - Pine Creek Village:** A request for approval to change the zoning designation from R-4, Medium Density Residential to R-5, High Density Residential. The owner is SP Pine Creek Village LP, represented by Dennis Murphy of Culpepper & Terpening, Inc.

Ryan Sweeney: Meeting the Section 22-131, the three criteria listed, the zoning atlas amendment does meet the standards, therefore staff is recommending that the Planning Board forward a recommendation for approval with the condition that the property owner shall enter into a developers agreement so as to cap the maximum residential density of the existing parcel at a total of 108 units.

Chairman Weaver asks if the Planning Board is in a circumstance where there has to be 'give and take' where the overall build out capacity has to give somewhere else in order for the taking of just a few residential credits at this location. It is known that in the coastal high hazard area there would be 'give and take' if some density credits were taken from one area. Is there anything that would apply to that overall in the city?

Mr. Sweeney states that the City currently does not have a transfer development rights system in place for the mainland or a formal system at all.

Mr. Poitier states that the people Dennis Murphy represent are doing a wonderful job.

Ms. Castro asks if the property is primarily a Section 8 rental property.

Mr. Murphy states that he unsure if it is. He is working strictly from the point of view of this residential development.

Ms. Ganzi states that she did not have a chance to visit the property, but was able to view an aerial. It seems as if development is encouraged, especially in this type of circumstance where a neighborhood is fixed up. It seems almost like a hindrance to have the applicant go through putting together the developer's agreement. How much more time would it take now for this applicant to go through a developer's agreement to just sell out a few more

units that they don't seem like they're intending to put there anyway? Would it be easier if the Board made the recommendation of approval without the developer's agreement?

Mr. Sweeney states that it is not going to take much more time at all. The developer's agreement does have to be drafted, but this ordinance is going to require two readings and also will have to be transmitted to DEO. It will not be a considerable amount of additional time.

Ms. Ganzi asks if this is an extra clause to say that they will be capped at the 108 units versus not including that language for the potential of it slightly going up, should they want to add a few more units or forbid something happened there then they would rebuild to the highest density possible.

Chairman Weaver states that a developer's agreement at the least would take 4 -6 hours of the City attorney's time. Can the Planning Board accomplish the same thing as the developer's agreement if the Board structures a motion as such?

Mr. Sweeney states that the only thing the Planning Board is considering at the moment is the amendment.

Mr. Walker states that when a zoning action is expressly made contingent on that, then the Board will open the door to concerns about contract zoning.

Mr. Clancy makes a motion and is seconded by Ms. Poitier - to approve the zoning atlas amendment with staff's recommendation.

Those in favor: Ms. Castro, Ms. Cummings, Ms. Slep, Mr. O'Connell, Mr. Clancy, Mr. Poitier, Mr. George, Ms. Baker, Mr. Burdge and Chairman Weaver.

Those opposed: None.

Motion is approved unanimously.

The next item considered – **Item #8 Comments from the Public**

None.

The next item considered – **Item #9 Comments from the Board**

Chairman Weaver states that the Treasure Coast Regional Planning Council is currently considering a template draft manufacturing encouragement ordinance for the cities to review. It is outside of the exact context of what this Board would review, but it could add implications on the future land use and LDR. If there are any thoughts towards encouraging manufacturing that would be good for this community, you can gather further information at the Regional Planning Council website.

Mr. Burdge asks when allowing "comments from the public" was approved by the Board.

Chairman Weaver states that there is a public law to that effect, but will let Ms. Grohall answer.

Mr. Walker states that at the past session of the Legislature, there was a measure championed by Senator Negrón which provided that reasonable opportunity be given to members of the public speaking to agenda items. The Board remains to establish parameters defining that access.

Mr. Burdge states that he does not want the Planning Board to end like the beginning of the City Commission. It is agreed that the public should have the opportunity to speak on agenda items and they would be able to do that under the public hearing.

Chairman Weaver states that there has been some push back on the tolerance of conversations by the members of the Board outside of the scope of the items on the agenda, but what is being said is recognized. It is a legitimate concern and whoever is Chair at the time, as these public comments come forward, should do their best to keep them within the parameters of the agenda items that the Board is considering.

Mr. Burdge states that the Board should take a definitive stand on whether the Board wants this to happen or not since there is the availability for the public to speak at any time during the hearings. The Board needs to express the intentions and desires over particular issues that affect the City, at times maybe with latitude of the Chair, but surely items that affect the City as a whole especially under the safety aspect. Item #8 is out of order. It has not been approved by the Board that it be placed on the agenda.

Chairman Weaver states that staff has probably presented what they felt was the appropriate type, location and measure of input that the public can comment to.

Ms. Grohall states yes. To be in compliance of the state laws, staff put it on the agenda. Certainly parameters for what the public comments can entail as well as how long it can last are appropriate matters for the Board. It is not believed that the Planning Board will receive what has taken place at the City Commission.

Mr. Burdge states that once people hear that they can come to the Planning Board and take their three, five or ten minutes that people will start showing up and the board will have the fiasco that the City Commission has where they can't stop it.

Chairman Weaver asks if the matter could be discussed at the next meeting as far as the number of minutes each person is allowed for public comment and a predetermination of which agenda items the individuals are intended to speak on.

Ms. Grohall answers yes.

Chairman Weaver states that perhaps the Board members could have their input ready for the next meeting.

Mr. Burdge makes a motion and seconded by Mr. Poitier – to remove the ‘Comments from the Public’ from the Planning Board agenda.

Chairman Weaver states that this motion would put the Board in violation of the public comment law that was recently passed.

Mr. Walker states that Mr. Burdge may be correct in his assertion that the rules as currently drafted provide for fair latitude to members of the public to speak on agenda items specifically through our rules 10c and 10d, however there is no rule as such that addresses public participation. If the Board wanted to study the question of revising its rules in some manner to address that subject, it would be free to do so. If there was interest in considering or addressing that topic at the next meeting, that is a possibility for the purpose of facilitating that consideration to furnish to the members of the Board a copy of the act that was adopted by the legislature last year so that the Board can consider that in light of the current rule to determine whether an actual amendment of the rule should indicated or not.

Chairman Weaver states that Board has two options: either allow staff to come back with some comments or to knock it off the agenda. The Chair has historically had some discretion on allowing members of the public to speak as well and it is unsure how removing the item from the agenda may impact that. Mr. Burdge’s motion will not be supported by the Chair.

Ms. Slep asks if it is understood that Mr. Burdge wishes the public to not have the opportunity to speak.

Mr. Burdge states that the intent is to allow the public to have their say during the agenda items that come before the Board. With this type of latitude, the Board would be entertaining comments from the public where they can talk about anything they wanted to and the Board would have to allow that. Mr. Walker suggested that his office could explain the public comment law better. It is not opposed to allow the public to come and speak on any item on the agenda, however to allow someone at the podium to personally attack any of the Board members is not suggested.

Ms. Baker states that comments from the public on agenda items that are not public hearings are not required. It would be at the discretion of the Chair. It is agreed that comments from the public on agenda items should be allowed, but they are not at this point codified. A free-for-all should not be allowed; on the other hand the Board should codify the fact that public comments can be heard on agenda items that are not public hearings. It would have to be discussed and carefully thought out.

Ms. Grohall states that the City Commission is working on a draft of those same principles including no personal attacks, addressing the Commission as a whole etc. If there are inappropriate comments or comments that do not pertain to planning matters, the Chairman can shut that down. If the person is out of order, that can be addressed too.

Ms. Baker states that there have been Commission meetings where people have had to be forcibly removed by police. Having been verbally and physically attacked the consequences

of having a free-for-all and comments from the public that are not related to the agenda are known. It is unwanted for the Planning Board's public comments to dissolve into an alternate to the City Commission for people who have been restrained in some way.

Mr. Walker states that the procedure that is in place states: "Procedure for discussion' The following procedure will normally be observed: a.) The committee and staff presents report; makes recommendation, b.) The Board may ask questions regarding the committee or staff report, c.) Proponents of the agenda item make presentation, d.) Opponents make presentation."

Anyone who is either for or against any agenda item has the ability to speak to this Board in connection with that.

Chairman Weaver asks if there is a difference in opinion from staff and the City attorney's office about the necessity of the stand-alone comments from the public item.

Mr. Walker states that he has not spoken to the necessity for that. That is solely a matter to be judge by this Board. Whether or not the Board feels as if this language in question and the present rules are sufficient or not is a matter that should be deferred to the Board. It is unsure if staff has expressed any contrary view.

Chairman Weaver states that he is still seeking guidance in light of the new law that passed by Senator Negron that prompted staff to bring this to the Board's attention in addition to the existing input that the public can give. Staff has proposed to install it in the agenda. The Board is in no position to review the requirements of the new law. It is believed it is the City attorney's responsibility to give feedback on whether the attorney feels that the Board is obligated to have this separate.

Mr. Walker states that had the City attorney's office concluded that there was any conflict that statute and the rule in its current form, it would have been brought to the attention of the Board.

Ms. Castro states that at the City Commission meetings, public comment is given before the agenda items which in some cases can prolong the meeting significantly. What Mr. Burdge has brought to the attention to the Board is agreed with; that people stick to the agenda items and people can speak with respect to that. If someone has an item that they would like to discuss with staff, could staff then place it on the agenda to be discussed?

Ms. Grohall states that typically nothing is placed on the agenda that is not an application or ordinance of some type. If someone wants to come in and discuss anything that they think is a planning matter and could be addressed, they could come in and see staff.

Ms. Baker states that at a previous meeting the Board has asked Mr. Walker to ask for various items that were not agenda items, but were of interest to the Planning Department to be brought before the Board. The idea that the Board is open for discussion of extraneous matters is still available. No discourse or legitimate comments from the public is being cut off. The motion on the floor would simply prevent the type of spectacle that transpires at the City Commission meetings.

Mr. George states that at the last meeting the Board had a good opportunity to see when the public came to the podium for comments and congratulate the Board on a job well done. Opening to the public will give them the opportunity to speak whether it is good or bad for 1 or 2 minutes.

Chairman Weaver states that there are concerns on whether the Board will be in compliance with the new law. Anything that is taken off the agenda tonight is not going to impact the discretion shown to Chair in allowing people to approach the podium under the right circumstances. It is preferred to have more speech than less speech.

Those in favor: Ms. Castro, Mr. O'Connell, Mr. Clancy, Mr. Poitier, Ms. Baker and Mr. Burdge.

Those opposed: Chairman Weaver, Ms. Slep and Ms. Cummings Mr. George.

Motion passes 6-4.

Chairman Weaver states that staff had good intentions to open the meeting up with a little public comment. It doesn't necessarily have to end at this juncture. It would be favorable for staff to come back with a series of parameters that may allow a little bit more public comment.

Chairman Weaver passes the gavel.

Mr. Weaver makes a motion and is seconded by Mr. George - to ask staff to come back with parameters on how public comments might be better incorporated then it currently is.

Mr. O'Connell asks if the motion is for a new rule set for comments [from the public] or is it going to be specifically for the items that are being discussed.

Mr. Weaver states that staff could come back and the Board may have the opportunity to talk about the subject in generality and specifics and probably be some background that will include a copy of the law and the new ordinance the City Commission is drafting and the Board will have a chance to think it through and make a decision there after.

Chairman Burdge states that the motion on the floor is that staff recommend to the Board, if staff decides that they would want to get involved, staff may decide that it may be better left to the Board to decide issues and procedures by the Board versus staff making recommendations other than those that would require legal recommendations which would come from Mr. Walker. He has already expressed to the Board that if there was any violation it would have been brought forward.

Mr. Walker states that the only thing that is transpiring at the moment is that staff is going to offer a draft that will merely service the template for discussion and whether an amendment is adopted by this Board in which form or with what language or provisions is a matter that will be strictly up to the Board after its review of the recommended language and materials that are offered in furtherance thereof.

Chairman Burdge asks if it is believed that the matter is strictly for the Board's discussion or is the intent to allow public to enter in discussion which is already available on items that are on the agenda. What is being asked is that the additional item of discussion strictly reserve to the public rather than strictly reserved to the public during the course of the meeting which would include an additional agenda item that would open the meeting to anyone who wants to speak before the Board on supposedly an time that is on the agenda which they are currently allowed to do.

Mr. Weaver states that the request is to give staff the opportunity to come back with something that the Board could live with that could give the public more of an opportunity to speak.

Chairman Burdge states that he is embarrassed that the item is even on the agenda because the Board was never approached. If individual members of the Board were approached and it was suggested by someone then that is fine, however the Board went through a number of meetings before the Board members had "Comments from the Board". The agenda that was presented to the Board this evening was a decision someone made to have comments from the public, but the Board never approved it.

Ms. Grohall states that it was her decision to place the item on the agenda to further comply with the State statute.

Chairman Burdge states that staff should have approached the City attorney to see if it complied with State statute. The attorney has already expressed that the Board is allowing people to have public input during the course of the meeting.

Ms. Baker states that the Board wants to have more public participation, but the Board does not want to have disruption. Staff could develop a separate program in which the public is invited to come to the Planning Board and present their ideas, problems and concerns about planning issues in the City of Fort Pierce.

Ms. Castro asks if Ms. Baker is suggesting that it would be separate meeting that would happen perhaps twice a year.

Ms. Baker answers yes.

Mr. Weaver amends his previous motion – to ask staff to come back with recommendations with how the Board may better handle the public comments situation.

Chairman Burdge states that a motion for staff input may not be needed. It would not have to be voted on. A Board member can always request items from staff unless there is overall opposition by Board members.

Those in favor: Mr. Weaver, Ms. Cummings and Mr. George.

Those opposed: Mr. O'Connell, Ms. Castro, Ms. Slep, Mr. Clancy, Mr. Poitier, Ms. Baker, and Chairman Burdge.

Motion fails 3-7.

Mr. Burdge asks Mr. Walker to come back and inform the Board if it is in any violation of the State statute.

Mr. Walker states that it has been addressed. When the bill was enacted, it was reviewed in light of the question of whether the Board's rules were in compliance. It was felt that the Board's rules, with particular attention to the subparts under rule 10 that have been discussed, gave ample scope for public to interact with the Board, therefore it is not believed to be any legal issue of compliance. The City attorney's office would be happy to supply the Board members with a copy of that statute.

The next item considered – **Item #10 Adjournment.**

Poitier makes a motion and is seconded by Ms. Cummings – to adjourn.