

**Minutes of Planning Commission Meeting
Held Monday, March 11, 2019, at 7:00 P.M.
in the Council Chambers, 11 North 3rd Street,
Jacksonville Beach, Florida**



Call to Order

The meeting was called to order at 7:00 P.M. by Chairman Greg Sutton.

Roll Call

Chairman: Greg Sutton
Vice-Chairman: David Dahl
Board Members: Margo Moehring Britton Sanders
Alternates: Jon Scott Walker Bill Spann

Also present was Senior Planner Heather Ireland.

Approval of Minutes

The following minutes were unanimously approved:

- February 25, 2019

Correspondence *None*

Old Business *None*

New Business

(A) **PC#3-17** **417 & 421 11th Street South**
Owner/ BCEL 4 LLC
Applicant: 7563 Phillips Highway Suite 109
 Jacksonville, FL 32256

Agent: Curtis Hart
 8051 Tara Lane
 Jacksonville, FL 32216

Concept Plan for Plat Approval for a proposed four-unit townhouse development located in a *Residential, multi-family: RM-1* zoning district, pursuant to Section 34-503 of the Jacksonville Beach Land Development Code.

Staff Report:

Ms. Ireland read the following into the record:

The Planning Commission originally considered and denied this application on February 27, 2017. The property owners appealed that decision to the Circuit Court. After extended litigation, the application has been returned to the Planning Commission for public hearing and consideration.

The agenda packet provided includes the original application, including the staff report, items distributed at the first public hearing, minutes of February 27, 2017 hearing, and the approved Findings of Fact.

Section 34-503 of the Land Development Code requires the Planning Commission to hold a public hearing and consider the application staff report, and public testimony. The Planning Commission shall then approve, approve with conditions, or deny the concept plan for plat based on the following standards:

Section 34-503(6).

- a. *Consistency with comprehensive plan.* It shall be consistent with the goals, objectives, and policies of the comprehensive plan.
- b. *Compatible with surrounding land uses.* It shall be compatible with surrounding land uses.
- c. *Design and layout.* It shall be adequately designed so that the general layout of the proposed development will be compatible with surrounding land uses and not be at such variance with other development so as to cause a substantial depreciation in property values.

The City Attorney's office will provide guidance for you on the procedures for this hearing.

City Attorney:

Denise May with the City Attorney's office summarized for the record [*copy on file*]:

This application [for Concept Plan for Plat] was first heard on February 27, 2017. The Planning Commission denied the application upon the motion of Ms. Dumont and second by Mr. Sutton based upon standards 6A and 6B of the criteria stating incompatibility with the surrounding neighborhood and inconsistency with the Comprehensive Plan. Denial of the application was confirmed in writing and sent to the applicant [certified mail February 28, 2017].

On March 29, 2017, the property owners, BCEL 4, LLC and BCEL 5, LLC, filed a petition under Florida Statutes 70.51 Land Use and Environmental Dispute Resolution Act seeking the appointment of a Special Magistrate for resolution. The applicant and City held mediation under the Act July 7, 2017, and a hearing was scheduled for August 30, 2017.

On August 23, 2017, prior to the hearing under the Act, the applicant filed this petition for Writ of Certiorari and [in the alternative], for Writ of Mandamus in State court. This officially ended our Florida statute 70.51 Dispute Resolution [proceedings].

On March 19, 2018, the Circuit Court granted the property owners the petition for Writ of Mandamus and the Writ of Certiorari. The Circuit Court ordered approval of the application for "Concept Plan Plat" by the Planning Commission. In addition to granting the requested Writ of Certiorari, the Court found that the City departed from the essential requirements of law and that there was no competent substantial evidence to support denial.

On March 26, 2018, the City appealed this decision to the 1st District Court of Appeals on the basis that the lower court could not grant both the Writ of Mandamus (or to direct this Planning Commission to approve), and the Writ of Certiorari and that the lower court failed to apply the correct law [in granting the Writ of Certiorari].

On December 18, 2018, the 1st DCA issued its order reversing the lower court's in its [grant of the] Writ of Mandamus in overturning that decision which directed this Commission to approve but upheld the grant of Writ of Certiorari. [The City sought a rehearing and clarification of the order which was denied February 1, 2019].

As mentioned, the Circuit Court found that the Commission departed from the essential requirements of law in refusing to see that it's compliance and being consistent with the Comprehensive Plan. It also found that there was no competent substantial evidence to support the denial of the Concept Plan for Plat at the February 2017 hearing. Therefore, the Commission tonight may not rely upon the same evidence the Court has already ruled as not competent and substantial [determined to be insufficient as a matter of law].

This application for Concept Plan for Plat is back before the Planning Commission for a public hearing after the order of February 2017 was quashed.

You may hear new evidence from the applicant and the public.

The applicant will then have an opportunity to rebut any evidence presented by the public.

The Commission must then apply the criteria as set forth in Section 34-503(6)(a-c). Specifically, whether it [the Concept Plan] is:

1. Consistent with the Comprehensive Plan.
2. Compatible with surrounding land uses.
3. Design & Layout are not at such variance as to cause substantial depreciation in property values.

This Commission must then approve, approve with conditions, or deny the Concept Plan for Plat based on this criteria.

Any decision must be supported by competent, substantial evidence showing the applicant failed to meet those objective criteria and it may not be the evidence which you heard at the first hearing.

Attorney:

Mark Scruby of Rogers Towers, P.A., 1301 Riverplace Boulevard, Suite 1500, Jacksonville, was present to represent the applicant. He proceeded with the timeline of this case since its start in February 2017, reiterating some of the points discussed by Ms. May and Ms. Ireland. Throughout his presentation, he added the denial of the application occurred by a vote of 3-2 and further explained the objectives behind the Writ of Certiorari that was requested. He explained it is the remedy applied for when a quasi-judicial decision is made by the Planning Commission. Unlike the process of filing for complaint, this process includes the collecting of records and filing for a petition, which states why the applicant believes an error has occurred. It is not a trial, as only what is presented becomes reviewed, and there is no introduction of new evidence.

Mr. Scruby stated the court would assess the case based on the fairness of the original decision made, if essential requirements of the law were followed and if the evidence was competent substantial. He added the court did not find substantial evidence against the applicant and quashed the decision as if it never happened. It comes back to the Planning Commission. He questioned whether another public hearing was deemed necessary and concluded, after negotiations with Ms. May through a series of emails [*on file*], the applicant is back before the Board.

He added the current land use where the property is situated is Medium Density Residential (MDR). It runs from north to south, between 1st Avenue South and 12th Avenue South, and from east to west, between 4th Street South to portions of 10th and 11th Streets. According to Section 34-

339 of the Land Development Code, MDR authorizes up to 20 units per acre; RM-1 zoning laws are also consistent with the proposed plan. The area embraced by this zoning extends several blocks east and north of the property specific to this application. Based on the 10,000 square foot total land area in this application, at least 17 units are allowed for construction, and the applicants are asking for four. Mr. Scruby then restated the three standards in section 34-503(6) the Planning Commission must base its decisions on. He also added the Circuit Court quashed the Planning Commission's denial of the application on February 27, 2017, because it did not find the reasons for denial to be sufficient, and the First District Court of Appeals declined to set that determination aside.

He referenced the last public hearing, where discussion ensued regarding the types of people that would reside in the properties and the number of vehicles they might have, and told the Commission to disregard those reasons, as they are not part of the three standards; he also provided evidence to show the proposal is compliant with the three criteria in discussion:

1. By virtue of the MDR land use designation, the concept plat is consistent with the Comprehensive Plan.
2. By virtue of the RM-1 zoning, along with several adjacent lots of the property, the concept plat is compatible with surrounding land uses. He added there are six multi-family residential buildings owned by the Jacksonville Housing Authority that are located in the block to the immediate east of the property, four more to the block east of that, and proceeded with a list of nearby properties that resemble the ones in this proposal.
3. The criteria the design & layout are not at such variance as to cause substantial depreciation in property values was uncontested at the February 27, 2017 meeting and therefore satisfies the standards.

According to zoning laws, the applicant has the ability to build an apartment complex but has requested the concept plan for plat approval to build townhomes. Additionally, five months after the February 27, 2017 hearing, on June 12, 2017, another similar concept plat application (PC #27-17) was heard and approved by the Planning Commission.

Public Hearing:

The following spoke in opposition to the application:

- Kay Odom, 402 11th Street South, Jacksonville Beach, spoke about her concerns on parking and safety but understands those are not part of the three standards the Commission must base its decision on. Ms. Odom stated she believes it doesn't fit the area.

The following was opposed to the application, but preferred not to speak:

- Blake Zeigler, 414 11th Street South, Jacksonville Beach

Mr. Sutton closed the public meeting.

Discussion:

Mr. Sanders asked Ms. Ireland to explain to the public how the applicant has the ability to construct an apartment complex. Ms. Ireland stated the property is zoned Multi-Family so it can be built into an apartment complex or condominium-style housing.

Ms. Moehring stated a comprehensive look must be taken to examine residential densities, and landowners cannot be subjected to the public perception of the character of neighborhoods.

Motion: It was moved by Ms. Moehring and seconded by Mr. Sanders, to approve the Concept Plan for Plat Application.

Mr. Walker questioned the issue of parking, to which Ms. May advised to disregard as it is not part of the three standards the Commission must base its vote on. Mr. Dahl commented, regarding the third criteria, there is no metric of measurement that can determine the future of the values of the surrounding properties. Mr. Sanders added due to the lack of substantial evidence from the public, and due to the property's compliance with the three criteria, he would second the motion.

Roll call vote: Ayes – David Dahl, Margo Moehring, Britton Sanders, Jon Scott Walker, and Greg Sutton.

The application was approved unanimously.

Planning & Development Director's Report

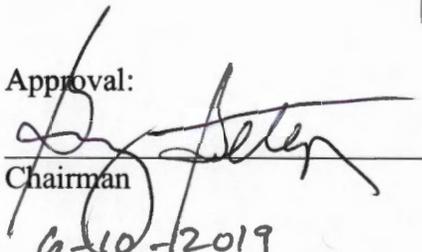
Ms. Ireland noted the next meeting is scheduled for Monday, April 8, 2019.

Adjournment

There being no further business coming before the Commission, Mr. Sutton adjourned the meeting at 7:40 P.M.

Submitted by: Sama Kaseer
Administrative Assistant

Approval:


Chairman

6-10-2019
Date