

PLANNING AND ZONING COMMISSION

There was a meeting of the Indian River County (IRC) Planning and Zoning Commission (P&Z) on Thursday, January 10, 2008 at 7:00 p.m. in the Commission Chambers of the County Administration Building, 1801 27th Street, Vero Beach, Florida. You may hear an audio of the meeting; review the meeting agenda, backup material and the minutes on Indian River County website www.ircgov.com/Boards/PZC/2007.

Present were members: Vice Chairman George Hamner, Member-at-Large; Donna Keys, District 1 Appointee; Gerard Weick, District 2 Appointee; Craig Fletcher, District 3 Appointee; Greg Smith, District 4 Appointee; George Lawrence, District 5 Appointee; Dr. Richard Baker, Member-at-Large; and Ann Reuter, non-voting School Board Liaison.

Also present was IRC staff: George Glenn, Assistant County Attorney; Bob Keating, Community Development Director; Brian Freeman and Steven Deardeuff, Senior Planners; and Reta Smith, Recording Secretary.

Call to Order and Pledge of Allegiance (7:30:28)

Vice Chairman Hamner called the meeting to order and Mr. Weick led all in the Pledge of Allegiance.

Election of Chairman and Vice Chairman (7:30:52)

ON MOTION BY Ms. Keys, SECONDED BY Mr. Smith, the members voted unanimously (7-0) to elect Mr. George Hamner as Chairman.

ON MOTION BY Ms. Keys, SECONDED BY Mr. Smith, the members voted unanimously (7-0) to elect Mr. Craig Fletcher as Vice Chairman.

Approval of Minutes (7:31:37)

ON MOTION BY Mr. Fletcher, SECONDED BY Mr. Smith, the members voted unanimously (7-0) to approve the minutes of the meeting of December 13, 2007, as presented.

Item on Consent (7:32:00)

Chairman Hamner read the following into the record:

- A. RCMA Day Care Facility:** Request for administrative permit approval for a pre-school/day care facility to be known as RCMA day care. Redlands Christian Migrant Association, Owner. Knight, McGuire & Associates, Inc., Agent. Located at 7625 85th Street (CR510), between 66th Avenue and 82nd Avenue. Zoning Classification: A-1, Agricultural 1 (up to 1 unit per 5 acres). Land Use Designation: AG-1, Agricultural 1 (up to 1 unit per 5 acres). (SP-MA-07-12-45/2001110154-60157) **[Quasi-Judicial]**

Mr. Fletcher wondered if a slow-down lane would be required when the road was paved or widened. Mr. Bob Keating, IRC Community Development Director, advised during the design phase it would be decided where it would be appropriate to have median cuts.

(7:33:47)

ON MOTION BY Mr. Lawrence, SECONDED BY Dr. Baker, the members voted unanimously (7-0) to approve the Consent Agenda.

Public Discussion (7:34:20)

The secretary administered the testimonial oath to those present who wished to speak at tonight's meeting on any quasi-judicial items.

Chairman Hamner read the following into the record:

- A. Ocean Concrete:** Appeal of a decision by community development staff to deny a request for a one year extension of a site plan application to construct a concrete batch plant. Located on the west side of Old Dixie Highway, south of County Road 512. Ocean Concrete, Inc., Owner. Todd Smith, Agent. Zoning Classification: IL, Light Industrial. Land Use Designation: C/I, Commercial/Industrial. [SP-MA-07-03-15 / 2004110124-57127] **[Quasi-Judicial]**

Attorney George Glenn, IRC Assistant County Attorney, clarified the appeal was to determine whether IRC staff improperly denied the

applicant's request for a site plan extension, and questions of merit and whether it was a good project or not were irrelevant.

Mr. Brian Freeman, IRC Senior Planner, reviewed the information contained in his memorandum dated December 31, 2007, a copy of which is on file in the Commission Office (7:36:27).

The applicant's representative, Attorney Geoffrey Smith, Smith & Associates, Tallahassee, Florida (7:43:23), maintained IRC staff was maneuvering to try and create the pretext that the project had expired. He stated a group known as Stop Ocean Concrete had posted the date of tonight's public hearing on its web site on December 22, 2007 before it was ever publicly announced, and submitted a copy of the Sebastian Concerned Citizens' web page which is on file in the Commission Office.

Attorney Smith discussed a letter dated December 4, 2007 to Mr. Todd Smith, P.E. from Mr. Brian Freeman, a copy of which is on file in the Commission Office. He cited LDR Section 914.06(4)(d) regarding extensions of site plan applications and gave his reason why the four criteria were not followed by IRC staff.

Attorney Smith related if staff was applying the changed LDRs they should straight forwardly say it was on the merits and not try to make it into a procedural matter that the permit had expired. He explained the legal principal of equitable estoppel.

Mr. Keating took issue with Attorney Smith's claim that staff changed the rules in the middle of the game because when looking at an extension request they were looking at a new game and adding another period to the game. He stated there were new rules and if staff extended the site plan it should be subject to those new rules. Mr. Keating pointed out the criteria regarding extension of site plan applications was discretionary on the part of the Community Development Director, and IRC staff had applied the criteria of looking at the impacts of changed LDRs in deciding whether or not to grant the extension request. He added IRC staff had gone to great lengths to make sure the application was reviewed under only the rules that were in effect without any changes when it was submitted, and had only applied the impacts of the zoning district changes in looking at an extension.

Attorney Smith asked Mr. Keating if, setting aside the change in the LDRs, the applicant's request for an extension would be granted. Mr. Keating replied it would if there was no change in the LDRs.

Discussion followed.

Mr. Todd Smith P.E., the applicant's Engineer (8:21:09), wanted to go on record that the applicant had been moving forward as diligently as possible, and talked about all the different agencies they had to deal with. He maintained, regardless of any extension or comment letters, there was no way the applicant could have secured an approval on the site plan within the twelve month period of 2007. He took issue with criteria #3 and #4 of LDR Section 914.06(4)(d).

Stormwater data was discussed.

The applicant, Mr. George Maib (8:37:44), stated the decision would inevitably be decided by a judge in a court of law and he asked the P&Z to allow him the opportunity to see his work come to fruition. He noted if the courts decided against him he would find another use to implement on the property and much of data concerning future road improvements, etc. would be utilized in another acceptable design which would be presented to staff.

Attorney Glenn discussed the factors and the reasoning associated with staff's denial of the extension.

Chairman Hamner opened the public discussion at 8:18 p.m. He asked if anyone present today was in favor of the appeal, with the assumption being anyone not in favor would support IRC staff's case.

Mr. Charles Wilson, 1935 19th Avenue, Vero Beach (8:49:34) disclosed he had worked with the applicant regarding the designation of Old Dixie Highway as a historic roadway, but did not represent him in this action. He was concerned it would be the policy of the County where a project could be delayed long enough that it then became a single person's decision whether the project could go forward or not. Mr. Wilson outlined why he did not believe staff had followed item #4 of the criteria.

Mr. Kelly Matherne (8:53:45) stated Sebastian Concerned Citizens did not have advanced information of tonight's meeting ahead of anyone else.

Mr. William Cox, River Run Drive, Sebastian (8:54:34), did not believe the extension should be granted.

Attorney Smith reiterated his arguments against denial of the extension (8:56:16).

Chairman Hamner closed the public discussion at 8:27 p.m.

A member of the audience who had arrived after the swearing in of those who wished to speak asked to be heard. Chairman Hamner reopened the public discussion at 8:31 p.m., and the secretary administered the testimonial oath.

Mr. Al Manzi, 742 Holden Avenue, Sebastian (9:00:06), spoke against the extension being granted.

Chairman Hamner closed the public discussion at 8:35 p.m.

(9:02:48)

ON MOTION BY Ms. Keys, SECONDED BY Mr. Lawrence, the members voted unanimously (7-0) to find staff did not fail in regard to any of the four appeal criteria and to uphold denial of the extension.

Chairman Hamner called a recess at 8:35 p.m. and reconvened the meeting at 8:37 p.m.

Public Hearing (9:03:38)

Chairman Hamner read the following into the record:

- A. Indian River Estates Phase III:** Request for major site plan and special exception approval to construct a total care facility addition to be known as Indian River Estates Phase III. Adult Community Total Services, Inc., Owner. Carter Associates, Inc., Agent. Located at 7500 26th Street. Zoning Classification: RM-8, Residential Multi-Family (up to 8 units/acre). Land Use Designation: M-1, Medium Density (up to 8 units/acre). Density: 7.45 units per acre. (SP-MA-08-02-06/2007040082-60628) **[Quasi-Judicial]**

Mr. Steven Deardeuff, IRC Senior Planner, reviewed the information contained in his memorandum dated December 10, 2007, a copy of which is on file in the Commission Office (9:03:01).

Mr. George Simons, P.E., Carter Associates, Inc., 1708 21st Street, Vero Beach (9:07:53), representing the applicant, explained how the density had been calculated.

Access, traffic, and the landscape plan were discussed.

Chairman Hamner opened the public hearing at 8:50 p.m., and since no one wished to speak, the public hearing was closed.

(9:15:06)

ON MOTION BY Mr. Fletcher, SECONDED BY Mr. Weick, the members voted unanimously (7-0) to approve the applicant's request for Major Site Plan and Special Exception Approval.

Commissioners Matters (9:15:34)

There were none.

Planning Matters (9:15:36)

Mr. Keating reviewed recent actions taken by the Board of County Commissioners. He related while the mining moratorium was in effect, he had recommended the P&Z be the lead group working with IRC staff to come up with criteria for a new mining ordinance, and outlined what this might entail.

Attorney's Matters (9:24:24)

Attorney Glenn wondered if there was also consideration of areas in the County where mining would be allowed in the future.

Mr. Keating noted the focus of the moratorium should not be on prohibiting mining in certain areas because that would subject the County to potential lawsuits and damages. He clarified the potential impacts of mining and mitigation should be considered.

Discussion ensued.

Adjournment (9:27:39)

The meeting adjourned at 9:01 p.m.

George Hamner, Chairman

Date

Reta Smith, Recording Secretary

Date