

PLANNING AND ZONING COMMISSION

There was a meeting of the Indian River County (IRC) Planning and Zoning Commission (P&Z) on Thursday, January 25, 2007 at 7:00 p.m. in the Commission Chambers of the County Administration Building, 1840 25th Street, Vero Beach, Florida.

Present were members: Chairman Bob Bruce, District 2 Appointee (arrived at 7:01 p.m.); Donna Keys, District 1 Appointee; Craig Fletcher, District 3 Appointee; Greg Smith, District 4 Appointee; George Christopher, District 5 Appointee; George Hamner and Dr. Richard Baker, Members-at-Large; and Ann Reuter, non-voting School Board Liaison.

Also present were IRC staff: William G. Collins, County Attorney; Bob Keating, Community Development Director; Jim Davis, Public Works Director; Chris Mora, Assistant Public Works Director; Stan Boling, Planning Director; Gale Carmoney, Senior Planner, Long Range Planning; Steven Deardeuff, Senior Planner, Current Development; Darcy Vasilas, Interim Executive Aide to the Board of County Commissioners (BCC) and Terri Collins-Lister, Staff Assistant IV.

Call to Order and Pledge of Allegiance

Vice Chairman Christopher called the meeting to order and led all in the Pledge of Allegiance.

Approval of the Minutes

ON MOTION by Mr. Hamner, SECONDED BY Mr. Fletcher, the members voted unanimously (6-0) to approve the January 11, 2007 meeting minutes as presented.

Items on Consent

Vice Chairman Christopher asked if anyone wished to remove any items from the Consent agenda.

Mr. Stan Boling, IRC Planning Director, stated staff had passed out some additions for Items 3A and 3B, a copy of which is on file in the Commission Office.

Chairman Bruce arrived at 7:02 p.m.

Mrs. Collins-Lister administered the testimonial oath to all those present wishing to speak on any quasi-judicial items.

Mr. Christopher asked for all Items on the Consent Agenda to be pulled.

Chairman Bruce read the following into record:

A. Oslo Properties: Request for preliminary plat approval for a 28-lot conventional single-family subdivision to be known as Oslo Properties Residential Subdivision. Oslo Properties, LLC, Owner. Schulke, Bittle & Stoddard, LLC, Agent. Located at 900 13th Street SW, between 13th Street SW and 11th Street SW just east of 9th Court SW. Zoning Classification: RS-6, Residential Single-Family (up to 6 units/acre). Land Use Designation: L-2, Low Density 2 (up to 6units/acre). Density: 2.92 units/acre. (SD-06-08-25/2006040163-54712) [**Quasi-Judicial**]

Mr. Boling reviewed Item 3A, Oslo Properties, and noted the additions were in reference to the fact the preliminary plat proposes, as required by the ordinance, the right-of-way dedication along 9th Court SW as well as an ultimate right-of-way dedication for 13th Street SW. Mr. Boling pointed out even though the preliminary plat showed those dedications and accommodated them; he wanted to show this in the report and as a specific condition on that particular item.

Mr. Boling described Item 3B, Nalpak 20th Avenue, as a similar circumstance and regarded to it as a 10-foot dedication without compensation. He pointed out the information was reflected in corrected pages for the record.

Mr. Boling concluded staff's recommendation on Items 3A and 3B was for approval with the added conditions.

Mr. Christopher questioned whether the applicant had signed off on the Proportionate Share Agreement. Mr. Steven Deardeuff, IRC Senior Planner, stated the Proportionate Share Agreement had not been executed and pointed out the applicant had agreed to the conditions recommended by staff, however they had 12 months after approval of the preliminary plat before signing the agreement.

Mr. Christopher was surprised because this agreement was a major condition and asked why the applicant was not required to sign the Proportionate Share Agreement at the time, or had agreed to sign and then be required to sign it upon approval by the BCC assuming they would approve it promptly.

Mr. Bob Keating, IRC Community Development Director, replied the applicant had agreed to sign the Proportionate Share Agreement and was tentatively scheduled to go before the BCC at their February 6, 2007 meeting.

Mr. Christopher opined the Proportionate Share Agreement was to be signed prior to the issuance of the land development permit and that was what he had focused on as opposed, to the agreement being signed upon approval by the BCC.

Mr. Keating replied the condition was consistent with what the staff had recommended in the Land Development Regulations (LDR) Chapter 910 as the first point of vesting.

Mr. Christopher suggested since this was a major condition, the Proportionate Share Agreement should be signed at the time. Mr. Keating stated it was not a formality, but it was a money issue. Mr. Christopher replied perhaps the applicant should not have to pay the money stating the payment of the money was one thing and the signing of the agreement was another. Mr. Keating replied the payment of the money and the signing of the agreement was combined, and not only does the applicant pay the proportionate share, but also the impact fees, water and sewer capacity charges.

Mr. Christopher felt the applicant should sign the Proportionate Share Agreement and it was unfair for the applicant to be required to pay at the time of signing, and he did not object to waiting until land development permit time (LDP). It seemed to him a major condition which should be fulfilled promptly.

Mr. Keating pointed out the applicant must pay the fees in order to get concurrency. He continued staff had recommended a condition that the concurrency approval was in place, and at LDP time was the appropriate time to vest.

Mr. Christopher did not realize this exempted the applicant from the vestability permit time and suggested staff get in writing from the applicant a letter agreeing to sign the proportionate fair share agreement.

Mr. Hamner asked if the applicant would be bound to sign this agreement, if the purpose was to move forward rather than not proceed very far without the agreement.

Ms. Keys asked what if during the approval process with P&Z or the BCC, another condition was place on the applicant and it had to be part of the developer agreement. Mr. Keating replied the preliminary plat was final at the

P&Z. Ms. Keys questioned if the applicant came to P&Z with the Developers Agreement already signed, could changes be made at a P&Z meeting that would impact the Developers Agreement. Mr. Keating replied in the affirmative and noted it was in Quasi-Judicial mode and if the project did not meet the criteria, it would not matter whether the applicant had done a developer's agreement.

Mr. Christopher suggested to staff to get the applicant to agree in writing to sign the Proportionate Share Agreement.

Mr. Christopher inquired on the traffic reports and had an issue with the dates of the counts and the vesting data. Mr. Chris Mora, IRC Assistant Public Works Director, referred to the link sheets for the Oslo Properties Project, attachment #5, page 4 in the P&Z packet, and noted the date of compilation.

Mr. Christopher said the information did not tell the dates of the counts and vesting and assumed the counts were from 2005. He inquired on the vesting dates and stated he had always understood that the vesting was a very current date. Mr. Keating stated the vesting should be the date it was compiled. Mr. Mora stated as new projects were vested day-to-day, they would be entered into the compilation table in the vested column, so as of the date the link sheet was compiled in July 2006 that would be the date the project was vested.

Mr. Christopher verified on the Oslo Road link sheet, the vesting was around the date of July 2006, the date of compilation and the counts were as of 2005 and asked for it to be spelled out in writing. He did not know how concurrency could be determined at that point and could see using old counts, but vesting numbers had to be current.

Mr. Keating explained if staff was reserving capacity and giving a Concurrency Certificate, the client had to apply their assignment to the actual available capacity as of the present date. Mr. Christopher asked if there was a way to get on the link sheet a statement as of the date of the count and vesting number.

Mr. Keating clarified if a project had a Proportionate Share Agreement or a Developers Agreement, and would be providing additional capacity with a major roadway improvement as the County deemed it should, those were the two exceptions to the pending ordinance at building permit time. He continued the Oslo subdivision could vest before building permit time. He indicated when a project came in for vesting, staff would approve the traffic study and then the trips were assigned to links. He said before staff issued the Concurrency Certificate, they made sure there was available capacity.

Mr. Keating stated he would need to verify with staff, but a Conditional Concurrency Certificate was issued to the Oslo subdivision back in July 2006. The certificate stated concurrency was available at that point in time, and there was no guarantee it would be later. He concluded staff would give a Conditional Concurrency Certificate prior to approval by P&Z only if the project was within the review stage.

Dr. Baker questioned the land clearing at the Oslo Subdivision and asked if it was generally approved in that way. Mr. Boling noted on the site, there were two native buffer areas that would not be cleared, but what tended to be cleared was the areas of right-of-way improvements and building pads. He continued there were opportunities outside of those areas to retain trees, however, on this particular site, there was a stormwater area located by a right-of-way and building envelopes on the lots which would be cleared and brought up to grade as part of the development of the subdivision infrastructure.

Dr. Baker asked if the developer could leave certain trees for the owner of the property. Mr. Boling indicated there was some perimeter areas on the lots and so much depended on the need for fill. A discussion ensued on the tree ordinance.

Mr. Jodah Bittle, Schulke, Bittle & Stoddard, LLC, stated it was required for the lot to be filled for a positive discharge to the drainage facility from the roadway which would consist of 2 to 3 feet of fill on the site. He continued once a road was built for public access and for the lots, they would bring the fill up to site

Dr. Baker asked if the trees could be moved in a progression from one end of the subdivision to another which would be half of the cost to move a tree then to put in new trees. Mr. Boling pointed out some developers with larger sites had taken advantage of the concept by creating a temporary nursery and putting the trees back in the lots later. Mr. Hamner stated the down part was that it was voluntary and no rules were in place, however it was encouraged.

Dr. Baker felt the tree ordinance should be revisited. Mr. Keating pointed out cleared sites were sometimes better for the environment and discussed an article in the Press Journal on the Bristol Bay development. A discussion ensued on moving trees.

ON MOTION BY Ms. Keys, SECONDED BY Mr. Hamner, the members voted unanimously (7-0) to approve the request for preliminary plat with the additions and corrections provided by staff.

Chairman Bruce read the following into the record:

B. Nalpak 20th Avenue: Request for preliminary plat approval for 24-lot conventional single-family subdivision to be known as Nalpak 20th Avenue Subdivision. Robert Kaplan, Owner. Schulke, Bittle & Stoddard, LLC, Agent. Located at 1355 20th Avenue, north of 12th Street. Zoning Classification: RS-6, Residential Single-Family (up to 6 units/acre). Land Use Designation: L-2, Low Density 2 (up to 6 units/acre). Density: 3.28 units/acre. (SD-06-11-36/2006010122-55888) **[Quasi-Judicial]**

Mr. Christopher questioned why the applicant had applied for and obtained a Conditional Concurrency Certificate six months ago and felt needing to meet concurrency on the present date was irrelevant.

Mr. Keating responded staff had been issuing a Conditional Concurrency Certificate because the applicant was not getting the right to create any traffic demand at this stage.

Mr. Christopher stated the LDR's specified concurrency was met when the development order which was the date approved. He felt they should meet concurrency at that time.

A discussion ensued on the traffic counts.

Dr. Baker made reference to the Gopher Tortoises and Mr. Deardeuff replied there was evidence of the Gopher Tortoises on the site. Dr. Baker asked if the applicant had done a survey, and if, so how many Gopher Tortoises were found on site. Mr. Deardeuff replied in the affirmative, however did not know the exact count. Dr. Baker questioned how the survey was done. Mr. Deardeuff said the survey was done in one small area on the site and then estimated from the number of holes or burrows found in a certain square footage. Dr. Baker asked if those sites were located on the plans. Mr. Deardeuff said the sites were detailed in a report.

A discussion ensued.

Mr. Joseph Schulke, Schulke, Bittle & Stoddard, LLC, addressed Dr. Baker's concern. He explained a detailed survey was not done for Gopher Tortoises because they had an Environmental Consultant go through the site to identify them, then once the staff acknowledged the presence of the tortoises, they too would make the survey a condition.

Dr. Baker asked for any reports to be included in future packets. A discussion ensued on the environmental report and the Gopher Tortoises.

Mr. Smith asked the number of environmental reports were required in this type of development. Mr. Boling responded it depended on the Environmental Planning staff looking at the site, doing an initial site visit and determining if there was a need for further study. He continued some areas automatically required ecological studies and the developer would need to determine the permitting requirement which would drive the preliminary information.

Mr. Smith asked if the County had been out to look at the Nalpak Subdivision site. It was mentioned that Mr. Ken Oristaglio, IRC Senior Planner, had visited the site. Mr. Keating indicated there was a difference when purchasing property and reviewing property, environmental audits needed to be done when buying property and was done in phases. He gave the example, if Phase I of the environmental audit indicated some kind of pollution, then Phase II would be performed, and so forth, however the environmental work done at the County consisted of reviewing what an Environmental Consultant would submit.

ON MOTION BY Mr. Hamner, SECONDED BY Ms. Keys, the members voted unanimously (7-0) to approve the request for preliminary plat with the additions and corrections presented by staff.

Chairman Bruce read the following into the record:

C. Beale 5th Street SW: Request for preliminary plat approval for a 36-lot conventional single-family subdivision to be known as Beale 5th Street SW Subdivision. Beale Holdings, Owner. MBV Engineering, Inc., Agent. Located at 1225 5th Street SW, just west of the 12th Avenue SW/Indian River Farms Water Control District Lateral E Canal right-of-way. Zoning Classification: RS-6, Residential Single-Family (up to 6 units/acre). Land Use Designation: L-2, Low Density 2 (up to 6 units/acre). Density: 2.79 units/acre. (SD-06-11-34/2006040056-55811) **[Quasi-Judicial]**

ON MOTION BY Mr. Hamner, SECONDED BY Mr. Christopher, the members voted unanimously (7-0) to approve the request for preliminary plat as presented.

Public Hearing

Chairman Bruce read the following into the record:

A. Margaret Knight: Request to rezone ±51.7 acres located approximately 2,700 feet south of S.R. 60 and 450 feet east of 98th Avenue from A-1, Agricultural District (up to 1 unit/5 acres), to RM-6, Multiple-Family Residential District (up to 6 units/acre). Margaret Knight, Owner. Joshua Ellern, Agent. (RZON 2006070074-55147) **[Quasi-Judicial]**

Mr. Gale Carmoney, IRC Senior Planner, Long Range Planning, reviewed the information contained in his memorandum, a copy of which is on file in the Commission Office.

Chairman Bruce questioned whether the Proportionate Share Agreement meant anything at this point. Mr. Carmoney stated they had agreed to enter into one once the site plan had been approved.

Mr. Keating replied the importance of Proportionate Share Agreement was not that the applicant agrees to enter into one, but was available to be entered into. He opined you do not want applicants entering into Proportionate Share Agreements at this point, because staff was very conservative in estimating the number of trips, therefore the applicant may not receive the total yield and would end up paying for more than they would be able to use.

Mr. Christopher mentioned assuming the BCC approves the interest proposal on State Road (S.R.) 60, would an applicant only be able to take advantage of the S.R. 60 expansion if they entered into a Proportionate Share Agreement.

Mr. Keating responded if the interest issue with S.R. 60 was resolved and the County entered into an agreement with the Federal Department of Transportation (FDOT) to advance the two FDOT projects, a special fee would apply to any development that contributed trips to those links. He continued those developments would not enter into a Proportionate Share Agreement, even if the S.R. 60 interest proposal fell through and there would still be opportunity for the applicant to do a Proportionate Share Agreement on the one S.R. 60 link that was broken because it was in the FDOT Five Year Work Program.

Mr. Christopher asked if the S.R. 60 improvements between 82nd Avenue and 66th Avenue was on the fourth or fifth year of the FDOT Five Year Work Program. Mr. Keating noted the FDOT Five Year Work Program was updated.

He explained the Draft Tentative FDOT Five Year Work Program that had been endorsed by the Metropolitan Planning Organization (MPO), would be presented to the legislature within a few weeks and signed by the Governor on July 1, 2007. He indicated the S.R. 60 improvements were within the first three years. A discussion followed.

Mr. Christopher opined on how this matter was before the P&Z, because it was a road in the fourth and fifth year and was not eligible for the Proportionate Share Agreement. He wondered how this plan could be set to meet concurrency.

Mr. William G. Collins, IRC County Attorney, explained the concurrency ordinance and Mr. Christopher referred to the concurrency Chapter 910.12 of the LDR's on the general requirements.

Mr. Christopher opined the only reason Mr. Joseph Baird, IRC County Administrator, agreed to put the money forward in advance to capital was because he believed the state would not move S.R. 60 into the first three years.

Mr. Baird spoke up and said if the County would enter into a Joint Partnership Agreement (JPA), the state would guarantee it, however when presented to the BCC it was \$67 million for both links and there would be a loss of interest. He continued the BCC had asked the staff to come back with a method for the FDOT to pay the loss of interest. He reiterated the County was moving forward right now as if it would be approved and to keep in mind this was a rezoning and was conditional.

A discussion followed. Mr. Christopher felt the road should be included in the concurrency test. He continued the road was not going to be improved, concurrency had not been met and the Proportionate Share Agreement was not available.

Mr. Hamner asked Attorney Collins if conditions could be put on the rezoning. Attorney Collins replied there could not be conditional rezoning. Mr. Baird asked for the P&Z to keep in mind, at this point it was a test and when the request to rezone came back at site plan approval to be reviewed, there may not be capacity and could not move forward.

Mr. Keating stated even though rezoning could not be conditional, when the BCC approved Chapter 910, a provision was approved that could place conditions on Conditional Concurrency Certificates.

Attorney Bruce Barkett, representing Mr. Joshua Ellern, thanked staff for their presentation and reasoning. Attorney Barkett told Attorney Collins at a rezoning stage, concurrency could not be reserved. He indicated the project was two years away and felt S.R. 60 would be approved. He told the committee the Comprehensive (Comp) Plan for this property was M-1, (eight units per acre) and around the property the zoning was six units per acre so his client has asked for six units to be consistent with the neighboring property.

Attorney Barkett asked the P&Z for their support in implementing the comprehensive plan the way the laws, regulations and ordinances directed and the request for the rezoning consistent with the plan.

Ms. Reuter questioned if the Proportionate Share Agreement would be satisfied by a developer making public transportation more frequent and filling in the grid links that did not exist, to alleviate some of the traffic on S.R. 60.

Mr. Keating stated those questions had come up state wide and if there was an alternative that would divert trips away from a deficit link the improvement project could go ahead through a Proportionate Share Agreement and concurrency would be satisfied. He concluded public transportation was more problematic because there was not the large number of individuals riding it, and the density in that area would not be a congestion mitigator.

Mr. Smith inquired if there was a piece of property adjoining another 5 acre parcel zoned RM-6, could it be rezoned to agriculture. Mr. Keating noted there were policies in the plan that allowed agriculture to remain zoned agriculture, and it designated agriculture within the urban service area as a holding zone.

Mr. Fletcher clarified the P&Z at the January 25, 2007 meeting was not reserving capacity for the Margaret Knight property, but requesting rezoning. He mentioned his concerns with 98th Avenue and felt there was not enough capacity to take another vesting. He concluded the difficulty was getting a right-of-way on the northwest side of 98th Avenue.

The public hearing opened at 8:17 p.m. and since no one cared to speak, the public hearing was closed.

Ms. Keys piggybacked from Mr. Fletcher's comment and stated on the northwest side of 98th Avenue there were industrial building structures which prohibited the right-of-way. She expressed concern about the three year wait for improvements and the 166 negative trips on that particular link on S.R. 60.

Mr. Christopher noted two problems with the project; one being a technical problem in which the project could not comply with the laws set today, however he felt the BCC could clean it up if they would do the interest agreement on the expansion of S.R. 60. The next concern he had was the traffic, stating there were serious traffic problems and did not know the dimension of the problem. He deemed it was a mistake to continue rezoning at near maximum and there was no obligation to rezone because it was consistent with the Comp Plan.

ON MOTION BY Mr. Hamner, SECONDED by Mr. Smith, that the P&Z approve the project as presented, because the concurrency as Attorney Barkett stated was not an issue at this point in time and was within the context of Urban Service Area in which the property had that right.

UNDER DISCUSSION Ms. Keys asked if this project could be held off until the expansion of S.R. 60 was approved. Attorney Barkett stated there was discussion about postponing until there was a resolution on S.R. 60 and told the committee they did not know when that may happen. He could not control when it would go before the BCC, but would rather the P&Z take action one way or another.

THE MOTION WAS CALLED, and the members voted (2-5) causing the motion to fail. Mr. Hamner and Mr. Smith voted in favor of the motion. Chairman Bruce, Ms. Keys, Dr. Baker, Mr. Fletcher and Mr. Christopher voted against.

Commissioners Matters

Mr. Smith referred to one of the votes taken at the January 11, 2007 meeting in which a developer came before the P&Z who had met all of the requirements by the County and because there was recognition of a problem it was part of the approval process. He was concerned when a developer comes into IRC, completes the development and leaves, the community was left to solve the problems associated with whatever improvements that were necessary.

He questioned if we should carry our concerns by voting the law but with some aside connected to it as to what expectations were for those improvements to be made in a matter that was timely so those conditions were met. He was trying to understand why we voted a project down that met the stipulations of our own rules because of legitimate concerns, and then allow the process to continue.

A discussion followed. Mr. Christopher stated there were requirements in the law to be met. Mr. Smith would like to see concurrency work such that the improvements were in place the day the first car drives into a parking lot. Mr. Christopher replied the law states the improvements must be there within three years.

Ms. Keys thanked the owner and engineer of the Oslo properties for the ultimate right-of-way. She had e-mailed Mr. Mora a request for some information on the widening of 58th Avenue and S.R. 60. She continued the intersection at 58th Avenue and S.R. 60 needed to be widened, but noted the improvements were so expensive a consultant was brought in to look at alternative routes.

Mr. Mora stated the widening of the intersection at 58th Avenue and S.R. 60 was very involved. He summarized turn lanes would be added to all four approaches, and an additional three lanes on 58th Avenue. He estimated construction costs of \$13.5 million dollars and if the purchase of right-of-way was added, the cost could be up to \$25 million. He pointed out this was one of the reasons why the County started looking at diversion routes for the traffic. A discussion ensued on the alternative routes and the intersection at 43rd Avenue and S.R. 60. Mr. Mora stated at peak hours both the intersections at 58th Avenue at S.R. 60, and 43rd Avenue at S.R. 60 failed, however he felt 58th Avenue and S.R. 60 had more congestion and back-ups.

A lengthy discussion followed on traffic and the housing market.

Chairman Bruce inquired what was going to happen to the Bristol Bay development and how did the County keep it from being an eyesore. Mr. Keating explained the project was not going to be abandoned, but not going ahead with vertical construction as of now. Mr. Keating felt Bristol Bay was better as a cleared site, than a degrading dead grove.

Chairman Bruce asked if there were any protections in place for abandoned developments becoming eyesores. Mr. Boling stated there were no bonding requirements or protections, however there were bonding requirements once a subdivision has been platted.

Mr. Christopher discussed the identification of alternative sources of water. Mr. Keating stated the IRC Utilities Department consultant would be reviewing alternative water sources and coordinating efforts with St. Johns River Water Management District.

Mr. Christopher questioned the year 2005-2006 counts and wondered how half of the counts could go up and half go down. A discussion ensued. He asked Mr. Mora to go back and provide justifications for the counts.

Mr. Christopher had heard from developers there was a lot of room for improvements on the quality of projects. He would like to come back with a specific proposal for a workshop to address issues in the urban service boundary.

Planning Matters

Mr. Boling reported Grand Harbor items would be going before the BCC at their February 6, 2007 meeting and a workshop would be held on February 9, 2007 concerning U.S. Highway 1 issues. Also on February 13, 2007, two appeals would be presented to the BCC from the P&Z decisions, The Source and the Century Town Center site plan.

Mr. Boling stated other meetings were scheduled for February 15, 2007, a School Concurrency Meeting at the Richardson Center, and on February 19, 2007, IRC would be having a joint meeting with St. Lucie County to discuss Cloud Grove and a few other issues.

Mr. Boling concluded as promised for P&Z members, an aerial of the County was given to each Commissioner identifying the Urban Service and Municipality Boundaries with labeled roads. A copy of which is on file in the Commission Office.

Attorney Matters

Attorney Collins reported the BCC discussed how the legal staff might better serve the P&Z, and the suggestion was made to provide recommendations for alternatives. He explained if there was a legal review that he had signed on an issue, he would write short legal memos about it. He continued in the future, staff would try to block out half a day the Thursday before the packets go out, so if he had comments, staff would have time to modify their recommendations, add alternatives or attach a legal memo if there were some unresolved issues.

Adjournment

The meeting adjourned at 9:09 p.m.

Bob Bruce, Chairman

Date

Terri Collins-Lister, Staff Assistant IV

Date