

Planning Board Minutes
City of Wauchula
May 18, 2009

The Wauchula Planning & Zoning Board met Monday, May 18, 2009 with the following members present: Janelle Knight, Jan Knight, Ray Graham, Patricia Detwiler and Peter Preston. Also present were City Manager Rick Giroux, Attorney Cliff Ables, Community Development Director Olivia Minshew and Attorney Ken Evers. Secretary Susie Gibbs was absent.

Chairman Peter Preston called the meeting to order. Jan Knight made the motion, seconded by Detwiler to approve the minutes of the March 2009 meeting. Minshew polled the Board. All were in favor.

The 3rd and 4th items on the agenda were discussed before the 2nd item; which is a Development Agreement.

City Manager Rick Giroux, representing the City of Wauchula, is requesting an Annexation w/Rezone and FLUM Amendment to Conservation. Giroux gave a summary of why the City is making the request. The City purchased the property essentially to trade with Florida Communities Trust for a one-acre parcel that they own as a four to one ratio exchange. Ables stated that actually the City owns the one-acre parcel but they got it through a grant from Florida Communities Trust that has restrictions that does not allow the City to use it for anything but the park. Giroux explained that what the City has done is made an agreement with Florida Communities Trust to trade them four-acres for one-acre of Park property back to do with it what we want, which is specifically for the Waste-Water Treatment footprint for construction. The four acres were purchased from the Daws and we are rezoning it to conservation to become part of the park in perpetuity. Minshew explained where the Peace River Park and the Waste-Water Treatment Plant are located. She showed where the City needed one-acre. There is actually a building that encroached on the one-acre parcel, so to remedy that and to be able to have the additional room that we need for expansion, the City proposed an exchange. When we talked with FCT, they normally require a sixteen to one trade ratio, but they agreed to go to a four to one ratio, so we purchased four acres here (*pointing to map*) from the Daws to add to the park to take out one-acre right here (*pointing to map*), which is the next item on the agenda. The one-acre parcel will be rezoned as P-SP, Public – Semi-Public and the four-acre parcel will be rezoned Conservation and added to the park. There were comments about item #3 and #4 on the agenda correlating and one not being able to happen without the other. Ables stated that since they are separate parcels, the Board would have to act on them separately. Preston asked for discussion on item #3 and made comments about Peace River being the most canoed river in Florida and us having a canoe outpost. Giroux stated that this is the apex of about fourteen months of work and taking a personal trip to Tallahassee to beg and grovel in front of the FCT, so this is very, very foundationally essential for the City as far as getting our infrastructure up to speed. Preston commented that it was for the WWTP and a great addition to the park. After further discussion about uses for the park and a possible Canoe Outpost being opened at Crews Park, Detwiler made the motion, seconded by Graham to make the recommendation to the City Commission to approve the Annexation, Rezone and FLUM Amendment request. Minshew polled the Board. All were in favor. Motion carried.

Preston asked if there was any discussion about Item #4, the corollary to Item #3. Being none, Janelle Knight made the motion, seconded by Jan Knight to make the recommendation to the City Commission to approve the Rezone and FLUM Amendment. Minshew polled the Board. All were in favor. Motion carried.

Ken Evers, attorney for the Mills Group, who wants to purchase the land, stated that the City Commission has always made it a practice apparently to condition rezones on the presentation and recommendation of the Planning and Zoning Board with final approval by the City Commission for the Development Agreement. Evers stated that the Board had an unexecuted version of the agreement that was assimilated Friday and didn't know if Ables had any comments. He stated that Minshew sent an email to him that the agreement was OK with her. He stated that he had used a previous development agreement as a template and altered a couple of paragraphs that described the project and tried to make it clear that the City will get a look at every phase. Ables wanted to give several thoughts of his. He stated that they already have a development agreement in place and that this agreement doesn't deal with that sufficiently. The title of paragraph 14 says "Revival of Prior Development Agreement", but it talks about "It shall remain in full force and effect" and that raises a question about when did it go out. How can you remain in full force and have a second one? Evers stated that they would add whatever language Ables fills is clear. The intent is to do away with the present and replace it with the new one and revive the present in case this one doesn't fly. He stated that they didn't have a problem with changing the language so that everyone is happy. Evers stated that his understanding is that Southwell, at his request, had a very specific conversation with Greg Mackin about this and Evers stated that he told him that he had to be specific about whether he was going to sign off or not sign off. He stated that Southwell told him that Mackin stated that he would not be a problem. Ables stated that Paragraph 14 should say, "In the event that the contract to purchase the land described in Exhibit A does not close or the proposed development described herein is not realized". Evers stated that if it does not close, the development will not realize. Ables stated that it could close and the development still not realize. Evers stated that it was not going to close until they had all of their permits. The due diligence free look is up shortly and we are asking to extend that. Evers stated that he doesn't see Mills putting that kind of money into the project if he is not absolutely sure that it is going to go, but I will add whatever it takes to earn your approval to make it go. Minshew stated that this is probably just because of the situation that we have gotten ourselves into because ProCorp did not close, but yet they still have a tie to this property because of the previously signed Developer's Agreement. Detwiler stated that when she looked at it, she thought the first thing that she would want, and she didn't know whether this was in our area or not, is a separate subordination agreement from Pro-Corp to Heartland. That could just be a nightmare if you keep giving people rights to act on your behalf, when does that right end. She stated that if it were she, she would want a separate subordination agreement with all of the "ifs" in it that was outside of the document that might even be recorded with the property. Otherwise, the City opens themselves to "how many people are they going to get married to". Evers stated that he felt she was rephrasing the same thing that Ables said to start with. He wants something added in there that this was replacing the prior agreement. Detwiler stated that if it goes through, you want the previous agreement to go away, but not if it doesn't go through. Evers explained they kind of have a little bit of a situation right now. The sellers never signed the first Developer's Agreement, so you have a piece of property that is bound, we think it is, but it was never signed by the owners of the property. Detwiler asked if it matters if they signed it as long as they sell the property to the developers, because the owners aren't the ones that are going to develop it. Ables stated that it is the owner's property that is being encumbered by this agreement. I think we would have to go back to the actual application to see if they authorized ProCorp to make that agreement. Evers stated that there was a matter that came up with Greg Mackin, such as pinning him down, but him and Cliff will work together on the wording of the agreement. Detwiler asked if ProCorp had a signed contract to purchase the property that did not close? Was there an open ending time? Ables stated that the development agreement had a five-year life and it is recorded. Detwiler stated that that is the development agreement, but is that also the purchase date, within those five years? Ables stated, no. Evers stated that there is a separate contract of sale between the owners of ProCorp that they never closed on, never met any contingencies of the closing. As I understand it, it just isn't happening. The seller is treating it as null and void. I understand that ProCorp owes the seller some money. I think ProCorp is trying to put himself in the position of being released from some debt for his signature on this agreement. There were several, yes' heard. Preston stated just to summarize, paragraph 14

basically is saying that the agreement between ProCorp and the City is in effect, so there doesn't really need to be any language to make it go back. Ables stated that we couldn't have two valid agreements at the same time. Minshew stated that this was by request of the actual property owners; they also want an agreement in place. Preston stated that this is for the ProCorp agreement and Ables stated but with the ability for ProCorp to be revived. Evers stated that they did add signature lines for ProCorp to sign off on this, so they can acknowledge that there is a different agreement. There was discussion about putting in the proper language in the agreement and ProCorp signing it and giving up their rights and to keep the City from being liable if that should come up. Giroux stated that he felt the key issue is as long as there is a development agreement that spells out roughly what they are doing to the Commission's satisfaction and the fact that this would supercede the old agreement if it goes through and if it doesn't fall back to the old plate. The only thing that I hope happens is that they actually build it.

Preston asked for any more discussion. Being none, Detwiler made the motion, seconded by Janelle Knight to make a recommendation to the City Commission to approve the Developer's Agreement subject to language changes that Ables agrees to. Minshew polled the Board. All were in favor. Motion carried.

Being no further business, the meeting was adjourned.

Susie Gibbs, P & Z Secretary