



City of Naples

City Council Chamber
735 Eighth Street South
Naples, Florida 34102

Planning Advisory Board Regular Meeting – February 14, 2007 – 8:30 a.m.

Chairman Jones called the meeting to order and presided.

ROLL CALLITEM 1

Present:

Falconer Jones, Chairman
James Siedel, Vice Chairman
James Black
Ian Butler
Richard Klaas
David Miller
Margaret Sulick
Kathleen McFadden, Alternate (left at 9:20 a.m.)

Absent:

Amy Taylor, School Board Rep. (non-voting)

Also Present:

Tony McIlwain, Planner	John Passidomo
Adam Benigni, Planner	Lorren Cusack
Brenda Blair, Technical Writing Specialist	Joseph McMackin
Robert Pritt, City Attorney	Pierre Bruno
Robin Singer, Community Development Director	Other interested citizens and visitors.

APPROVAL OF MINUTESITEM 2

MOTION by Miller to ***APPROVE*** the January 10, 2007, regular meeting minutes as presented; seconded by Black and unanimously carried (Black-yes, Butler-yes, Klaas-yes, Miller-yes, Siedel-yes, Sulick-yes, Jones-yes).

CHANGES TO THE AGENDAITEM 3

Member Siedel indicated that he would bring up items during correspondence (Item 7 below).

.....ITEM 4

Public Hearing: Rezone Petition 07-R1

Petitioner: Naples Harbour, Ltd
Agent: F. Joseph McMackin, III, Esq.
Location: 201-271 Harbour Drive

This is a request to rezone a 44,004 square foot parcel from R3-12 to PD in order to allow eight existing single-family residences fee-simple ownership with zero setback lines located at 201-207 Harbour Drive.

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Notary Public Brenda Blair administered an oath to those intending to offer testimony; all responded in the affirmative. This being a quasi-judicial proceeding, Board Members offered ex parte disclosures to the effect that each had reviewed the documents provided, and visited the site. With the exception of Member McFadden, each also indicated a conversation with petitioner's attorney John Passidomo; Member Black also noted a discussion with Planner Tony McIlwain; Chairman Jones noted a discussion with Dave Sexton; and Member Siedel noted a discussion with the developer, Bud Cusack.

Planner Tony McIlwain explained that this is a request to rezone from R3-12 Multifamily District to Planned Development (PD) in conjunction with the subdivision petition (Item 5 below) for the existing residential development.

Attorney John Passidomo, representing the petitioner, explained that the property was purchased several years ago and contained a 12-unit development (Barbados Club) which was subsequently demolished. He then noted the new design is eight single-family residences surrounding a central courtyard with each having its own amenities package and functioning as a townhouse. He explained that the petitioner chose to reduce the density to eight units and increase the parking provided from 1.5 to 3.0 spaces per unit. The petitioner also recognized that market demands indicated the desire for zero lot line townhomes in lieu of condominiums as well as fee-simple ownership. Because of this fee-simple ownership, however, issues came to light following issuance of a Certificate of Occupancy (CO) in January which revealed that the subdivision regulations had unwittingly been violated since there are no multifamily districts within the City of Naples that accommodate fee-simple, zero lot line townhouse ownership. The only apparent alternative, therefore, was to petition to rezone the property from R3-12 to PD with the aforementioned density and parking with zero lot lines instead of a 12.5 foot side yard setback; lot size and lot width are consistent with the site plan, he added. Attorney Passidomo further pointed out that the Code encourages innovative design and referred to two site plans: the existing development and condominium configuration to illustrate that there is no difference between the two. The issue therefore, he said, is not what has been built or whether it complies with City regulations, but instead resides with the form of ownership; therefore, PD zoning is the only vehicle available to the petitioner.

Chairman Jones noted that the proposed development reduces density by one third and increases the number of parking spaces per unit by 50%; he therefore questioned whether lot coverage standards had been met. Attorney Passidomo responded that every standard in the R3-12 Multifamily District had been met except for those previously mentioned due to an anomaly in the Code. In response to Member Sulick, Attorney Passidomo stressed that the petitioner is in fact not in an advantageous situation because the project had been built and suggested that the Board consider the request as if the site were vacant. Member Siedel noted that until recently another law firm represented the petitioner, and Attorney Passidomo concurred, but noted that while he was not intending to be elusive, and the status of legal representation was not relevant to the issue before the Board. Member Sulick disagreed, noting that the Board should in fact not ignore the fact that the project has been built and sought to discern whether this project had been submitted to the City as condominiums or whether a possible lack of information on the original plans had been a factor. Attorney Passidomo however asserted that the City has no interest in whether the project is for condominiums or townhouses. Member Sulick maintained that if the petitioner had been required to submit the project as a subdivision rather than a condominium it

would not have met the subdivision standards. While acknowledging this point, Attorney Passidomo also noted that the City requires that there be a zoning district that meets the performance standards, and since the R3-12 District does not do so in this case, a rezone to PD is necessary, and in order to create nine parcels out of one it must undergo the City's subdivision process which resulted in the companion subdivision petition (Item 5).

Planner Tony McIlwain explained he, along with Community Development Director Robin Singer, met with the developer to discuss alternatives, however, in recent discussions with Attorney Passidomo it was learned that the developer had never intended this project as condominiums but as fee-simple ownership. The only alternative to rezoning to PD would be to pursue variances which would nevertheless fail to meet all the criteria. He further explained that any existing development within the City can apply for a rezone to PD and does not necessarily entail demolition or new construction. He further noted that there is no visible difference between condominiums or townhomes. Staff determined that the property must however also undergo the subdivision petition process to show the eight individual fee-simple lots, Lot 9 which is the common ground, and Lot 10 which is the submerged land. Staff did not penalize the developer for the completed project but simply applied the eight criteria in Section 58-805, Standards for approval of PD zoning. In terms of the land use being appropriate and the development being applicable to City standards and planning policies, staff determined that this project meets all of the eight criteria outlined in the standards of PD zoning and therefore recommends approval, Planner McIlwain concluded.

In response to Member Sulick, Attorney Passidomo confirmed that each lot is over 2,000 square feet in size. Chairman Jones identified a need to allow fee-simple ownership, rather than condominiums, especially since smaller projects with fewer units would not meet the square footage requirement to rezone to PD. Chairman Jones noted that he had been involved with three projects over the past few years that were two units each that were townhomes and not condominiums and in those instances the legal description noted which portion of the lot belonged to each of the two unit owners, however, the lot was not divided and therefore remained one parcel for platting purposes. In further discussion, Planner McIlwain clarified that the project can meet the standards for front and rear yard setbacks but not for side yards since the units have common walls. Director Singer clarified that City staff does not regulate ownership patterns and it is assumed that units vertically stacked will be rented or a condominium formed if the units are not fronting a public street. Attorney Passidomo confirmed that no units have been sold but that there were outstanding contracts. He further noted that the market indicates a desire for condominiums and therefore a choice of ownership should be offered. City Attorney Robert Pritt noted the relevancy of a question as to the identity of the appropriate applicants and that it is fair to ask for confirmation that there has not been a closing or change in fee-simple ownership of any of the parcels since all of the owners must participate in the application for rezone.

Attorney Passidomo confirmed that there have been no real estate closings on this property and the petitioner owns all the units at that time. He reiterated that a PD addresses innovative questions and design issues and reiterated that there is no other type of zoning to accommodate a townhouse in a multifamily district. He further noted that the project does not meet any of the criteria for a variance and variances benefit only one petitioner while a PD affords mutual benefits which include a reduction in density and increased parking, Attorney Passidomo said; he therefore requested approval.

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Planner McIlwain confirmed for Member Black that if this PD petition had been submitted for vacant land it would meet all the requirements to rezone to PD. Member Black said he believed that the issue is to solve a problem and the Board should not contribute to the turmoil in this regard. Planner McIlwain confirmed that the project is complete and has met all the applicable permitting requirements in conjunction with the standards of the PD document which include such advantages as reduced density and increase in parking requirements. In response to Member Sulick, Planner McIlwain explained that side yard setbacks would not be an issue when the PD petition is submitted since a petitioner has the right to include unique development standards. He further explained that the City nevertheless is requesting that the petitioner undergo the subdivision petition process (see Item 5 below) to denote the location of the lot, common areas, and submerged lands should further development be desired in the future. City Attorney Pritt explained that the documents relative to the rezone petition do not refer to a master concept plan and requested confirmation that the master concept plan that is in conjunction with the PD will be the same as the subdivision plan; if not, a separate master concept plan must be included in the PD so that the plan for development is clear in both the rezone and subdivision petitions. Attorney Passidomo confirmed that there is only one master plan that applies to both the PD and the subdivision petitions. He also confirmed that boat docks are not to be considered at that time.

Public Input: (9:13 a.m.) None.

Member Klaas noted that staff confirmed that the project meets all the standards for approval of PD zoning and that residents in the neighborhood appear to be pleased with the project, especially the reduction in density and landscaping; he also complimented the construction company for maintaining a clean and orderly site.

MOTION by Klaas to APPROVE Rezone Petition 07-R1; seconded by Black and carried 5-2, all members present and voting (Black-yes, Butler-yes, Klaas-yes, Miller-yes, Sulick-no, Siedel-no, Jones-yes). This item will be heard by City Council on March 7, 2007.

Prior to the vote, City Attorney Pritt confirmed that the threshold for approving a PD is 40,000 square feet and that the Board is to consider the criteria for granting a PD. The intent outlined in Section 58-801 states, in part, that a PD is intended to accommodate integrated and well designed developments in accordance with approved development plans and the district is intended to offer flexibility of design and to encourage imaginative, functional, high quality land planning development which is compatible with adjacent and nearby lands and activities, which is the underlying purpose of the district, along with specific standards which staff determined had been met. What is important for the Board, Mr. Pritt said, is applying the facts of the case to the standards in place. In response to Member Siedel, City Attorney Pritt explained that the Board could review the standards in a legislative capacity if it determined that the thresholds or standards were incorrect. Member Black suggested that this topic be discussed at a workshop.

It was noted for the record that Member McFadden left at 9:20 a.m.

.....ITEM 5

Public Hearing: Subdivision Petition 07-SD1

Petitioner: Naples Harbour, Ltd
Agent: F. Joseph McMackin, III, Esq.
Location: 201-271 Harbour Drive

This is a request for approval to subdivide a 44,004 square feet parcel into 10 lots at 201-102 Harbour Drive in conjunction with petition 07-R1 above.

It was noted for the record that there were no additional speakers to be sworn relative to the companion petition above (Item 4) and no additional ex parte disclosures by Board Members.

Planner Tony McIlwain noted that this petition is in conjunction with the Vista Royale project (see Item 4 above). John Passidomo, attorney for the petitioner, explained that the subdivision includes eight zero-lot-line townhouses, Lot 9 represents the common areas, and Lot 10 is being designated for a future site for dockage in order to create the applicable legal description. He confirmed for Member Sulick that the intent to create Lot 10 was to facilitate the ultimate disposition of boat docks and does not impinge on the platting process. He said if necessary, he would stipulate to platting nine lots instead and confirmed that the uplands represent 44,000 square feet which is sufficient to generate 12 units under the R3-12 zoning district as noted in the PD document and staff report.

Planner McIlwain explained that in review of the subdivision he discussed the issue of submerged lands with the petitioner and had included in the staff report that the property is within the entire plat according to the warranty deed. He explained that the Land Development Code defines a subdivision as a division of a parcel or parcels of land into three or more parcels for the purpose, whether immediate or future, of transfer of ownership; if the establishment of a new street is involved, it applies to any division of a parcel of land. He confirmed that this request is to delineate the lot lines including Lot 9 in relation to the eight fee-simple ownership lots, and staff recognizes that Lot 10 is submerged land. It also gives staff some control if the property is redeveloped in the future since lot lines will clearly be delineated. Staff recommends approval, he said, and also noted that this is for preliminary subdivision approval with final approval in the future.

Public Input: (9:28 a.m.) None.

City Attorney Robert Pritt requested that legible copies of all documentation be provided prior to the City Council meeting since some had been faxed and were unclear. Planner McIlwain requested that the approval include Lot 10 in order to have a clear subdivision plat on file so as to address subsequent development in the waterway and to provide the Natural Resources Division with the necessary information concerning the extent of the property. City Attorney Pritt concurred, noting that the plat could include a notation that dockage is not a consideration at that time instead of adding it later which would require another replat. Chairman Jones noted that testimony had been that docks are not being considered and the documentation does not represent dockage. Attorney Passidomo confirmed that no dockage is shown on Lot 10, therefore, there is no suggestion that docks are being permitted as part of this approval. City Attorney Pritt suggested that the Board consider the plat as submitted which includes Lot 10 and include a definitive notation on the plat that dockage is not being considered. Member Butler pointed out that the submission includes documentation that the submerged land in Lot 10 is owned by the State of Florida which requires the property owner to undergo another permitting process to lease those submerged lands. Attorney Passidomo agreed that a notation could be added to the plat that any dockage is subject to future federal, state, and local permitting requirements prior to construction; City Attorney Pritt concurred.

Chairman Jones identified various advantages from projects such as this one including a reduction in density and replacement of a worn structure, thereby increasing the tax base. Since market factors suggest that this is the type of property desired, the Board would be shortsighted in not allowing it. He further said that he believed the project to be an example of good development and that the Board has identified a problem with the current zoning regulations that should be addressed so that other similar sized properties could be developed without the necessity of applying for a PD, particularly if single-family configurations are desired.

Member Sulick said that she respectfully disagreed, noting that, while attractive, the view from the water is of the wing walls created by zero lot lines, noting that older developments have green space between the waterway and the buildings. She said she felt that this project was intended as a condominium and there had been no indication that it would be developed as townhouses, which are allowed so long as there are side yard setbacks. She further indicated that it is not the responsibility of the PAB to be concerned about the market but to protect the integrity of the zoning within the City. Member Siedel concurred with Ms. Sulick's comments and said he felt that the petitioner had abused the process and reiterated his concern with the misuse, pointing out that any deficiencies in the Code should be addressed. Member Butler however concurred with Chairman Jones, noting that ownership is irrelevant to the design and that the petitioner met all of the requirements in the Code for a PD.

MOTION by Jones to APPROVE Subdivision Petition 07-SD1; seconded by Butler and carried 5-2, all members present and voting (Black-yes, Butler-yes, Klaas-yes, Miller-yes, Sulick-no, Siedel-no, Jones-yes). This item will be heard by City Council on March 7, 2007.

.....ITEM 6

Public Hearing: Text Amendment Petition 07-T1

Petitioner: City of Naples

This is a request to amend Section 16-291(b)(10)d. of the City of Naples Code of Ordinances for the purpose of allowing a City approved inspector to conduct a pre-construction or pre-demolition inspection.

Community Development Director Robin Singer explained that concerning the recently approved amendments to construction site standards, there was a requirement that prior to demolition or pile driving activity that an offer be made to adjacent property owners that they could have an onsite inspection by an engineer of their homes prior to construction activity. City Council questioned whether another qualified inspector such as those licensed to do home inspections for appraisals or building permits could conduct the inspection. The requirement for an engineer arose out of conversations with Collier County's licensing office in that it was suggested that an engineer would be best prepared to offer expert testimony regarding structural issues, however, there are other qualified professionals who could provide the same or similar professional services; staff therefore supports this amendment. The determination on whether or not the inspector is qualified would be made by the Building Official.

Member Klaas proffered a motion to approve, seconded by Member Black, however, additional discussion ensued. Chairman Jones noted that an issue has arisen since the construction site maintenance ordinance was amended in that should damage come to light after a home had been inspected, the only recourse for the owner is to file a lawsuit; he said his concern is the appearance that the City is requiring the individual performing the construction activity to prove their innocence rather than any guilt. City Attorney Robert Pritt noted that City Council heard

various members of the public who expressed concern with requiring an engineer to perform the inspection, and had therefore agreed to amend the ordinance to include a City-approved inspector in order to expedite the process. Chairman Jones noted that he was not requesting an additional change if City Council is satisfied with the language. Member Klaas noted that the ordinance protects both parties since a property owner is aware of the status of his or her property after an inspection is performed and cannot claim damage after the fact. Building Official Paul Bollenback explained that most firms providing inspection services require licensed personnel and therefore determined that it was reasonable to accept the credentials of these licensed inspectors to perform this service. He also noted that there are two nationally recognized home inspection companies that he determined should be eligible for consideration for performing inspections while others would be considered on an individual basis.

Public Input: (9:50 a.m.) **Pierre Bruno, 1896 Seville Boulevard**, noted that he is a professional geologist hired by an engineering firm that performs these types of inspections and recommended that the City carefully consider whether to use an accredited home inspector versus an individual with a professional engineering degree.

MOTION by Klaas to APPROVE Text Amendment Petition 07-T1; seconded by Black and unanimously carried, all members present and voting (Black-yes, Butler-yes, Klaas-yes, Miller-yes, Sulick-yes, Siedel-yes, Jones-yes). This item will be heard by City Council on March 7, 2007.

STAFF CORRESPONDENCE.....ITEM 7

Member Siedel asked whether the Code addresses performance requirements that span the period between permit issuance for a construction fence and when the fence is removed. Community Development Director Robin Singer stated that it may only be up for the duration of the building and/or demolition permit and the site must be maintained and free of vegetation on the lot as well as the fence. Member Siedel requested information concerning a new State law (fair share) requiring developers to pay into a fund. City Attorney Robert Pritt explained that his has to do with concurrency and has little applicability since the City of Naples is concurrent; however, he said that he would be discussing the technicalities of this issue with Director Singer. Member Siedel urged the use of signage to indicate to the public that the striping along the side of streets is not a demarcation of dedicated bike lanes. City Attorney Pritt suggested that any discussion of signage be coordinated with City Council. Member Klaas suggested that staff investigate whether additional signage might have played a role in prevention of any accidents involving a bicycle. Member Siedel suggested determining whether City Council desires the PAB to review Planned Development (PD) zoning requirements. Director Singer clarified for Member Sulick that she would at a future date be providing proposed text concerning docks and dock rentals in residential neighborhoods. Chairman Jones also suggested ascertaining City Council’s interest in a PAB review of subdivision requirements applicable to townhomes. City Attorney Pritt pointed out that the PAB had always sought City Council concurrence before proceeding with reviews such as these. Director Singer agreed to inquire.

Director Singer also noted that City Council would be reviewing the historic preservation ordinance at a workshop the following week, including an explanation of the State process concerning becoming a Certified Local Government. Member Miller said that this is the proper channel for historic preservation. City Attorney Pritt urged the PAB to review his most recent draft of the historic preservation ordinance. Mr. Pritt pointed out difficulties which occur when

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the PAB and City Council are simultaneously dealing with a particular issue and reiterated caution against proceeding without Council concurrence.

Chairman Jones noted that the PAB had previously recommended to the City Council that it create a task force to revise the Flood Plain ordinance to address such issues as hardening existing structures; Director Singer noted that Council would be discussing this at the workshop the following week. If a task force is formed, the intent is to present the revised ordinance to City Council in March, she added, and further noted receipt of corrections from one individual at FEMA. Chairman Jones however recommended avoiding any type of line item veto by FEMA which had in the past occurred when one City staff member communicated with a sole staff member of FEMA. City Attorney Pritt noted that City Council review will include the PAB's suggestions, but Chairman Jones was critical of the length of time involved in transmitting a PAB recommendation to City Council, pointing out the importance of the flood plain matter in relation to other ordinances such as construction site maintenance which, while popular with residents, does not compare in importance. He said he believed that the City is spending time on addressing small rather than large issues.

ADJOURN
10:19 a.m.

Falconer Jones, Chairman

Robin Singer, Community Development Director

Minutes prepared by:

Brenda A. Blair, Technical Writing Specialist

Minutes Approved: March 14, 2007