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The Planning Board for the City of Fort Myers met in regular session at City Hall, 2200 Second Street, its regular meeting place in the City of Fort Myers, Florida, on Wednesday, May 14, 2008 at 1:05 o'clock p.m.

NO. 1 - ROLL CALL Present: Anne Dalton, Chairwoman, presiding, Theresa Artuso, Lee Ford, Mark Gillis, Jim Kinsey, Jami McCormick and William Mudgett, Board Members. Also present were Robert Gardner, Director, Community Development Department; Maureen Lund, Manager, Lynee Rodriguez, Principal Planner, and Belinda Smith, Planner, Development Services Division, Community Development Department; Leslie Persia, Comprehensive Planner, Enid Torregrosa, Historic Principal Planner, and Keisha Cyrianno, Neighborhood Senior Planner; Eunice Usher, Senior Project Manager, and Robert Erickson, Project Engineer, Engineering Division, Public Works Department; Michele Hylton, Redevelopment Manager, Fort Myers Redevelopment Agency; and David Migut, Assistant City Attorney. Absent: Forrest Banks, Teresa Brown, Daniel Jarackas and William Spikowski, Board Members, and Grant W. Alley, City Attorney.

NO. 2 - MINUTES Minutes of the regular meeting held on April 9, 2008 had been delivered to the Board. Ms. McCormick stated that a request had been made by Eunice Usher, Senior Project Manager, Engineering Division, Public Works Department, at the meeting held on April 9, 2008 that if the issue on traffic calming was brought before the Board again that the item be heard first. Ms. Dalton stated that staff had spoken to her about the request and the hope was that Mr. Spikowski and Ms. Brown would be present for the discussion because both had expressed interest in the traffic calming issues. It was moved by Mr. Gillis, seconded by Ms. McCormick, and unanimously carried to approve the minutes of the regular meeting held on April 9, 2008.

NO. 3 - EX PARTE COMMUNICATIONS: None.

Prospective witnesses and those persons to present testimony were duly sworn by David Migut, Assistant City Attorney.

NO. 3 - CONTINUED PUBLIC HEARING: REQUEST FROM MOUNT HERMON MINISTRIES, INC., FOR AN AMENDMENT TO A PREVIOUSLY APPROVED CONDITIONAL USE AT MOUNT HERMON BAPTIST CHURCH, 2856 PRICE STREET Pursuant to advertisement in the Fort Myers News-Press, issue of March 25, 2008, Affidavit of Publication on file, a continued public hearing, continued from April 9, 2008, was held at this time on a request from Mount Hermon Ministries, Inc., for an amendment to a previously approved conditional use at Mount Hermon Baptist Church, 2856 Price Street, to allow a modular classroom.

Overview

Mount Hermon Ministries, Inc. is requesting an amendment to an existing Conditional Use at 2856 Douglas Street to allow for the

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continued use of a modular building for classrooms for another five (5) year period. The property is zoned single-family duplex (RS-D) and has a future land use designation of single-family duplex (A1-D). The original Conditional Use, approved by the Board of Adjustments on December 5, 1996, allowed for the use of a portable classroom for a period of five (5) years. On October 24, 2001, an amended Conditional Use was granted which allowed for continued use of the modular building for classrooms for another five (5) year period. The Building Department is requiring the portable unit be moved so that it is at least ten (10) feet away from any buildings and property lines.

Recommended Action

Find the amendment to an existing conditional use consistent with the Comprehensive Plan, specifically as follows:

Policy 2.1.2) Within each land use classification, the Land Development Regulations will distinguish between permitted uses and conditional uses; and

Action 2.1.2.2) Conditional Uses are uses that would not be appropriate generally or without restrictions throughout a particular district classification, but if controlled as to number, area, location and relation to the neighborhood, may be an acceptable use; and,

Find the amendment to an existing conditional use consistent with the Land Development Code, and recommend approval of the conditional use to the Board of Adjustments subject to the following:

1. The amendment to the Conditional Use for Mount Hermon Baptist Church located at 2856 Douglas Street allows for continued use of the modular unit for classroom purposes for another five (5) year period retroactive from November 1, 2006 until November 1, 2011.
2. The portable unit shall be moved so that it is ten (10) feet away from any other structures on the property as well as any property line.
3. The storage unit immediately next to the portable unit shall be removed from the parcel. Use of a trailer for storage is not permitted at this location.

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Jacquie Daymon, Mount Hermon Ministries, Inc., stated that the conditional use was for a portable classroom. Ms. Daymon stated that the issue was not new because Mount Hermon Ministries had a conditional use two (2) additional times. Ms. Daymon stated that Mount Hermon Christian School would be celebrating twenty (20) years of education in August 2008. Ms. Daymon stated that the original portable classroom was damaged by hurricanes and a replacement portable classroom was moved onto the site to replace the damaged facility. Ms. Daymon stated that a daycare facility had been constructed by Mount Hermon Ministries directly east of the original site of the portable classroom and the replacement unit was not able to be placed on the original site. Ms. Daymon stated that Mount Hermon Ministries was requesting that the portable classroom be placed in a more south position but on the same property. Belinda Smith, Planner, Development Services Division, Community Development Department, stated that staff supported the application for a conditional use. Ms. Smith stated that an agreement was reached with Mount Hermon Ministries and conditions were placed on the conditional use. Ms. Smith stated that staff recommended approval of the application. Ms. Smith stated that previously Mount Hermon Ministries had two (2) five (5) year conditional uses and the application for renewal was for five (5) years with two (2) years already used. Ms. Smith stated that a provision for support was that the conditional use would be for the remaining three (3) year period in hope that the Church would be able to build permanent structures for operation of the school. Ms. McCormick stated that a letter had been received from Kathy Terrell-Watkins who had a number of concerns and questioned whether the concerns had been addressed. Ms. Smith stated that there had been several telephone calls from the public on the requested conditional use but the only actual written letter was from Ms. Terrell-Watkins. Ms. Smith stated that a conversation was held with the lady but the letter was written on behalf of the mother of Ms. Terrell-Watkins. Ms. Smith stated that property owned by the resident with concerns was adjacent to the church. Ms. Smith stated that the concerns were concerns that would be present with any school. Ms. Smith stated that the children traversing the yard were not children who attended the Mount Hermon Christian School but neighborhood children, which was discussed with the letter writer. Ms. McCormick stated that the plans indicated where the proposed portable classroom would be located and questioned where the portable classroom was currently located. Ms. Smith stated that the plans indicated where the portable classroom was currently located but the facility needed to be moved to not be located next to any other structure and away from all property lines because of the Fire Code. Ms. Smith stated that upon application for a permit to move the portable classroom, the structure would be required to be ten (10) feet from any structure or property line but would remain on the current parcel. Ms. Smith stated that the portable classroom would probably be moved as small a distance as possible for financial purposes. Ms. Smith stated that the drawing indicated where the portable classroom was currently located but there was not a drawing that indicated where the classroom would be located. Ms. Smith stated that the proposed location was across the street but the City decided that not moving the portable building across the street would be better for the community and

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the facility should be kept at the present location. Ms. Smith stated that the portable classroom was in a fenced in area, the children would not have to run back and forth across the street. Ms. McCormick stated that there would be more clarity if there was a drawing indicating where the portable classroom would be located. Maureen Lund, Manager, Development Services Division, Community Development Department, stated that the storage trailer that would be removed would enable the portable classroom to remain where currently located and would be ten (10) feet away from the main structure. Ms. Lund stated that the portable classroom would be located approximately at the present location but the storage bin that should not be there would be removed.

Mr. Kinsey arrived at the meeting at 1:15 o'clock p.m.

Ms. Lund stated that the existing portable classroom would remain at the present location but the church would have another three (3) years to use the facility. Ms. Lund stated that the original approved conditional use had been in effect and acknowledged the church and other accessory uses. Ms. Lund stated that the time extension was for use of the modular classroom. Ms. Daymon stated that Mount Hermon Ministries had purchased the property around the church, including the properties across the street. Ms. Daymon stated that the property to the east of the current location of the portable classroom was owned by the church even if the structure had to be moved. Ms. Daymon stated that the church planned to move the existing fence to extend the playground area for the children in the location of the portable classroom. Ms. Daymon stated that the portable classroom would be in a nice area even if the structure had to be moved ten (10) additional feet. Ms. Artuso stated that the other structure or storage bin would be removed and the portable classroom would not have to be moved according to staff. Ms. Smith stated that the portable classroom could remain in the current location if after the storage bin was removed the classroom was ten (10) feet from all other structures. Ms. Smith stated that the classroom could remain in the current location but the Building Code required a certain rated firewall if closer than ten (10) feet from other structures. Ms. Smith stated that the portable classroom would be moved rather than replacing the wall. There being no one present to be heard, it was moved by Mr. Gillis, seconded by Mr. Mudgett, and unanimously carried to find the amendment to the existing conditional use consistent with the Comprehensive Plan and the Land Development Code, and recommend approval of the conditional use to the Board of Adjustments subject to the following:

1. The amendment to the Conditional Use for Mount Hermon Baptist Church located at 2856 Douglas Street allows for continued use of the modular unit for classroom purposes for another five (5) year period retroactive from November 1, 2006 until November 1, 2011.
2. The portable unit shall be moved so that it is ten (10) feet away from any other structures on the property as well as any property line.

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3. The storage unit immediately next to the portable unit shall be removed from the parcel. Use of a trailer for storage is not permitted at this location.

NO. 4 – EX PARTE COMMUNICATIONS: None.

Prospective witnesses and those persons to present testimony were duly sworn by David Migut, Assistant City Attorney.

NO. 4 – PUBLIC HEARING: REQUEST FROM IGLESIA EVANGELICA MENONITA ARCAS DE SALVACION, INC. FOR VACATION OF A PUBLIC UTILITY EASEMENT LOCATED AT 3641 AND 3651 MICHIGAN AVENUE AND 106 AND 126 CATALINA STREET Pursuant to advertisement in the Fort Myers News-Press, issue of April 29, 2008, Affidavit of Publication on file, a public hearing was held at this time on a request from Iglesia Evangelica Menonita Arcas de Salvacion, Inc., for vacation of a public utility easement located at 3641 and 3651 Michigan Avenue and 106 and 126 Catalina Street.

Overview

Iglesia Evangelica Menonita Arcas De Salvacion, Inc., owner, is requesting vacation of the public utility easement located between Lots 1 through 9 and Lots 17 through 23, Block G, Santa Anna Park, according to the plat thereof as recorded in Plat Book 8, Page 4, Public Records of Lee County, Florida. The applicant proposes to join all four (4) lots into a single continuous building site for a church. City staff has reviewed the application and found it to be consistent with the provisions of Florida Statute 177.101. In accordance with the requirements for a vacation, the utility companies were notified of the vacation request. Embarq Telephone, Comcast Cable and Florida Power and Light have no objection to the easement being vacated. Vacation of the public utility easement does not affect the ownership or right of convenient access of property owners.

Recommended Action

Find the vacation request consistent with the Comprehensive Plan and Land Development Code and recommend approval to City Council.

R.J. Ward, Spectrum Engineering, Inc., representing the applicant, stated that the purpose of the request for vacation of the public utility easement was to consolidate the lots for construction of a place of worship. Belinda Smith, Planner, Development Services Division, Community Development Department, stated that staff did not object to vacation of the public utility easement as requested. There being no one present to be heard, it was moved by Ms.

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McCormick, seconded by Ms. Artuso, and unanimously carried to find the vacation request consistent with the Comprehensive Plan and Land Development Code and recommend approval to City Council.

NO. 5 – EX PARTE COMMUNICATIONS None.

Prospective witnesses and those persons to present testimony were duly sworn by David Migut, Assistant City Attorney.

NO. 5 – PUBLIC HEARING: REQUEST FROM NASSIF DEVELOPMENT, LLC, OWNER, TO AMEND ORDINANCE NO. 3310 THAT APPROVED THE PRIMA LUCE PLANNED UNIT DEVELOPMENT, 2631 FIRST STREET, TO EXTEND THE TIMEFRAME TO COMMENCE AND COMPLETE VERTICAL CONSTRUCTION Pursuant to advertisement in the Fort Myers News-Press, issue of April 29, 2008, Affidavit of Publication on file, a public hearing was held at this time on a request from Nassif Development, LLC, owner, to amend Ordinance No. 3310 that approved the Prima Luce Planned Unit Development, 2631 First Street, to extend the timeframe to commence and complete vertical construction.

Overview

The Prima Luce Planned Unit Development (PUD), approved by Ordinance No. 3310 adopted December 19, 2005, provides that if for any reason, the Developer is not able to meet the timeframes set forth in the ordinance, the Developer must, no later than ninety (90) days prior to expiration of any of the timeframes, provide written notice to the City indicating the anticipated failure to meet the timeframes and provide a detailed explanation of the reason. The City determines whether an extension of the timeframes is warranted. Ordinance No. 3410, adopted June 18, 2007, extended the timeframe to commence construction for four (4) downtown high rise projects to June 30, 2008 with construction to be completed by June 30, 2011. The Prima Luce project is located at 2631 First Street and is one (1) of the four (4) downtown high rise developments that received the time extension granted by Ordinance No. 3410. A letter was received from Matt Uhle, Esq., representing the owner, Nassif Development, LLC, requesting an additional two (2) year time extension to enable the applicant to proceed with construction. Letters were received from the marketing firm for the applicant detailing current poor conditions in the real estate market for presales and street construction by the City as the basis for requesting additional time. The proposed ordinance extends the timeframe two (2) years to commence construction or by June 30, 2010 with completion of construction by June 30, 2013. No other changes are proposed to the planned unit development. All previous rights, obligations, commitments and conditions are still in effect and binding.

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Recommended Action

Find the proposed ordinance consistent with the Comprehensive Plan and Land Development Code and recommend approval to City Council.

Maureen Lund, Manager, Development Services Division, Community Development Department, stated that the request was to amend the approval of the Prima Luce Planning Unit Development to allow for a time extension to commence construction. Ms. Lund stated that all planned unit developments had conditions and timeframes for which to commence construction and for completion of construction. Ms. Lund stated that item Nos. 5, 6 and 7 were three (3) downtown high rise projects that were requesting a two (2) year extension to commence construction of the projects. Ms. Lund stated that City Council would decide whether the time extensions were appropriate. Ms. Lund stated that the requests were for time extensions to commence and complete construction of the projects. Matthew D. Uhle, Esq., Knott, Consoer, Ebelini, Hart and Swett, P.A., representing the applicant, stated that the Planning Board was familiar with the conditions that gave rise to the requested time extension but the ordinance approving the planned unit development required that a detailed explanation be provided for the reason for the time extension. Attorney Uhle stated that two (2) letters had been provided to justify the requested time extension. Attorney Uhle stated that a letter was submitted from Dave Simms, Director of Sales and Marketing, Mandel and Simms Real Estate, Inc., that explained the problems from a marketing perspective as well as a letter from Russell L. Phillips, Vice President, Regions Bank, that explained the difficulties in current financing of a high rise structure. Attorney Uhle stated that the request was obvious because there was a problem with building high rise structures in Fort Myers at the present time. Attorney Uhle stated that the time extension was requested for a two (2) year period. There being no one present to be heard, it was moved by Mr. Kinsey, seconded by Mr. Ford, and unanimously carried to find the proposed ordinance consistent with the Comprehensive Plan and Land Development Code and recommend approval to City Council.

NO. 6 – EX PARTE COMMUNICATIONS None

Prospective witnesses and those persons to present testimony were duly sworn by David Migut, Assistant City Attorney.

NO. 6 – PUBLIC HEARING: REQUEST FROM HOMES FOR AMERICA HOLDINGS, LLC, OWNER, TO AMEND ORDINANCE NO. 3261 THAT APPROVED THE HOTEL MONACO PLANNED UNIT DEVELOPMENT, 2543 FIRST STREET, TO EXTEND THE TIMEFRAME TO COMMENCE AND COMPLETE VERTICAL CONSTRUCTION Pursuant to advertisement in the Fort Myers News-Press, issue of April 29, 2008, Affidavit of Publication on file, a public hearing was held at this time on a request from Homes for America

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Holdings, LLC, owner, to amend Ordinance No. 3261 that approved the Hotel Monaco Planned Unit Development, 2543 First Street, to extend the timeframe to commence and complete vertical construction.

Overview

The Hotel Monaco Planned Unit Development (PUD), approved by Ordinance No. 3261 adopted March 8, 2004, provides that if for any reason, the Developer is not able to meet the timeframes set forth in the ordinance, the Developer must, no later than ninety (90) days prior to expiration of any of the timeframes, provide written notice to the City indicating the anticipated failure to meet the timeframes and provide a detailed explanation of the reason. The City will determine whether an extension of the timeframes is warranted. Ordinance No. 3410, adopted June 18, 2007, extended the timeframe to commence construction for four (4) downtown high rise projects to June 30, 2008 and to be completed with construction by June 30, 2011. The Hotel Monaco is located at 2543 First Street and is one (1) of the four (4) high rise developments that received the time extension by Ordinance No. 3410. A letter was received from E. Bruce Strayhorn, Esq., representing Homes for America Holdings, LLC, owner, requesting an additional two (2) year time extension to enable the applicant to proceed with construction. The letter cites redesign issues and significant street construction by the City hampering sales efforts as the basis for the request. The ordinance extends the timeframe two (2) years to commence vertical construction or June 30, 2010 with completion of construction by June 30, 2013. No other changes are proposed to the planned unit development. All previous rights, obligations, commitments and conditions are still in effect and binding.

Recommended Action

Find the proposed ordinance consistent with the Comprehensive Plan and Land Development Code and recommend approval to City Council.

Maureen Lund, Manager, Development Services Division, Community Development Department, stated that the ordinance that approved the Hotel Monaco Planned Unit Development required that a time extension be requested from City Council with justification and explanation as to why the time extension was warranted. Ms. Lund stated that a two (2) year extension was sought to commence construction. Ms. Lund stated that the time extensions were the third extensions that had been requested since the planned unit developments were originally approved and City Council had been generous to work with the developers. E. Bruce Strayhorn, Esq., Strayhorn and Strayhorn, representing the application, stated that the difference between Hotel Monaco

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and Prima Luce was that the Engineering Division had requested that language be entered into the record, which should be included in the motion. Attorney Strayhorn stated that the ordinance included language as follows:

This proportionate share fee includes the City's current road impact fee.

Attorney Strayhorn stated that when the ordinance was adopted there was a fee that was to be paid for every extra trip generated to help with the Palm Beach Boulevard and Seaboard Street roadway improvements. Attorney Strayhorn stated that Lee County had raised impact fees since the ordinance was adopted and the Engineering Division had requested that language be added to the ordinance and included in the motion as follows:

The applicant shall pay the proportionate share or the road impact fee, whichever is greater.

Attorney Strayhorn stated that the language was acceptable to the applicant. Attorney Strayhorn stated that the applicant agreed to pay whichever was higher, the proportionate share or the road impact fee. There being no one present to be heard, it was moved by Ms. Artuso, seconded by Mr. Gillis, and unanimously carried to find the proposed ordinance consistent with the Comprehensive Plan and Land Development Code and recommend approval to City Council with the additional language regarding proportionate share or road impact fees, whichever is greater.

NO. 7 – EX PARTE COMMUNICATIONS Ms. Artuso stated that she would abstain from voting as she was the landscape architect on the Cypress Club project.

Prospective witnesses and those persons to present testimony for item Nos. 7, 8, 9 and 10 were duly sworn by David Migut, Assistant City Attorney.

NO. 7 – PUBLIC HEARING: REQUEST FROM BAP NEWLEAF, LLC, OWNER, TO AMEND ORDINANCE NO. 3233 THAT APPROVED THE CYPRESS CLUB PLANNED UNIT DEVELOPMENT, 2589 AND 2595 FIRST STREET, TO EXTEND THE TIMEFRAME TO COMMENCE AND COMPLETE VERTICAL CONSTRUCTION Pursuant to advertisement in the Fort Myers News-Press, issue of April 29, 2008, Affidavit of Publication on file, a public hearing was held at this time on a request from BAP Newleaf, LLC, owner, to amend Ordinance No. 3233 that approved the Cypress Club Planned Unit Development, 2589 and 2595 First Street, to extend the timeframe to commence and complete vertical construction.

Overview

The Cypress Club Planned Unit Development (PUD), approved by Ordinance No. 3233 adopted October 18, 2004, provides that if for

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any reason, the Developer is not able to meet the timeframes set forth in the ordinance, the Developer must, no later than ninety (90) days prior to expiration of any of the timeframes, provide written notice to the City indicating the anticipated failure to meet the timeframes and provide a detailed explanation of the reason. The City will determine whether an extension of the timeframes is warranted. Ordinance No. 3410, adopted June 18, 2007, extended the timeframe to commence construction for four (4) downtown high rise projects to June 30, 2008 and to be completed with construction by June 30, 2011. The Cypress Club is located at 2589 and 2595 First Street and is one (1) of the four (4) high rise developments that received the time extension by Ordinance No. 3410. A letter was received from Brian Fenster representing BAP Newleaf, LLC, owner, requesting an additional two (2) year time extension to complete construction documents to enable the applicant to move forward with construction. The letter cites massive adjustments in both the construction and finance industries, as well as market driven issues that have made the timeframes impractical. The ordinance extends the timeframe two (2) years to commence vertical construction or June 30, 2010 with completion of construction by June 30, 2012 and completion of construction by December 31, 2013. No other changes are proposed to the planned unit development. All previous rights, obligations, commitments and conditions are still in effect and binding.

Recommended Action

Find the proposed ordinance consistent with the Comprehensive Plan and Land Development Code and recommend approval to City Council.

Maureen Lund, Manager, Development Services Division, Community Development Department, stated that the Cypress Club Planned Unit Development had requested a two (2) year time extension to commence construction. Ms. Artuso stated that the applicant was out-of-town but had spoken by telephone. Ms. Artuso stated that market conditions and the road construction were the reason for the requested time extension. There being no one present to be heard, it was moved by Mr. Mudgett, seconded by Mr. Ford, and unanimously carried to find the proposed ordinance consistent with the Comprehensive Plan and Land Development Code and recommend approval to City Council. Ms. Artuso did not vote due to a possible conflict of interest.

OTHER BUSINESS: GRANTING OF TIME EXTENSIONS FOR HIGH RISE DEVELOPMENT Ms. McCormick stated that time extensions that had been granted and placed in the Code, with the high rises when grouped together, were removed from the Code at a recent meeting of the Board. Ms. McCormick stated that now the high rises were coming back to the Board individually for

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time extensions and questioned whether there were high rise developments that would not be granted time extensions or did not know to request an extension individually. Maureen Lund, Manager, Development Services Division, Community Development Department, stated that all the high rise developments had been notified. Ms. Lund stated that time extensions was included in the downtown Smart Code to be accommodating but another extension was needed and the decision was made to remove the time extensions from the Code. Ms. Lund stated that each high rise development time extension would be addressed by individual ordinances. Ms. Lund stated that the time extensions had been removed from the Smart Code and each high rise development would be addressed individually. Ms. Lund stated that all four (4) of the downtown high rise developments that were referenced in the Smart Code had been addressed and the Board had seen all the affected developments.

NO. 8 – EX PARTE COMMUNICATIONS None.

NO. 8 – CONTINUED PUBLIC HEARING: REQUEST FROM FORT MYERS GATEWAY COMMERCIAL REAL ESTATE DIVISION FOR THE PILKINGTON INDUSTRIAL PLANNED UNIT DEVELOPMENT, A MIXED USE PROJECT OF INDUSTRIAL FLEX AND COMMERCIAL USES LOCATED AT 5150 DR. MARTIN LUTHER KING, JR. BOULEVARD Pursuant to advertisement in the Fort Myers News-Press, issue of January 29, 2008, Affidavit of Publication on file, a continued public hearing, continued from February 13, 2008, March 12, 2008, and April 9, 2008, was held at this time on a request from Fort Myers Gateway Commercial Real Estate Division for the Pilkington Industrial Planned Unit Development, a mixed use project of industrial flex and commercial uses located at 5150 Dr. Martin Luther King, Jr. Boulevard.

Overview

Fort Myers Gateway Commercial Real Estate Division, LLC, owner, is requesting a planned unit development (PUD) to construct a mixed use trucking, warehousing and distribution facility with four (4) commercial out parcels at 5150 Dr. Martin Luther King, Jr. Boulevard. The property located at the southeast corner of Dr. Martin Luther King, Jr. Boulevard and Ortiz Avenue is twenty point one two (20.12) acres, more or less. The property is currently vacant and zoned Commercial General (CG). The future land use designation is General Business (B-1). The project will consist of three (3) large warehousing facilities, with some elevated truck docks. Also provided will be a series of four (4) commercial properties fronting Dr. Martin Luther King, Jr. Boulevard. The four (4) commercial out parcels are not yet designed or configured for specific uses. The applicant feels that the project will provide an attractive gateway to the City of Fort Myers and will be an improvement over the immediate existing commercial developments in the area. The development will abut the Lee County Jail Stockade and when completed will screen the

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stockade from the view of travelers on Dr. Martin Luther King, Jr. Boulevard. In addition, the applicant is seeking one (1) deviation from the Land Development Code, as follows:

Section 138-4 Buffer yard requirements: Type "B" buffer fifteen (15) feet in width is required when the proposed development is adjacent to a right-of-way.

The applicant proposes to reduce the buffer to twelve (12) feet and include larger trees than Code requires along the major right-of-way of Dr. Martin Luther King, Jr. Boulevard.

No justification was provided for the reduced buffer yard width. Without some justification of hardship or physical constraint or an explanation for the deviation, staff would not support the request. Typically through the planned unit development process the City would request enhanced landscape treatment in both quantity and size at planting. The property is located in the Dr. Martin Luther King, Jr. and Veronica S. Shoemaker Boulevards Revitalization Area. The City adopted Ordinance No. 3392 establishing an interim development approval process while the City prepares the recommended Code changes outlined in the revitalization plan. During this interim development approval process, properties five (5) acres or greater in size shall be approved only through the planned unit development process. The application fees shall be waived during this twelve (12) month interim review and approval process. The site of the proposed planned unit development is located at the southeast corner of Ortiz Avenue and Dr. Martin Luther King, Jr. Boulevard and is directly across Ortiz Avenue from the Eastwood Village Planned Unit Development. Eastwood Village is the public-private partnership between the City of Fort Myers and Bonita Bay Group for the redevelopment of the old City wellfield site into a walkable, mixed-use community. Eastwood Village Planned Unit Development, approved by Ordinance No. 3430, is a mixed-use development with emphasis on providing workforce housing, creating a true mixed-income community, a destination community with connections to the outside neighborhoods and the creation of an active mixed-use environment, including neighborhood retail along Dr. Martin Luther King, Jr. Boulevard in the form of a town center. The current land use designation of the property is General Commercial (B-1). Comprehensive Plan Future Land Use Element Standard 2.8.3.1 defines allowed uses in General Commercial as follows:

Standard 2.8.3.1) General Commercial (B-1) areas shall be designated and allow the following uses:

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hotels; motels; offices; retail stores and shops; wearing apparel; food and drink consumption; food sales stores; department stores; personal services; theaters; radio and television stations and studios; funeral homes; schools; pick up stations; shoe and leather repair stores; shelter homes; those uses allowed in high-density multi-family districts; and other similar uses.

The proposed planned unit development is requesting, in addition to commercial uses, industrial uses in the form of a trucking warehousing and distribution facility. The industrial uses are not allowed in General Commercial. Therefore, the proposed planned unit development is inconsistent with the Comprehensive Plan. Approval of the proposed planned unit development would up-zone the property. The proposed planned unit development is also inconsistent with the adopted Dr. Martin Luther King, Jr. and Veronica S. Shoemaker Boulevards Revitalization Plan, hence inconsistent with the Comprehensive Plan. This area of Dr. Martin Luther King, Jr. Boulevard between Ortiz Avenue and Interstate-75 serves as the gateway to the City of Fort Myers. The Dr. Martin Luther King Jr. Boulevard Revitalization Plan has commercial and entertainment destinations with an emphasis on pedestrian friendly urban design for this site. A trucking facility at this intersection will destroy the pedestrian friendly design. Planning understands the needs for trucking warehouse and distribution facilities; however location of these types of facilities must conform to the requirements of the Comprehensive Plan and Future Land Use Map. Unlike the site of the proposed planned unit development, north of Dr. Martin Luther King, Jr. Boulevard between Ortiz Avenue and Interstate-75, land use designation and development is very suitable to trucking warehousing and distribution facilities. The proposed planned unit development is inconsistent with the current land use of the site and the Dr. Martin Luther King Jr. Boulevard Revitalization Plan, thereby inconsistent with the Comprehensive Plan. Approval of the proposed planned unit development would up-zone the property, which makes the site inconsistent with the Future Land Use Map. The applicant can request a Comprehensive Plan amendment; however, the proposed planned unit development will still be inconsistent with the Dr. Martin Luther King Jr. Boulevard Revitalization Plan and the Comprehensive Plan. An alternative site plan was submitted on March 28, 2008 which affects only the four (4) out parcels. Planning notes that the revised site plan provides more definition to the four (4) parcels fronting Dr. Martin Luther King Jr. Boulevard, in particular a slip road separating Dr. Martin Luther King Jr. Boulevard and the four (4) parcels, but the following items remain unclear:

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1. Pedestrian friendly design along Dr. Martin Luther King Jr. Boulevard, including connection of the four (4) frontage parcels.
2. Existence of parking along the slip road in front of the buildings, which would improve the walkability of the site.
3. Pedestrian connectivity at the corner of Dr. Martin Luther King Jr. Boulevard and Ortiz Avenue, which appears non-existent.

The Dr. Martin Luther King Jr. Boulevard Revitalization Plan clearly indicates shops fronting at the corner of Dr. Martin Luther King Jr. Boulevard and Ortiz Avenue; the revised site plan does not show future structure(s) at the corner and it is unclear as to the intentions for this location of the site. The corner of Dr. Martin Luther King Jr. Boulevard and Ortiz Avenue should provide a pedestrian friendly connection to the future Eastwood Village development on the southwest corner of Dr. Martin Luther King Jr. Boulevard and Ortiz Avenue as well as the other corners of the intersection. The revised site plan remains inconsistent with the Dr. Martin Luther King Jr. Boulevard Revitalization Plan and the Comprehensive Plan.

Recommended Action

Find the planned unit development inconsistent with the Comprehensive Plan and the Dr. Martin Luther King, Jr. and Veronica S. Shoemaker Boulevards Revitalization Plan and recommend denial of the request to City Council.

Belinda Smith, Planner, Development Services Division, Community Development Department, stated that the request was for a planned unit development. Ms. Smith stated that Fort Myers Gateway Commercial Real Estate Division, LLC, requested a planned unit development to be located at 5150 Dr. Martin Luther King Jr. Boulevard for a mixed use trucking, warehousing and distribution facility with four (4) commercial out parcels. Ms. Smith stated that the project had been submitted prior to the Dr. Martin Luther King Jr. Boulevard/Veronica S. Shoemaker Boulevard Revitalization Plan and the interim approval process. Ms. Smith stated that properties over five (5) acres were required to apply through the planned unit development process. Ms. Smith stated that staff reviewed the application and concluded that the proposed planned unit development was not consistent with the Dr. Martin Luther King Jr. Boulevard/Veronica S. Shoemaker Boulevard Revitalization Plan or the Comprehensive Plan. Maureen Lund, Manager, Development Services Division, Community Development Department, stated that the project

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had one (1) required deviation for a reduced buffer yard width but there was not enough information or explanation to make a comment on the deviation and the department position was to find the deviation inconsistent. Ms. Lund stated that the recommendation was to not approve the planned unit development and the deviation would follow suit. E. Bruce Strayhorn, Esq., Strayhorn and Strayhorn, representing the applicant, stated that the staff report was negative for the proposed planned unit development. Attorney Strayhorn stated that he had made a request to continue the project at the April 9, 2008 Planning Board meeting. Attorney Strayhorn stated that an aerial photograph was taken on Monday, May 13, 2008 of the area of the subject property to show the Dr. Martin Luther King Jr. Boulevard/Interstate-75 quadrant, a junkyard, a portion of the Alligator Towing junk yard, part of the City wellfield, which was the Resource Conservation Properties or the potential Eastwood Village project by Bonita Bay, truck distribution/truck sales facility, gas station, and the Lee County prison with the recently constructed multi-story jail. Attorney Strayhorn stated that the subject site did not extend to Interstate-75 because there was a piece of property owned by the Zemel family. Attorney Strayhorn stated that the subject site commenced at the full median cut on Dr. Martin Luther King Jr. Boulevard east of Ortiz Avenue, west to Ortiz Avenue with the Lee County prison on the southern boundary. Attorney Strayhorn stated that the northern boundary of the subject property was Dr. Martin Luther King Jr. Boulevard across from a junkyard, western boundary was Ortiz Avenue and the eastern boundary was an easement with the Zemel family for shared access. Attorney Strayhorn stated that the one (1) access would serve both the subject parcel and the Zemel parcel. Attorney Strayhorn stated that another aerial photograph was taken because a part of the objection was to the inconsistency relative to Dover-Kohl study. Attorney Strayhorn stated that the Dover-Kohl Dunbar plan indicated that the rear part of the subject parcel should be reserved for "big box" retailers. Attorney Strayhorn stated that the date of the Dover-Kohl plan was important with the plan adopted in November 2006. Attorney Strayhorn stated that the Dover-Kohl plan mentioned that the recently opened Wal-Mart Super Center might have an impact on what was recommended in the plan. Attorney Strayhorn stated that "big box" retailers that have opened since the start and end of the Dover-Kohl plan were Target, Home Depot, Lowe's, Kohl's and BJ's. Attorney Strayhorn stated that there was a multiplicity of "big box" retailers within a short distance from the subject site. Attorney Strayhorn stated that the proposed project was inconsistent with what was planned prior to November 2006 but the project might not be inconsistent given the market conditions in 2008. Attorney Strayhorn stated that expert testimony would be given by Tiffany Luongo that the "big box" retailers were already built and there would probably not be many more "big box" retailers jumping to the subject site. Attorney Strayhorn stated that there was no criticism of Dover-Kohl because planning took a picture when a study was underway and tried to project to the future but Dover-Kohl might not have anticipated the nodes and growth in the area. Attorney Strayhorn stated that the Dover-Kohl plan did not appear to anticipate the growth because only the Wal-Mart Super Center was mentioned. Attorney Strayhorn stated that a third aerial photograph was taken of the subject site that indicated the surrounding

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properties, including LKO Recycled Auto Parts, Alligator Towing and the Lee County Stockade. Attorney Strayhorn stated that the subject property was bordered by junkyards, truck distribution, the prison, Interstate-75, Eastwood Village Planned Unit Development/Bonita Bay and Forestry Resources closer to town. Attorney Strayhorn stated that new urbanism worked a lot of places but there were places that new urbanism did not ideally work. Attorney Strayhorn stated that the Duany new urbanism map when overlaid in the downtown area did not fit, whether the industrial use on Hough Street or other different areas. Attorney Strayhorn stated that the area of McCullum Hall and downtown Dunbar were more the urban fabric and more a Dover-Kohl/Duany type of new urbanism. Attorney Strayhorn stated that the Dover-Kohl thoughts about new urbanism might happen but market conditions today showed that the neighbors to the subject site for the foreseeable future would be the existing businesses. Attorney Strayhorn stated that the owner of the property, Donald H. Jeanes, was the past mayor and member of the city council of Palos Heights, Illinois, in government service with a background in business and business and land development for thirty-seven (37) years. Attorney Strayhorn stated that Mr. Jeanes acquired the land in late summer of 2006 and prior to the purchase Mr. Jeanes went to the City. Attorney Strayhorn stated that Mr. Jeanes did due diligence before purchasing the property and showed the City Plan A with the four (4) outparcels. Attorney Strayhorn stated that during the timeframe the Dover-Kohl plan was in discussion but not formally adopted. Attorney Strayhorn stated that staff indicated to Mr. Jeanes that the plan fit the property because there was Business One (B-1) underlying zoning but a planned unit development would be required because there would be a little Business One (B-1), Business Two (B-2) and Light Industrial, which was the industrial flex use. Attorney Strayhorn stated that the property was bought in late summer of 2006 and a couple of pre-application meetings were held with Alternative A plan submitted. Attorney Strayhorn stated that numerous meetings were held with staff with affirmative reactions because more than Code buffering and landscaping were provided. Attorney Strayhorn stated that the landscaping was particularly intensive along the border of the property to the west. Attorney Strayhorn stated that the Dover-Kohl plan was enacted in November of 2006 and the application for the planned unit development was well prior to the adoption of the plan. Attorney Strayhorn stated that the application was submitted under the old Code. Attorney Strayhorn stated that Phase 1 of the rewrite of the Growth Management Code was adopted in January 2008 but everything discussed today occurred in the late part of 2006 and prior to adoption of the Dover-Kohl plan. Attorney Strayhorn stated that a letter prepared in January 2008 addressed inconsistency with the Comprehensive Plan and mentioned two (2) issues. Attorney Strayhorn stated that the inconsistencies were with the Dover-Kohl plan and that zoning districts could not be changed through a planned unit development. Attorney Strayhorn stated that a planned unit development could not do what the applicant wanted and the Dover-Kohl plan was just adopted and the project was inconsistent with the plan. Attorney Strayhorn stated that discussions were held with Dan Delisi, Director of Planning, The Bonita Bay Group, and Margaret Emblidge, Resource Conservation Property, Inc./The Bonita Bay Group, who were the

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closest neighbors to the subject site with the property west of Ortiz Avenue, and both individuals indicated that the project looked fine. Attorney Strayhorn stated that the Bonita Bay/Eastwood Village plan did not indicate a super market fronting on Dr. Martin Luther King Jr. Boulevard but was turned internally, which would be a village concept. Attorney Strayhorn stated that the question was whether the proposed site fit from a planning perspective, which was a goal of the Dover-Kohl plan that was adopted after the application was submitted. Attorney Strayhorn stated that the subject parcel was not a Dover-Kohl new urbanism site. Attorney Strayhorn stated that the landscaping and some attempts were made toward new urbanism. Attorney Strayhorn stated that Alternative B was discussed after January 2008 when the applicant was made aware that there might be a problem and was submitted March 7, 2008. Attorney Strayhorn stated that Plan B was an attempt to determine whether the Dover-Kohl plan could practically work on the subject site. Attorney Strayhorn stated that the buildings were moved upfront on the site for the industrial flex with right turns in and out, a slip road with a main entrance where a convenience store with gas pumps would be located. Attorney Strayhorn stated that in the area off Interstate-75 where the buildings were up front and the parking located in the back or Plan B, which was an attempt to follow the Dover-Kohl plan, would not work from a marketing perspective. Attorney Strayhorn stated that the Engineering Division had some interesting comments regarding Plan B and although both Plan A and Plan B were before the Board, Plan A made sense from consistency, market and reality. Attorney Strayhorn stated that the presentation by Steve Hurley would address the necessary ingredients for a planned unit development with details and the traffic impacts. Attorney Strayhorn stated that the subject project would be located on State Road 82 and a pro-rata share for improvements would be necessary. Attorney Strayhorn stated that the Engineering Division had requested that individual stub outs for water and sewer be provided. Attorney Strayhorn stated that the original plan was to have an internal system with a main line and stubbing to different areas but the Engineering Division wanted individual stub outs for each parcel, which was fine with the applicant. Attorney Strayhorn stated that the Florida Department of Transportation had issued the notice of intent for the proposed shared access, to which the Zemel family had already agreed. Attorney Strayhorn stated that the Board should keep in mind that the Dover-Kohl dream, which was effectuated after the application submittal, and that uses could not be upgraded to permit light industrial or industrial flex through the planned unit development process were the two (2) issues for inconsistencies. Attorney Strayhorn stated that testimony would be presented that the Dover-Kohl plan might not be reality between a prison, junkyards and Interstate-75. Ms. Dalton stated that Attorney Strayhorn was not saying that the rights were vested merely because of the application. Attorney Strayhorn stated that the belief was that the rights were vested under the old plan because the application was submitted and accepted and paid for under the old plan. Attorney Strayhorn stated that only in the last one hundred and sixty to one hundred and eighty (160-180) days was any reference made to the new plan. Ms. Dalton stated that "accepted" meant that staff found the application sufficient. Attorney Strayhorn stated that the application was

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believed to be found sufficient because staff had issued several favorable rulings and the vesting argument could be viewed from an ex post facto element into when the new law came into effect. Attorney Strayhorn stated that the new law came into effect after application. Attorney Strayhorn stated that the applicant was doing all that could be done to incorporate concepts taking into account market reality. Ms. Dalton stated that rights were actually vested at the time of permit issuance and not at the time of application. Attorney Strayhorn stated that there had been cases that were not always consistent as to the absolute vesting. Attorney Strayhorn stated that before acquisition and post acquisition led down one (1) trail but the other trail changed. Attorney Strayhorn stated that equitable estoppel was not suggested but the kind of phrases did play a role in the situation. L. Steven Hurley, Vice President of Operations, David Douglas Associates, Inc., representing the applicant, stated that a small color print of an exhibit showing photographs of the surrounding area had been prepared for the Board. Mr. Kinsey stated that he had another meeting that he had to attend and would be leaving in five (5) or ten (10) minutes but had comments on the Pilkington Industrial Planned Unit Development. Mr. Kinsey stated that he was in agreement with the presentation thus far. Mr. Kinsey stated that his business engaged in a lot of "big box" retail site selection and had done eight (8) to ten (10) "big box" projects with most grocery store anchored. Mr. Kinsey stated that Dover-Kohl were operating under circumstances that were not present today and the subject property was not a "big box" location or a viable location any time in the near future. Mr. Kinsey stated that the proposal as shown was agreeable and he liked the idea of the retail, customer oriented portion of the project faced State Road 82. Mr. Kinsey stated that the distribution portion would be located in the back of the property and was appropriate, particularly given the use south of the property. Mr. Kinsey stated that there was concern with the out parcels and a schedule of uses would be helpful. Mr. Kinsey stated that a plan was not necessary at this time but the Board should know what the uses were for each out parcel. Mr. Kinsey stated that the Board liked really enhanced landscape features at major intersections in the State Road 82 and Colonial Boulevard corridors when plans were reviewed and would defer to the Board and Ms. Artuso to discuss the issue. Mr. Kinsey stated that another driveway to the strip building was needed because there appeared to be only one (1) driveway other than that at the end and a driveway opposing out parcel four (4) would be appropriate for better access for such a long building. Mr. Kinsey stated that with all due respect to staff and to Dover-Kohl, he generally supported the item with the suggestions made. Mr. Hurley stated that the additional driveway was to access the rear buildings because out parcel four (4) had a driveway. Ms. McCormick stated that there was the issue that the proposed was not consistent with the Comprehensive Plan and questioned whether there should be an amendment done by the application or staff. Mr. Kinsey stated that planned unit developments were used to incorporate uses outside Comprehensive Plan uses and planned unit developments could be conditioned. Mr. Kinsey stated that he was not sold that the Comprehensive Plan was a hurdle.

Mr. Kinsey left the meeting at 1:54 o'clock p.m.

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Mr. Hurley stated that this was his first negative staff report because he had prided himself with working with all agencies before making presentations to boards to place issues aside as to focus on other aspects, such as design, connectivity, continuity with the surrounding projects. Mr. Hurley stated that the presentation would not speak to the “nuts and bolts” of infrastructure because there was a negative staff report. Mr. Hurley stated that the Engineering Division agreed with the proposed water, sewer and access points. Mr. Hurley stated that the original plan design, or concept A, would be discussed. Mr. Hurley stated that concept A reflected access on a Florida Department of Transportation roadway for Dr. Martin Luther King Jr. Boulevard and a Lee County Department of Transportation roadway for Ortiz Avenue. Mr. Hurley stated that the Notice of Intent was received for Ortiz Avenue and the permit was received from the Lee County Department of Transportation. Mr. Hurley stated that the access was part of the supportive comments from the City Engineering Division and the request was made to coordinate and line up with the accesses for Eastwood Village Planned Unit Development, with full median openings with proper separation between driveways. Mr. Hurley stated that the off-site infrastructure items and the water and sewer plans were acceptable. Mr. Hurley stated that the main lining of the sewer and water lines on concept A versus concept B would be discussed. Mr. Hurley stated that an attempt was made to respond to the comments when in December 2007 or January 2008 the applicant heard about the negative issues, which was after thirteen (13) months of positive comments from the City after pre-application meetings and additional meetings. Mr. Hurley stated that during the timeframe an attempt was made to move forward with another design that included the out parcels. Mr. Hurley stated that concept B would be discussed to show why concept B did not work on the piece of property and was not very good for traffic circulation. Mr. Hurley stated that a last minute final meeting was held with the Engineering Division on concept B but the Division was emphatic about making sure the slip road worked a little better than what was called for in the revitalization plan. Mr. Hurley stated that an attempt to make the slip road one (1) way was not conducive of the area and traffic circulation between out parcels. Mr. Hurley stated that the application was submitted on November 1, 2006 and the revitalization plan was approved November 20, 2006 and the resolution was included with the agenda packets provided to the Board. Mr. Hurley stated that the application was submitted prior to the actual adoption of the Dr. Martin Luther King Jr. Boulevard/Veronica S. Shoemaker Boulevard Revitalization Plan. Mr. Hurley stated that the two (2) issues that would be discussed were the inconsistency with the revitalization plan and the inconsistency with the Comprehensive Plan. Mr. Hurley stated that there was concern in January 2008 when the City notified that the project was inconsistent with the revitalization plan and the Comprehensive Plan after thirteen (13) months of working on the project and working with the type of projects for many years. Mr. Hurley stated that Mr. William Spikowski worked as a consultant on the Dr. Martin Luther King Jr. Boulevard/Veronica S. Shoemaker Boulevard Revitalization Plan and was asked to meet on the project. Mr. Hurley stated that Mr. Spikowski indicated that the

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uses were not as important as connectivity along the front of the roadway. Mr. Hurley stated that the request was not for outside industrial type uses but as had been done for years a couple of other uses were planned. Mr. Hurley stated that plans began with concept A which had four (4) traditional-style out parcels. Mr. Hurley stated that the City requested that the buildings be moved closer to the roadway but when out parcels were designed for fast food restaurants such as Wendy's, convenience stores, or banks with stacking requirements, the designs were not conducive to be like liner buildings along the roadway. Mr. Hurley stated that liner buildings did not meet the intent of the area because an overall view of the corridor was needed but traveling closer to Fort Myers the area became more dense and intense. Mr. Hurley stated that there was an access from Ortiz Avenue and there were two (2) accesses from Dr. Martin Luther King Jr. Boulevard. Mr. Hurley stated that the City requested that the project coordinate with the Zemel family for tie-in and the circulation for the industrial style or warehousing use in the back of the property would be from Dr. Martin Luther King Jr. Boulevard through the eastern side of the project that took the trucks directly to the buildings. Mr. Hurley stated that the site plan was designed so that all delivery activities were between two (2) buildings. Mr. Hurley stated that someone traveling north on Ortiz Avenue would see the front of the most rear, southerly building with the activities of the distribution for pick-up and delivery occurring in the back of the building. Mr. Hurley stated that the site was at an angle and the buildings were aligned to line up with Dr. Martin Luther King Jr. Boulevard. Mr. Hurley stated that the surrounding uses were important. Mr. Hurley stated that the subject property was located at the south eastern quadrant of Ortiz Avenue and Dr. Martin Luther King Jr. Boulevard. Mr. Hurley stated that south of the subject property was the Lee County Stockade. Mr. Hurley stated that east of the subject property was a vacant parcel owned by the Zemel family with future connectivity through the driveways. Mr. Hurley stated that Park 82 was located across Dr. Martin Luther King Jr. Boulevard and he personally permitted the Palm Peterbilt facility, which was a large tractor/trucks sales and service facility within Park 82. Mr. Hurley stated that the Revitalization Plan was overlaid on top of the existing conditions to indicate the inconsistencies that would create a patchwork in an attempt to create some new urbanism but not doing a design that was conducive of the area. Mr. Hurley stated that the surrounding area consisted of a gas station and the Flagler large equipment sales facility, which was given a Certificate of Occupancy by the City on March 8, 2008 and did not comply with the revitalization plan. Mr. Hurley stated that if the Flagler facility was vested under the old rights, the proposed project could be vested under the old rights because the revitalization plan was not legally adopted until November 20, 2006. Mr. Hurley stated that the area also consisted of industrial strip warehouses, Alligator Towing and Recovery, large equipment sale and Forestry Resources. Mr. Hurley stated that on the south side of Dr. Martin Luther King Jr. Boulevard were the City Public Works Department and lands as well as the Eastwood Village project on the southwestern corner of Dr. Martin Luther King Jr. Boulevard and Ortiz Avenue. Mr. Hurley stated that the Eastwood Village project was a planned unit development, which was approved by the Planning Board and proceeded to City

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Council. Mr. Hurley stated that the revitalization plan that was reviewed identified on the Dr. Martin Luther King Jr. Boulevard overlay plan a “big box” on the corner, which was a grocery store. Mr. Hurley stated that the revitalization plan identified a grocery store and liner buildings on the quadrant but the plan approved for Eastwood Village indicated a lake at the location. Mr. Hurley stated that Mr. Spikowski indicated that a plan was just a plan and not written in stone. Mr. Hurley stated that a plan was things someone wanted to do and incorporate, which was what was done for the subject Pilkington Industrial Planned Unit Development project. Mr. Hurley stated that the buildings were not conducive of the area to be front liner buildings. Mr. Hurley stated that the area was not pedestrian friendly. Mr. Hurley stated that the area was a gateway to Fort Myers but the area might not look like Palm Beach Boulevard at Billy’s Creek or West First Street because the areas had to have their own identities. Mr. Hurley stated that the project was started with heavy, intense industrial on the site but the request was not for all the types of uses and was only in the Industrial One (I-1) or the new Light Industrial (IL) zoning category. Mr. Hurley stated that a couple of uses were needed which were industrial or warehouse flex in the back of the property. Mr. Hurley stated that flex use would have a little office or showroom in the front with deliveries in the back and would house maybe air condition or plumbing contractor facilities. Mr. Hurley stated that each of the front areas had an office type store front with additional façade type items added and different scribing and striking of different materials so not to have a single long building. Mr. Hurley stated that an attempt was made to not have a typical warehouse box normally seen in the City but more a facility that would be seen in a Gateway industrial type area. Mr. Hurley stated that there was a myriad of industrial style uses in the area with the area being new and the buildings would not fall down tomorrow and someone replacing the building with liner building or a residential area with a park overlooking J.J. Taylor, a beer distributor. Mr. Hurley stated that the area was already there. Mr. Hurley stated that in the future the area could be redesigned and changed to make it more conducive, similar to what was done in suburban or rural suburban for the downtown area. Mr. Hurley stated that there were opportunities but the opportunities did not have to meet the lay of the plan. Mr. Hurley stated that the proposed project was not meeting the lay of the plan to a “T,” to a concept that was placed on the area. Mr. Hurley stated that the intent was met by the proposed project because of the surrounding areas. Mr. Hurley stated that a comment in the staff report was about pedestrian accessibility. Mr. Hurley stated that there were existing bike paths and sidewalks along Dr. Martin Luther King Jr. Boulevard and Ortiz Avenue north and south. Mr. Hurley stated that a requirement was the installation of sidewalks along the frontage of the property but the Ortiz Avenue and Dr. Martin Luther King Jr. Boulevard plans already showed sidewalk within the widening of the new design. Mr. Hurley stated that someone would construct the sidewalk whether it was the City or the applicant. Mr. Hurley stated that people living in the area had connectivity to all the out parcels and the other buildings for anyone who would ride a bike or walk to work similar to a shopping center with out parcels into a grocery store. Mr. Hurley stated that the pedestrian and access comments were addressed. Mr. Hurley stated that

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the road widening project on Ortiz Avenue would improve the intersection at Dr. Martin Luther King Jr. Boulevard with crosswalks or another safe way to cross the intersection would have to be determined. Mr. Hurley stated that safe crossing at the intersection was not an issue of the applicants but access around and to the site had been provided. Mr. Hurley stated that traffic circulation based on the revitalization plan were included in concept B by a slip road and access to driveways at forty (40) feet with landscaping and beautification. Mr. Hurley stated that proper turning radiuses were not provided and proper design standards could not be met because a vehicle would have to cut between the buildings to return to the slip roads. Mr. Hurley stated that the internal circulation for stacking of vehicles for banks or other uses would provide limited opportunity. Mr. Hurley stated that use of the out parcels was mentioned and the plan set identified the proposed uses. Mr. Hurley stated that the uses were further identified on the new concept, which would limit the commercial uses to the front out parcels. Mr. Hurley stated that the out parcels were the new Commercial General (CG) zoning category, which was identified in the revitalization plan. Mr. Hurley stated that the industrial style use was only requested for the rear of the property for the two (2) buildings. Mr. Hurley stated that comments were made about landscaping. Mr. Hurley stated that the clients were always told that the City needed more landscaping and that the City would ask for more landscaping. Mr. Hurley stated that additional landscaping was identified at the beginning of the project and went above and beyond typical landscaping standards of the City Code. Mr. Hurley stated that the reverse style frontage road was considered a road and the right-of-way needed to have a fifteen (15) foot buffer, which was not considered and was why there was no additional justification. Mr. Hurley stated that the frontage road was not considered as a local style road but as an access way within the site built to frontage road standards. Mr. Hurley stated that the thought was that the twelve (12) foot versus the fifteen (15) foot buffer with the upscale landscaping provided would be sufficient. Mr. Hurley stated that the landscape plan, prepared by Greg Diserio, David M. Jones, Jr. and Associates, Inc., indicated a ton of additional trees and shrubs and there would be difficulty to make water management work properly but somehow would be managed. Mr. Hurley stated that the landscape plans went above and beyond what was necessary because in February 2008 the City indicated that there was a right-of-way issue and that bigger and better trees were needed. Mr. Hurley stated that the next size larger tree was proposed so a justification for the reduced buffer was not prepared because the justification was provided in the landscape plan. Mr. Hurley stated that when it was realized that the proposed project did not meet the revitalization plan and the Comprehensive Plan, discussions were held with the client to decide what else could be done even if not marketable or sellable. Mr. Hurley stated that staff was told that elevations or more landscaping could not be provided but a new concept plan would be provided to see if the new plan was better in consistency with the Comprehensive Plan and revitalization plan. Mr. Hurley stated that concept B was provided knowing that landscape plans would still have to be provided but which concept would be approved was unknown. Mr. Hurley stated that pride was taken to ensure that projects fit the community and the

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development paid a fair share if necessary. Mr. Hurley stated that the Comprehensive Plan had several policies that the proposed project met. Mr. Hurley stated that Policy 2.11 provided as follows:

Policy 2.11) Within each land use classification, the Land Development Regulations will distinguish between permitted uses and conditional uses. Planned unit development requirements shall be established in the Land Development Regulations.

Mr. Hurley stated that the Land Development Code there were guidelines for a planned unit development, which was what was followed for the project as advised by staff. Mr. Hurley stated that Actions 2.11.1 and 2.11.2 addressed conditional uses but Action 2.11.3 provided as follows:

Action 2.11.3) A planned unit development is designed and developed and integrated in a cohesive fashion, under single ownership or unified control, providing for flexibility and clustering of uses. Specific standards and criteria must be met in order for developments to be approved as a planned unit development.

Mr. Hurley stated that the criteria and guidelines were met and things had been done for the past fifteen (15) to twenty (20) years to purposely have a planned unit development in-place. Mr. Hurley stated that the planned unit development process was the process the project was going through and the process that the City said had to be followed. Mr. Hurley stated that the planned unit development process had been used for twenty (20) years and to decide that there was no consistency with the Comprehensive Plan now raised the question as to whether there would ever be another planned unit development in the City. Mr. Hurley stated that Policy 2.8 plus the following actions and standards addressed location standards and what items should be close to interstate roadways, thoroughfares and adjacent uses. Mr. Hurley stated that Policy 2.3 addressed industrial land use and locations. Mr. Hurley stated that Policy 2.8 and Policy 2.3 provided as follows:

Policy 2.8) Commercial areas shall be encouraged that function as an integrated, cohesive unit.

Policy 2.3) Industrial land use is recognized as a legitimate land use possessing integrity comparable to that of other land uses, and is entitled to protection against encroachment from any other uses which are not integrated into the area through use of a well designed planned unit development.

Mr. Hurley stated that the policies addressed close proximity, median access, frontage roads and interstates. Mr. Hurley stated that a consistency analysis was performed where notified that the project did not meet the Comprehensive Plan or revitalization plan. Mr. Hurley stated that the City Code or Ordinances,

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Comprehensive Plan and the revitalization plan was reviewed as well as the requirements of Lee County and the State who would have to be met. Mr. Hurley stated that a site design was prepared that would be conducive. Tiffany Luongo, representing the applicant, stated she had been in commercial real estate for years and was with Coldwell, Banker Commercial Real Estate. Ms. Luongo stated that her job was to get people to make the site a better place. Ms. Luongo stated that she resided in the City and when Mr. Jeanes purchased the property she was thrilled because there had been positive comments from the City about what was wanted. Ms. Luongo stated that she lived in Edison Park and the Colonial Boulevard and Ortiz Avenue were her way to the highway. Ms. Luongo stated that a couple of Starbucks coffee shops would be great on the way to the highway or a Duncan Donut but bringing the uses here had been exceedingly difficult. Ms. Luongo stated that someone had to be able to turn into an access to a use because driving through a parking lot to reach a use created a liability for any retailer. Ms. Luongo stated that someone would have to insure the very unsafe traffic pattern that would be instilled. Ms. Luongo stated that Plan A worked best for the business people. Ms. Luongo stated that the back parcel took into consideration what would be conducive to the highway and the area around the site to improve the area. Ms. Luongo stated that she lived in the City and whatever went on the site would personally affect her. Ms. Luongo stated that something nice was wanted on the site. Ms. Luongo stated that her husband was the regional distributor for PGT Windows that were made in Florida and there was only one (1) delivery per week. Ms. Luongo stated that the remainder of the time was spent in the sales office and that type business plus national brand companies were what was needed and should be attracted to the site. Ms. Luongo stated that the staff report indicated trucking and warehousing but that did not sound like what was proposed. Ms. Luongo stated that the project was similar to what Gateway had with beautiful buildings, lots of trees and a corporate park. Ms. Luongo stated that the idea was to make it easy for box trucks and other trucks to reach the back of the property in order to attract the type of national companies that would make the City a better place to be. Ms. Luongo stated that the more national companies that would be attracted, the more national companies that would come to the City. Ms. Luongo stated that the opportunity for the "big box" would be lost but the retailers had gone to Colonial Boulevard, such as Target, Home Depots and the huge group located at The Forum. Ms. Luongo stated that retail begets more retail. Ms. Luongo stated that unlike some people that wanted to be a certain distance from other users, retailers wanted to group together. Ms. Luongo stated that the "big box" uses for practical purposes are gone and there was no way that the person who wrote the revitalization plan would have known. Ms. Luongo stated that consideration was given to the fact that a prison was located behind the subject site to determine the best and highest use for the parcel, which was what she dealt with every day. Ms. Luongo stated that there were a lot of empty offices in Lee County. Ms. Luongo stated that there would be offices with the uses provided but the ladies would not want to leave an office located next to a prison at 9:00 o'clock at night. Ms. Luongo stated that the least dense use that could be placed on the site that would be the best transition from prison up to the retail uses needed in the City

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was the Gateway style corporate industrial park that had been made beautiful, would attract national tenants and that would bring revenues to the City. Ms. Luongo stated that Mr. Jeanes would have been advised that the parcel was not worth buying if there had been any inclination that midway between when Mr. Jeanes went to the City to learn about the parcel and received approvals on the parcel that the minds of the City would change. Ms. Luongo stated that the property would be vacant for a long time, possibly twenty (20) or thirty (30) years because the buildings across the street are mostly new, which would not change for a long time. Ms. Luongo stated that she had the highest goals for the City because she lived in the City. Ms. Luongo stated that she would not want to drive past something ugly that would attract the wrong tenants. Ms. Luongo stated that the desire was for national companies so the City would be better. Ms. Luongo stated that density and the parking worked downtown but would not work on property right off the highway. Ms. Luongo stated that highest and best use that could be provided for out of town to people to be drawn to provide revenue to the City was the proposed plan with the existing uses. Ms. Luongo stated that Gateway was a beautiful park and very successful. Ms. Luongo stated that the City had an opportunity to take business away and get something that was really great at the location. Ms. Luongo stated that she was the buying broker for the parcel and would have advised Mr. Jeanes not to purchase had she known. Donald H. Jeanes, owner, stated that the main problem was that when he first looked at the property a visit was made to the City to receive an opinion on what was proposed for the site. Mr. Jeanes stated that the City thought everything looked great and the project was nice. Mr. Jeanes stated that he had been in business for thirty-seven (37) years constructing high-end projects in Chicago and surrounding area. Mr. Jeanes stated that all projects were upscale and the proposed buildings would look nice. Mr. Jeanes stated that although the subject project was a challenge to develop in an area off Interstate-75 and on Dr. Martin Luther King Jr. Boulevard, the project still had to be first class. Mr. Jeanes stated that the buildings would be beautiful but before the property was purchased he wanted approval of the plans for the site. Mr. Jeanes stated that the City thought the proposal was great and he closed on the property. Mr. Jeanes stated that the plans and application were submitted right after the closing on the property but over a year later through the process of comments going back and forth to the littlest details, including landscaping, in June 2007 the City notified that the project would have to be presented to the Planning Board. Mr. Jeanes stated that there were comments back and forth but the City indicated that answers to the comments were not received so proof of where the comments were answered was provided. Mr. Jeanes stated that a meeting was held in January 2008 where the City indicated that the questions about the plans were not answered. Mr. Jeanes stated that the plans had been submitted in August 2007, which answered the questions. Mr. Jeanes stated that the City then indicated that the project was inconsistent with the Comprehensive Plan, which was a surprise and over a year and \$500,000.00 later. Mr. Jeanes stated that his son had moved to Florida, obtained a State contractor license and he wanted to do a project here with his son. Mr. Jeanes stated that he never thought the situation would happen. Mr. Jeanes stated

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that the project would be an improvement to the area. Mr. Jeanes stated that the property was located in an Interstate quadrant right off Interstate-75 and questioned how the City could think about placing building right next to a highway like Interstate-75 and think that people would walk to the site. Mr. Jeanes stated that the product proposed was the best product for the area that would be an enhancement. Mr. Jeanes stated that the reason the project was called a gateway to Fort Myers project because the area was a gateway that would be made to look nice, whether traveling from the south on Ortiz Avenue or along Dr. Martin Luther King Jr. Boulevard there would be nice looking buildings. Mr. Jeanes stated that the project was designed so that the backs of the buildings faced each other and any activity would not be seen. Mr. Jeanes stated that the desire was to attract businesses such as a Wendy's Restaurant or Starbuck's that would require drive-through facilities and the buildings could not be placed up front of the out parcels and expect people to drive through a slip road that could not be turned onto. Mr. Jeanes stated that the intended uses of the out parcels were facilities that would serve the residents in the area. Mr. Jeanes stated that people traveling Dr. Martin Luther King Jr. Boulevard saw junkyards, trucking facilities and a flea market but there was no place for somebody to stop to get a cup of coffee. Mr. Jeanes stated that plans were for a gas station with a convenience store and some fast food restaurants in nice looking buildings such as those in Gateway. Mr. Jeanes stated that the buildings would be attractive. Robert Himschoot, resident of Lee County, property owner and a business owner in the City, stated that he was in favor of Plan A for a number of reasons, some of which had been elaborated on by the engineer. Mr. Himschoot stated that his business was located on Rockfill Road, approximately one and one-half (1 ½) miles from Ortiz Avenue. Mr. Himschoot stated that driving east from his location, on the north and south side of the road was full of commercial, industrial and business properties, excluding some vacant properties owned by the City and The Bonita Bay Group. Mr. Himschoot stated that Plan A provided the City with the opportunity to upgrade the neighborhood because the plan was nice and the type of industrial flex warehouse space would bring some national tenants to the City. Mr. Himschoot stated that if the City denied the opportunity, there would be a bad and wrong message sent to other investors and business people that were willing to try, develop and improve the tax base. Mr. Himschoot stated that more importantly the employment base would be improved. Mr. Himschoot stated that the City needed to have people that would provide services to the community and there was a need to employ the people that were unemployed. Mr. Himschoot stated that fast food restaurant idea was fine because from Jones Loop Road south to Daniels Parkway not one interchange had a convenient Burger King or McDonalds. Mr. Himschoot stated that the City needed the type of development presented in Plan A and needed to expedite the project because there had been a long, drawn out process. Mr. Himschoot stated that he had been involved in several zoning issues and understood the frustration that the development was experiencing. James Muwakkil, President, Fort Myers Coalition for Justice, a civil right group, and owner of a truck cleaning company, stated that staff was in denial or not in agreement with the presentation of Plan A and based the denial upon the plan not being

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consistent with the Dr. Martin Luther King Jr. Boulevard/Veronica S. Shoemaker Boulevard Revitalization Plan and the Comprehensive Plan. Mr. Muwakkil stated that he was a native of Fort Myers and had attended the charrettes conducted by Dover-Kohl. Mr. Muwakkil stated that he attended three (3) of the charrettes and the area past Ortiz Avenue was never included, which was confusing. Mr. Muwakkil stated that the area covered in the charrettes did not pass Michigan Avenue and Dr. Martin Luther King Jr. Boulevard and definitely not pass the light at Ortiz Avenue. Mr. Muwakkil stated that the Dunbar community that participated in the charrettes had been misconstrued about walkability. Mr. Muwakkil stated that when the people of Dunbar said they wanted to walk in the community, the people wanted law enforcement to make the streets and sidewalks safe to walk in the immediate 33916, 33901 and 33905 zip code areas. Mr. Muwakkil stated that the request was in response to the recent violence that had made the immediate zip code areas dangerous and not wise to walk. Mr. Muwakkil stated that the walkability statement had nothing to do with the people of the community saying they wanted to walk the area east of Ortiz Avenue in an already industry, commercial and business district. Mr. Muwakkil stated that the walkability statement was taken out of the spirit in which it was given. Mr. Muwakkil stated that the civil rights group was all about helping people and something about the project had hurt Mr. Jeanes. Mr. Muwakkil stated that Mr. Jeanes had been hurt by the City not being sensitive to his efforts. Mr. Muwakkil stated that the community did not think that the area east of Ortiz Avenue had been discussed at any charrettes. Mr. Muwakkil stated that the project would breathe life into the revitalization and the Comprehensive Plan because nothing had happened in the area and the City did not have a plan to finance anything that was presented but was just theory. Mr. Muwakkil stated that most people would say that they do not believe in the revitalization plan. Mr. Muwakkil stated that Plan A as outlined provided things that the community wanted. Mr. Muwakkil stated that rumor was that another residential community was to be built. Mr. Muwakkil stated that the Eastwood Village community was planned, there were one hundred (100) single family homes being built by Hope VI, and at Edison Avenue and Highland Avenue there was the Summerlin and the Towles Garden that about to be developed. Mr. Muwakkil stated that there were a tremendous number of homes newly constructed in the community that no one could afford to live in because they do not have jobs to pay for the homes. Mr. Muwakkil stated that Lee County according to WINK television as of March 7, 2008 hit the highest unemployment rate in fifteen (15) years. Mr. Muwakkil stated that he never saw the recession coming and plans were not made for the recession. Mr. Muwakkil stated that the past five (5) or six (6) months have indicated that there was a recession. Mr. Muwakkil stated that he and his wife did not see the recession coming, did not plan for a recession and thought that there would always be money, plenty of jobs in order to buy homes, there would not be a tight budget. Mr. Muwakkil stated that gas prices were not \$4.00 a gallon and food had not skyrocketed but now people had to plan around these things. Mr. Muwakkil stated that the City originally in the planned unit development planned did not plan for a time where employment would outweigh residences. Mr. Muwakkil stated that there was a need for

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employment. Mr. Muwakkil stated that a few people would have jobs for three (3) or four (4) months to build a house but questioned who would move in when the home was built and the work was over. Mr. Muwakkil stated that Plan A would bring millions of dollars to Fort Myers and would stimulate the economy. Mr. Muwakkil stated that main stream Lee County unemployment was six percent (6%) so the inner city of Lee County, mainly poor communities and according to the National Urban League that performed the annual state of the black union, the unemployment rate was around eighteen percent (18%) and sometimes as high as thirty-six percent (36%). Mr. Muwakkil stated that a drive along Dr. Martin Luther King Jr. Boulevard would show scores of young black men standing on the corners, around stores and in parking lots, which was an indication that the economy was not producing job that were so greatly needed in the City. Mr. Muwakkil stated that the proposed project would put millions of dollars into the City and would provide important, permanent employment opportunities for the surrounding areas. Mr. Muwakkil stated that there were enough homes but not enough jobs. Mr. Muwakkil stated that the community did not believe that the project was not consistent with the revitalization project. Mr. Muwakkil stated that he attended the charrettes and assisted in putting together some of the language. Mr. Muwakkil stated that he did not remember the charrettes covering the area east of Ortiz Avenue and the walkability issue was how to organize as a community to get the criminals out of the area so that in the evening people could stroll down Dr. Martin Luther King Jr. Boulevard and throughout the area. Mr. Muwakkil stated that the area involved the three (3) zip code area and were not included in the revitalization plan. Mr. Muwakkil stated that the project was supported. Keisha Cyriaano, Neighborhood Senior Planner, stated that clarity was needed because mention was made that the area was to be a walkable, pedestrian friendly environment. Ms. Cyriaano stated that Page 5.19 of the Dr. Martin Luther King Jr. and Veronica S. Shoemaker Boulevards Revitalization Plan provided as follows:

Gate To The City

The area of Dr. Martin Luther King Jr. Boulevard between Ortiz Avenue and I-75 serves as the gateway to The City of Fort Myers. Visitors to the City will pass through this area; it will be their first impression of the City after exiting the interstate. Due to this visibility, this location is ideal for commercial and entertainment destinations.

Ms. Cyriaano stated that the area of Dr. Martin Luther King Jr. Boulevard between Ortiz Avenue and I-75 was a gateway to the City to get people excited about Fort Myers and what Fort Myers had to offer. Leslie Persia, Comprehensive Planner, Planning Division, Community Development Department, stated that the Dr. Martin Luther King Jr. Boulevard plan included the Eastwood Village Planned Unit Development was identified on Page 5.16 of the Dr. Martin Luther King Jr. and Veronica S. Shoemaker Boulevards Revitalization Plan and the aerial presented could be found on Page 5.19 of the Plan. Ms. Persia stated that the pedestrian friendly areas were

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more than just constructing sidewalk. Ms. Persia stated that the proposed project was beautiful but the review was done with what staff had to work with and the plans. Ms. Persia stated that the staff report did not indicate that the project would not be beautiful or not beneficial to the City but there were some changes that could be made to make the project more representative of the area, which was what staff wanted to occur. Ms. Persia stated that a main idea was to keep the truck traffic at a minimum at the intersection of Ortiz Avenue and Dr. Martin Luther King Jr. Boulevard. Ms. Persia stated that she drove the area every day going to work and the traffic was already horrendous. Ms. Persia stated that the addition of more large trucks at the intersection of Ortiz Avenue and Dr. Martin Luther King Jr. Boulevard would be inappropriate. Ms. Persia stated that staff felt that the far eastern section of the property should have been the major truck entrance if not the only truck entrance and a circular pattern if possible internal to the site would keep the truck traffic off Ortiz Avenue. Ms. Persia stated that the potential for any walkability at the intersection would be eliminated. Attorney Strayhorn stated that the language read by Ms. Cyriaano was contained in the packet, which referenced the goals. Attorney Strayhorn stated that also in the packet was the statement that the bulk of community shopping still occurred around the periphery and at the new super Wal-Mart located at the intersection of Ortiz Avenue and Colonial Boulevard. Attorney Strayhorn stated that conditions had changed since the revitalization plan. Attorney Strayhorn stated that the Dover-Kohl plan indicated that traveling east on Dr. Martin Luther King Jr. Boulevard, the character of the roadway became more industrial. Attorney Strayhorn stated that everyone knew the roadway became more industrial without reading the Dover-Kohl plan. Attorney Strayhorn stated that an attempt was made by Dover-Kohl in 2005 and 2006 to see what was there and what could be done to better the community. Attorney Strayhorn stated that the argument could be made that a fair reading of the Comprehensive Plan and the comprehensive planning process indicated that the subject area was different than the new urbanism. Mr. Hurley stated that the parcel took truck traffic into consideration because there was a full median access opening on Dr. Martin Luther King Jr. Boulevard across from Park 82, which had heavy industrial in the back of the property and included J.J. Taylor and Palm Peterbilt. Mr. Hurley stated that Park 82 had truck traffic going east and west, to Interstate-75 and other arterial roadways. Mr. Hurley stated that occasionally the traffic used Ortiz Avenue depending on the destination. Mr. Hurley stated that the median opening was aligned based on input from the Engineering Division and the request to coordinate access with the Zemel property to have the majority of the main access in with the future development of the Zemel property. Mr. Hurley stated that the main access was for all directions with a right in and right out plus there was the median at the entrance. Mr. Hurley stated that the truck traffic would be traveling on Interstate-75 and to travel to Ortiz Avenue to enter the site from the back side would make no sense. Mr. Hurley stated that the development was set up so that vehicles would enter at the median cut to travel behind and between the two (2) buildings to maneuver to make a pick up or delivery. Mr. Hurley stated that if going further south a vehicle could elect to exit the site by the entrance access to enter Interstate-75

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or might use the Ortiz Avenue exit if traveling to Colonial Boulevard. Mr. Hurley stated that Lee County was widening Ortiz Avenue into four (4) lanes with median openings that were planned for the area. Mr. Hurley stated that the requirements of Florida Department of Transportation were met for an extra right in/right out to help eliminate some of the traffic at the main intersection into the development. Mr. Hurley stated that the revitalization plan with the "big box" retailers, commercial and professional offices would have parking associated, which would generated far more trips with the "big box" businesses than what was proposed for the subject site. Mr. Hurley stated that the proposed project would be a net benefit for the infrastructure. Mr. Hurley stated that there had been discussions held with possible tenants for the out parcels with negotiations were underway for a convenience store/gas station on the corner. Mr. Hurley stated that access to a convenience store/gas station facility was needed off the main highway. Mr. Hurley stated that many Publix centers had been developed with out parcels in front for Race Track gas stations, Wendy's and banks. Ms. Artuso stated that the out parcel at the corner of Dr. Martin Luther King Jr. Boulevard and Ortiz Avenue was the parcel of concern because when Eastwood Village came before the Board and because the area was the gateway into the City, the Board talked about the intersection being aesthetically pleasing. Ms. Artuso stated that while a necessity a gas station and convenience store were not aesthetically pleasing and made a statement for the City. Ms. Artuso stated that the amount of square footage might be necessary to serve a gas station but part of the corner could be preserved. Mr. Hurley stated that a previous Race Track gas station design had been placed on the parcel to make sure that circulation worked. Mr. Hurley stated that the gas stations and convenience stores now had nice metal roofs over the pump areas and the buildings were not the old typical box. Mr. Hurley stated that the site was overly landscaped and all the upscale items were complimentary. Mr. Hurley stated that a gateway to the City needed to be an identity area, which was fine, but the adjacent surrounding uses also had to be considered. Mr. Hurley stated that there were two (2) gas stations across the street and just like Wendy's and Burger King the businesses competed against each other on every corner possible. Ms. Artuso stated that the question was whether the corner parcel could be functional if reduced. Mr. Hurley stated that he could work with the owner and the potential buyer to make the parcel as compact as possible but the out parcels were split based on experience with the Publix shopping centers. Mr. Hurley stated that the desire was to make the out parcels a little larger than typical because the out parcels were usually two hundred (200) feet by one hundred and eighty (180) feet. Mr. Hurley stated that the proposed out parcels were a little large to allow the extra room for landscaping. Mr. Gillis stated that some of the surrounding uses were not very nice and all the "big boxes" had been taken but questioned what was being done to make the site a gateway to the City. Mr. Gillis stated that fast food restaurants and gas stations had been mentioned but those conveniences could be located at Alico Road, Daniels Parkway, Colonial Boulevard, Lockett Road and Palm Beach Boulevard. Mr. Gillis stated that the question was what was being done with the subject parcel to make it the gateway to the City and to reflect the kind of investment that would be put into the Eastwood Village

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Planned Unit Development. Mr. Hurley stated that one (1) parcel could not be the gateway into the City. Mr. Hurley stated that an upscale product would be at the site, similar to Gateway for the building in the back, which would not be the typical metal style building but a building with character. Mr. Hurley stated that the out parcels in front would be a typical design of out parcels. Mr. Hurley stated that the owner would provide a good product for the parcel because the uses around the site were junkyards and large tractor equipment sales. Mr. Hurley stated that the City could have said no large equipment sales in the area when the use was proposed. Mr. Hurley stated that the Dr. Martin Luther King Jr. Boulevard had Cat Tractors at the sidewalk. Mr. Hurley stated that the proposed project would have upscale landscaping and Eastwood Village would have a lake at the corner. Mr. Hurley stated that a water feature could be at the out parcel and the out parcel could be moved to Ortiz Avenue. Mr. Hurley stated that the project was upscale that would improve the area while dealing with the uses surrounding the site. Mr. Hurley stated that people would come into the gateway and the left eye would like at one (1) development and the right eye would see all the surrounding uses. Mr. Hurley stated that nothing was going to happen at the surrounding sites and Eastwood Village would have commercial uses in the front with residential behind. Mr. Hurley stated that the City would not tear the public works building down and construct linear buildings for the public works section. Mr. Hurley stated that what the applicant was trying to do for a gateway was to provide upscale projects. Mr. Mudgett stated that the Dover-Kohl plan was a plan and a direction but the plan was a direction. Mr. Mudgett stated that the plan was what the City envisioned for the Dr. Martin Luther King Jr. Boulevard corridor. Mr. Mudgett stated that the proposed project was an appropriate use and would have no major objections but everything the developer could do to enhance the character and to comply with the Dover-Kohl plan should be done. Mr. Mudgett stated that the Board had a couple discussions regarding the corner on Colonial Boulevard near Interstate-75 but the applicant had a one hundred and fifty (150) foot Florida Power and Light easement across the corner of the property and nothing could be done. Mr. Mudgett stated that the main point of the Planning Board was that the corner was a gateway and something needed to be done to acknowledge same. Mr. Mudgett stated that there were noxious uses along the corridor but hopefully the strength of what would happen with the Dover-Kohl plan would displace some of the uses sooner or later. Mr. Mudgett stated that the property would be too valuable to have a junkyard there or a truck sales facility. Mr. Mudgett stated that the purpose of the plan was to envision the future of the corridor. Mr. Mudgett stated that the current developer was the first project to be involved with the Dover-Kohl plan. Mr. Mudgett stated that the City had the right to look for positive reinforcement of the plan. Mr. Mudgett stated that there was not a lot of walkability that would occur in the subject area because there was nothing for connectivity at the present time. Mr. Mudgett stated that there would be a lake at the corner of Eastwood Village, the Nature Center was on another corner and one (1) corner would unfortunately be a Walgreens, which the City would not have much control over, but the proposed project provided an opportunity to enhance the corner. Attorney Strayhorn stated that the project was caught between the

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conflict old and new and the proposal was not exactly what fit. Attorney Strayhorn stated that the Dover-Kohl plan provided that there should be parking along the road but there would not be any of that and trees should be between the road and the sidewalk, which the Engineering Division generally hated. Attorney Strayhorn stated that the landscaping items the development could provide but there could not be as solid a buffer on Dr. Martin Luther King Jr. Boulevard as there could be on Ortiz Avenue. Attorney Strayhorn stated that a suggestion from staff was to buffer Ortiz Avenue. Attorney Strayhorn stated that there were elements of the Dover-Kohl plan that could be reflected in the landscaping when presented to City Council that tried to incorporate as many Dover-Kohl issues into the plan. Attorney Strayhorn stated that Dover-Kohl liked trees between the curb and the sidewalk, unlike the Florida Department of Transportation who preferred trees inside the sidewalk. Attorney Strayhorn stated that one (1) of the plans provided for a roundabout where the right-in/right-out was located but the Engineering Division indicated that a roundabout could not be placed at the location. Attorney Strayhorn stated that there were directions where something would not work because of this or that but there were landscaping features and many features contained in the Dover-Kohl study that the applicant could incorporate in Plan A. Attorney Strayhorn stated that the proposed would not be a perfect gateway and Eastwood Village would be the more perfect gateway but an attempt to make more of a gateway could be accomplished through landscaping efforts. Attorney Strayhorn stated that there were several prospective tenants that had expressed interest in the location but there were no signed tenants. Attorney Strayhorn stated that there could possibly be a Bank of America at the corner, which Dover-Kohl indicated that banks were favorable tenants, but a bank had not signed up for the corner parcel. Ms. Luongo stated that the developer reserved the right to review the look of the buildings. Ms. Luongo stated that making the buildings look right would detract from a gas station because of landscaping and nice tiled roofs. Ms. Luongo stated that the look had to be regulated. Ms. Luongo stated that national tenants would have travelers on Interstate-75 stopping at the exit within the City rather than going to Daniels Parkway or the other exits, which would be a boost to the economy of the City. Ms. McCormick stated that most of the conversation had addressed consistency with the Land Development Code or the Comprehensive Plan but the environment should also be addressed. Ms. McCormick stated that environmental surveys should be included in the proposed plan and the statement was made that all the landscaping could create trouble with water management required by the South Florida Water Management District. Ms. McCormick stated that the landscaping would be improved but might need to be modified later because a water management permit had not been received. Mr. Hurley stated that there were no environmental issues on the subject site. Mr. Hurley stated that a water management permit had been approved and received for Site A. Mr. Hurley stated that the landscaping was upgraded by increasing the tree diameters from the Code required to the next size up and the addition of more trees in the rights-of-way. Mr. Hurley stated that the permit from the South Florida Water Management District had been received and the landscaping worked with water management. Mr. Hurley stated that

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more trees could be added but where was the question. Mr. Hurley stated that the landscape plan provided to the Board indicated that the upscale in landscaping was above and beyond two (2) or three (3) times what was required by City Code. Ms. McCormick stated that the area was wooded and thought that there was to be a review as to how much was native vegetation, upland and wetland distinction, and that part of the open space would be a preservation of uplands not related to whether there were wetland impacts or not. Ms. McCormick stated that the open space was to be part of the indigenous preservation. Mr. Hurley stated that comments were not received about preservation of certain areas. Mr. Hurley stated that the subject site was totally inundated with the water table being above the site. Mr. Hurley stated that materials on the site were pepper trees and melaleuca trees with maybe sporadic pines. Mr. Hurley stated that the problem in trying to preserve areas on site was that certain natural areas were down at a lower water table and everything around the site would be built up, which would retain water and kill whatever vegetation was preserved. Mr. Hurley stated that the subject site would have to be raised just like the Eastwood Village site three (3) to four (4) feet because the property was so low. Ms. McCormick stated that because the land was so low there could be wetland impacts. Mr. Hurley stated that there were no wetland impacts. Mr. Hurley stated that there was less than a quarter (1/4) acre of wetland. Ms. McCormick stated that there should be something submitted as part of the application that there was no native vegetation on-site and there was no need to preserve any of the uplands as part of the open space requirement. Mr. Gillis stated that the Florida Department of Transportation needed to approve the access points. Mr. Hurley stated that a development order permit was issued for Ortiz Avenue because the roadway was a Lee County road and third round comments had not been submitted to the Florida Department of Transportation because the owner wanted to obtain zoning first. Mr. Hurley stated that Florida Department of Transportation and the City had been coordinated because of the want to have the access located directly across from the Park 82 development. Mr. Hurley stated that the access points also had to be coordinated with the Zemel family. Mr. Hurley stated that the Florida Department of Transportation would be worked with on drainage issues. Mr. Hurley stated that the Notice of Intent had not been received yet from the Florida Department of Transportation to indicate that the project was in the process. Mr. Ford stated that the question was if the Comprehensive Plan was in the process of being amended, where in the process would applicants be impacted by the proposed changes. Ms. Persia stated that the Comprehensive Plan amendment should occur prior to any other approvals. Mr. Ford stated that an applicant could apply for a planned unit development but a month later an amendment to the Comprehensive Plan could be approved and questioned when the amendment would impact the application for a planned unit development. Ms. Artuso stated that if an application had been submitted but the Comprehensive Plan was changed after submittal, the question was whether the date that the application was submitted or the date of approval of the Comprehensive Plan amendment prevailed. Ms. Persia stated that an application should be submitted as soon as possible but staff would work with an applicant if a Comprehensive Plan amendment was subsequently

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approved. Ms. Dalton stated that the question by Mr. Ford was really a legal question. Mr. Ford stated that there was confusion because the applicant had submitted an application for a planned unit development and was in the process when the Comprehensive Plan amendment was approved. Ms. Persia stated that the Comprehensive Plan amendment had already been approved. Mr. Ford stated that there had always been a Comprehensive Plan but the impact on the subject planned unit development was after the application was already in the process. Mr. Ford stated that the question was whether the City went back to applicants after the fact and asked that the applicant reapply or if the amendments to the Comprehensive Plan were in effect from the date of adoption forward. Ms. Persia stated that the future land use of the site had not changed since the application for a planned unit development was submitted. Ms. McCormick stated that the Future Land Use Map had a zoning overlay that had not changed since the initial submittal of the planned unit development application. Ms. McCormick stated that the Future Land Use Map currently and before the Dover-Kohl study would not allow industrial use in the subject area. Mr. Mudgett stated that the staff report contained the comment that approval would be an up-zoning. Ms. Artuso stated that there was confusion because there was approval for the project but three-quarters (3/4) of the way through the process then staff determined that the project was inconsistent with the Comprehensive Plan. Ms. Artuso stated that the question was at what point was the project affected. Mr. Mudgett stated that there was probably not a detailed Comprehensive Plan review performed early in the process. Ms. Dalton stated that Attorney Strayhorn hinted at equitable estoppel. Ms. Dalton stated that Attorney Strayhorn was asked when he perceived the rights of the applicant to vest and asked Assistant City Attorney Migut when in the process legally did the rights of an applicant vest for purposes of equitable estoppel. Assistant City Attorney Migut stated that each application had to be reviewed on a case-by-case basis and there were different contributing factors in the current case which would have to be reviewed much closer in order to competently answer the question. Ms. Artuso stated that there was confusion as to how the project got to the current point when the plans were almost approved and then all of a sudden the brakes had been put on the development. Ms. Dalton stated that staff had not commented and normally did not comment on interchanges with the applicant over the course of over a long period. Ms. Dalton stated that the applicant had made representations about how staff had chosen to conduct the matter and maybe should have the opportunity to respond to the allegations. Ms. Persia stated that Planning Division staff reviewed the application as soon as the information was received. Ms. Artuso stated that she questioned whether or not staff had given a favorable review up until the point of the Dover-Kohl plan. Mr. Mudgett stated that the Dover-Kohl plan and the up-zoning were the issues. Ms. Persia stated that the Planning Division staff received the application in December 2007 because the date on the letter was January 2008. Ms. Artuso stated that clarification was needed because information provided indicated that the application had been in the works for two (2) years. Attorney Strayhorn stated that acquisition of the property occurred at the end of August 2006, the Dover-Kohl plan was approved at the end of November 2006 and the application was submitted at the beginning of

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November 2006. Attorney Strayhorn stated that the project was in the works prior to site acquisition. Attorney Strayhorn stated that the letter cited by Ms. Persia was dated January 11, 2008. Attorney Strayhorn stated that there was no dispute about pre-application, due diligence, close of the property, pre-application and the Dover-Kohl plan being approved later. Attorney Strayhorn stated that the timeframe that was the most relevant was not only those but also there were two (2) issues. Attorney Strayhorn stated that the argument could be made that consistency with the Dover-Kohl plan had to be there post adoption of the Dover-Kohl plan, whether legal or fairness. Attorney Strayhorn stated that governments talk about a lot of laws but until adopted, did someone have to plan or not plan for them. Attorney Strayhorn stated that the applicant tried to plan for them but he meant legally. Attorney Strayhorn stated that the project was a classic planned unit development with zoning of Business One (B-1) to a planned unit development for a mix of uses and flexibility. Attorney Strayhorn stated that now we are hearing that in the City no longer could planned unit developments handle what Policy 2.11, Comprehensive Plan, had always provided could be handled or a mix of uses. Attorney Strayhorn stated that the January 11, 2008 letter was received yesterday when a copy of the agenda packet was obtained. Attorney Strayhorn stated that the applicant had not received the January 11, 2008 letter prepared by Ms. Persia but had received the staff report that did not appear good. Attorney Strayhorn stated that until yesterday he did not have the background to understand where the applicant stood. Attorney Strayhorn stated that the application was submitted prior to the Dover-Kohl plan, which was largely subjective because the more objective was the brand new thought that what the Board had done, as well as City agencies, in the past twenty (20) years could no longer be done without a Comprehensive Plan change, i.e. planned unit developments could not accomplish. Attorney Strayhorn stated that the idea was far beyond him and was probably something for a City Attorney or City Council because he would not opine whether what was done was right or wrong but the project took the same process as always. Ms. Artuso stated that there was confusion but she was on both sides of the fence because she could support the project and anything would be an improvement over what was currently located on the site. Ms. Artuso stated that she lived downtown and would like to see something at the location but if the site was a gateway to the City the parcel at the corner would be a problem. Mr. Hurley stated that the timeframe was November 1, 2006 when the application was submitted and November 20, 2006 the resolution was adopted by City Council that approved the Dover-Kohl revitalization plan. Mr. Hurley stated that the effective date of the Dover-Kohl plan was November 20, 2006. Ms. Dalton stated that she questioned whether the applicant and representatives were aware of the charrettes, various discussions and hearings on the Dover-Kohl plan prior to the submission of the application. Mr. Hurley stated that he was aware of the charrettes but did not attend any of the meetings. Ms. Dalton stated that there was awareness of the process and an attempt was made with consideration of the adjacent uses. Eunice Usher, Senior Project Manager, Engineering Division, Public Works Department, stated that the biggest problem that the Engineering Division had was with the slip road that was proposed because the

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design did not provide stacking that was needed and the concept was not acceptable. Ms. Usher stated that the project would abut an arterial road, which would require stacking. Mr. Mudgett stated that the project was appropriate for the location. Mr. Mudgett stated that calling the "big box" retail a positive and the proposed function not a positive was not appropriate because there was not a lot of difference and the stuff along the roadway was what would really make the visual difference to the gateway to Fort Myers. Mr. Mudgett stated that there were two (2) issues with the Dover-Kohl plan issue being subjective. Mr. Mudgett stated that as a professional, he could make a case for approving the project in light of the Dover-Kohl plan. Mr. Mudgett stated that the Dover-Kohl issue was subjective, which could be worked through, and the other issue was for the planners and the lawyers. Mr. Mudgett stated that the larger issue that had been referred to was whether planned unit developments as had been done all along could continue under the interpretation. Mr. Mudgett stated that whether the interpretation was legal he was not qualified to determine but the two (2) things were upon which the denial by staff was based. Mr. Mudgett stated that if the Board could work a way through the issues, with the subjective issue being able to be worked through, the project was positive. Mr. Mudgett stated that the traffic issues were not the number of trucks going through the intersection but the amount of lanes. Mr. Mudgett stated that with five (5) to eight (8) lanes there would not be a friendly intersection for pedestrian crossing. Mr. Mudgett stated that the walkability and connectivity issue had to be visual, connecting to Eastwood Village and connected to that gateway. Mr. Mudgett stated that the gateway was the key to how the project could be improved upon and something should be done to enhance the entrance to Fort Myers but every other element about the plan could be supported. Mr. Gillis stated that the most concern was with the out parcels along Dr. Martin Luther King Jr. Boulevard. Mr. Gillis stated that the slip road would not work and that type of road was not wanted against an arterial roadway. Mr. Gillis stated that the Board should be looking for enhanced landscaping and signage to make the entire frontage along Dr. Martin Luther King Jr. Boulevard and Ortiz Avenue nicer as the gateway. Mr. Gillis stated that when the vacant parcel to the east of the subject site came before the Board, the same would be required. Mr. Gillis stated that he was in agreement with Mr. Mudgett in that the out parcels were the most important issue along State Road 82 with the use in the back less of a concern. Ms. McCormick stated that the representatives did a great job of explaining the project and the project should move forward but there was uncertainty as to how to move the project forward legally. Mr. Ford stated that he was definitely in agreement with the project and the gateway issue could be addressed with landscaping and fountains. Mr. Ford stated that the gateway issue was not necessarily the buildings on the sides of the road. Mr. Ford stated that the issue on his mind was a legal issue on what the Board could and could not do, which should be addressed. Mr. Ford stated that clarification was needed by whoever was responsible. Mr. Mudgett stated that the job of the Board was to judge whether the project met the Comprehensive Plan. Mr. Mudgett stated that the question was whether up-zoning was illegal and had the Board been doing the wrong thing in the history over the last twenty (20) years of planned

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unit developments and whether anything had been up-zoned. Mr. Mudgett stated that the problem seemed to be the issue and whether the actions had been illegal. Assistant City Attorney Migut stated that the Board had to make a determination based on the information received both orally and in writing and on the record. Assistant City Attorney Migut stated that based on the understanding of the evidence the Board had to determine whether or not the project was consistent with the Comprehensive Plan. Assistant City Attorney Migut stated that the issue of up-zoning would be reviewed if the Board desired but the specific application was before the Board and based on the knowledge today and the understanding of testimony and evidence the Board had to determine whether the proposed planned unit development was consistent with the Comprehensive Plan. Mr. Mudgett stated that staff felt that the project was not consistent with the Comprehensive Plan but he did not believe it. Mr. Mudgett stated that judging by how the Board had acted in the past, the Board had done the same thing before and it was not illegal then. Ms. Dalton stated that the Board had the ability to find the planned unit development consistent or not consistent as the finders of facts. Ms. Artuso stated that the reason the area of Corkscrew Road looked the way it did was because of the Estero Design Committee, which had very stringent requirements and just about everything built in Estero had to have a barrel tile roof. Ms. Artuso stated that the Estero Design Committee controlled the look of the area but the City of Fort Myers did not have any similar guidelines. Ms. Artuso stated that if the subject area was the gateway to the City, the Board should impose restrictions as to design standards, such as minimizing signage. Ms. Artuso stated that the commercial parcels would want to have signage but something more attractive was needed. Ms. Artuso stated that just trees being planted did not create a gateway and the look of the Interstate-75 exists should be changed because this exit was a gateway and the Board should address the issue. Mr. Mudgett stated that another element was to recognize the intersection as a gateway, which was proposed in Plan B. Mr. Mudgett stated that Plan A should keep the intersection wide open with a gateway feature, which might go a long way toward giving the Board what the Board was after. Mr. Ford stated that someone should design a gateway entry into the City on State Road 82 and the problem would be addressed. Ms. Artuso stated that the out parcel on the corner of Dr. Martin Luther King Jr. Boulevard and Ortiz Avenue could be made rectangular and the corner piece saved. Ms. Artuso stated that the gas station even with a nice metal roof was not aesthetic. Ms. Artuso stated that there would be a nice detention area filled with Cypress trees, which would help on Ortiz Avenue, but some of the corner parcel should be preserved because something needed to be done at the corner and not have a car vacuuming facility at the corner. Mr. Hurley stated that the owner agreed to commit to a portion of the corner parcel at Dr. Martin Luther King Jr. Boulevard and Ortiz Avenue to do some identify as asked by the Board. Mr. Hurley stated that a meeting could be scheduled with the landscape plans reviewer, Rick Dalton, to assist with the design. There being no one else present to the heard, it was moved by Mr. Mudgett to go against the recommendation of the staff to deny the planned unit development and to approve the submittal by finding that the submittal by the applicant was consistent with the Comprehensive Plan with

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the additional that the applicant would work with the City to enhance the gateway characteristics of the frontage on Dr. Martin Luther King Jr. Boulevard and to devote a portion of the corner of Dr. Martin Luther King Jr. Boulevard and Ortiz Avenue to identity features. Mr. Mudgett stated that the slip road issue was not addressed because the slip road was part of Plan B, which was not the submittal nor included in the motion. Seconded by Ms. Artuso. Ms. McCormick stated that she was not comfortable with moving the project forward and not because of the proposed design or the use. Ms. McCormick stated that the applicant had proven to the Board that the project could work and could be a nice feature in the area but she did not recall the Board actually going through an up-zoning. Ms. McCormick stated that she remembered going through many Comprehensive Plan amendments because a project did not match the Future Land Use Map. Ms. McCormick stated that the Comprehensive Plan needed to be changed before the Board could approve the project because she could not find the project consistent with the Comprehensive Plan based on the presentation today. Ms. McCormick stated that her non-support was not because she was against the project or did not see benefits and could move forward but she did not see how the project was consistent with the Comprehensive Plan. Ms. Artuso stated that the issue was when the Comprehensive Plan affected the design of the subject project and nobody could give a clear answer. Mr. Mudgett stated that the Comprehensive Plan had been in place and the issue was the Dover-Kohl plan that was introduced late in the process. Ms. Artuso stated that the Dover-Kohl plan was introduced after the application was submitted. Ms. McCormick stated that the difference was whether there should be a "big box" at the location or something else because Dover-Kohl plan was the "big box" issue but the actual trucking was the land use issue that did not meet the schedule currently in the Future Land Use Map. Ms. Dalton stated that the project was great and the planners had worked very hard. Ms. Dalton stated that the landscaping firm had worked extremely hard and the team had made an excellent presentation. Ms. Dalton stated that she concurred with Ms. McCormick because there was a significant Comprehensive Plan issue and Future Land Use Map issue. Ms. Dalton stated that she was not ready to set a precedent by going against that although the project was great. Ms. Dalton stated that an amendment to the Comprehensive Plan amendment should have moved forward prior to the project moving forward. Ms. Artuso stated that she was in favor of the project but understood the land use issue. Ms. Artuso stated that she was in favor of the project but could be inconsistent with the Comprehensive Plan. Mr. Mudgett stated that the legal issue had been brought up. Ms. Artuso stated that the Board did not have an answer to the legal question. Mr. Mudgett stated that the question was where in the process did the determination on legality occurred. Mr. Mudgett stated that the City, staff and City Council could decide that the project was indeed illegal. Ms. Dalton stated that once the Board voted, City Council could have the attorneys for City to research the issue. Ms. Artuso stated that she supported the project with the conditional discussed by the Board and would let City Council discuss the legal issue. Ms. McCormick stated that as the project moved forward, something should be an entrance feature and there should be more information about the front parcels. There being no one else

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present to the heard, it had previously been moved by Mr. Mudgett and seconded by Ms. Artuso to go against the recommendation of the staff to deny the planned unit development and to approve the submittal by finding that the submittal by the applicant was consistent with the Comprehensive Plan with the additional that the applicant would work with the City to enhance the gateway characteristics of the frontage on Dr. Martin Luther King Jr. Boulevard and to devote a portion of the corner of Dr. Martin Luther King Jr. Boulevard and Ortiz Avenue to identity features. After due consideration, a roll call vote was taken as follows: Chairwoman Dalton - Nay. Ms. Artuso - Aye. Mr. Ford - Aye. Mr. Gillis - Aye. Ms. McCormick - Nay. Mr. Mudgett - Aye.

NO. 10 - EX PARTE COMMUNICATIONS None.

Prospective witnesses and those persons to present testimony were duly sworn by David Migut, Assistant City Attorney.

NO. 10 - PUBLIC HEARING: REQUEST FROM WDK INVESTMENTS, LLC, FOR PRELIMINARY PLAT APPROVAL FOR COLONIAL COMMONS, 3511 ORTIZ AVENUE Pursuant to advertisement in the Fort Myers News-Press, issue of April 29, 2008, Affidavit of Publication on file, a public hearing was held at this time on a request from WDK Investments, LLC, for preliminary plat approval for Colonial Commons, 3511 Ortiz Avenue.

Overview

WDK Investments, LLC, is requesting preliminary plat approval of Colonial Commons, a subdivision, located at 3511 Ortiz Avenue. The preliminary plat includes fifteen (15) tracts on seventy point zero nine (70.09) acres, more or less. The tracts will be for private rights-of-way, open space, future development, water management and conservation area. The property is zoned Commercial General (CG) and Commercial Intensive (CI). The Future Land Use is Business District One (B-1). The applicant has one (1) year from the date of preliminary plat approval to submit the final plat for recording.

Recommended Action

Find the preliminary plat of Colonial Commons, a subdivision, consistent with the Comprehensive Plan, and recommend approval to the City Council, subject to the condition as follows:

The property shall be subdivided in accordance with the subdivision platting requirements of Florida Statute 177 and Chapter 130, Subdivisions, Land Development Code, prior to the issuance of building permits.

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Michael Neff, Heidt and Associates, Inc., stated that the Colonial Commons project was located north of the corner of Ortiz Avenue and Colonial Boulevard. Mr. Neff stated that the preliminary plat was for the decent size out parcels for future use and included platting of the connection road through the site. Ms. McCormick stated that the project was large and although the issue before the Board was for preliminary plat approval, she questioned whether there were environmental issues on the site. Mr. Neff stated that the site had a site clearing and tree removal permit for the project and a South Florida Water Management District permit had also been issued. Mr. Neff stated that the site clearing permit had been issued by the City. Ms. McCormick stated that native vegetation on the site should have been protected. Mr. Neff stated that the master water and sewer plan, Sheet 5-19 of the site work submittal, should be included in the agenda packet. Mr. Neff stated that there were two (2) areas of wetlands on site that were protected as part of the South Florida Water Management District permit. Ms. McCormick stated that there could be uplands that were part of the open space where a percentage of native indigenous could have been preserved. Mr. Neff stated that there were no uplands and only wetlands on site. Belinda Smith, Planner, Development Services Division, Community Development Department, stated that staff supported the application and recommended approval of the preliminary plat. Ms. McCormick stated that she thought something was added into the Growth Management Plan where if there was a large tract of land that was unaltered and a wooded area that a percentage of the open space would be kept if determine to be indigenous. Ms. Artuso stated that fifty percent (50%) of the open space needed to be preserved. Ms. McCormick stated that the provision mimicked Lee County and a vegetation plan was not provided to determine how much was found to be indigenous. Ms. McCormick stated that if there were ten (10) acres of wooded pine flats on the seventy (70) acre site, fifty percent (50%) of the ten (10) acres or five (5) acres should be preserved or incorporated into the open space requirements. Maureen Lund, Manager, Development Services Division, Community Development Department, stated that the requirement would be reviewed at the time of permit application because the requirement was part of Chapter 138, Vegetation. Ms. Lund stated that the applicant could designate the area and commit to preservation later because flexibility was needed for when the end user was known. Ms. Lund stated that at the platting stage there was vacant raw land and the applicant wanted to ensure that there were legal lot size, access and utilities but all other Code requirements would come at the time of actual development. Ms. McCormick stated that conservation areas were listed and the applicant would have to keep indigenous preservation in mind during the next step. Ms. Lund stated that this would be the time for identification and preservation in the conservation easements. Ms. Artuso stated that she brought a project to the Planning Board and the discussion arose about fifty percent (50%) of the indigenous area was to be preserved as part of the open space but she could not reference the Code section. Ms. Lund stated that the requirement was in Chapter 138, Vegetation, which provided that if there was indigenous vegetation on site that a percentage had to be preserved. Ms. McCormick stated that the problem was that the applicant already had a tree clearing permit and there

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was no way to know whether the applicant was supposed to have some of the open space kept if there was no vegetative survey at this point. Ms. Lund stated that a site plan of development had to be submitted and the application might have been made application but the City needed a site plan. Ms. Lund stated that a plat was first because a development plan could not be obtained without platting. Ms. Lund stated that the applicant might have gotten anxious and applied for a tree removal permit but the permit could not be issued until the site plan was submitted. Mr. Neff stated that the clearing permit had been issued by the City. Ms. McCormick stated that she now had a really big problem. Ms. McCormick stated that the requirement was new but was very important to the citizens of the City because entire big parcels should not be clear cut. Ms. McCormick stated that the subject parcel at seven (70) acres was very large and there should have at least been a vegetation survey as part of the preliminary plat application so the Board could determine if there was anything that should be incorporated into the open space. Mr. Mudgett stated that at least application should have been made for a tree removal permit. Ms. Dalton stated that the Board could condition approval on vegetation issues raised by Ms. McCormick. Mr. Neff stated that the tree removal and site clearing permit was issued in 2006. Ms. Lund stated that if issued under one (1) unified piece, the matter needed to be investigated. Mr. Neff stated that the site had been cleared because the permit had been issued. Mr. Neff stated that a vegetation plan would be easy now because there would be the wetlands and nothing else was there. Ms. Lund stated that the permit was issued and a review would be made. Mr. Mudgett stated that the point was moot on the present project because the vegetation was gone. Ms. McCormick stated that she did not want the situation to happen again. Ms. McCormick stated that the Board should be told at the next meeting how there was disconnect and that the situation occurred. Ms. McCormick stated that maybe there was a timing issue and permit approval occurred before the new language was approved. Ms. McCormick stated that how the two (2) departments were talking should be reported. Ms. Lund stated that there was a Code requirement, regardless of Chapter 138, Vegetation, that addressed preservation of on site indigenous vegetation and issuance of tree removal permits, which were not to be issued until there was a plan of development. Ms. Lund stated that the requirement had existed for a long time and she would look into the incident to report to the Board. There being no one present to be heard, it was moved by Mr. Mudgett, seconded by Ms. McCormick, and unanimously carried to find the preliminary plat of Colonial Commons, a subdivision, consistent with the Comprehensive Plan, and recommend approval to the City Council subject to the condition that the property be subdivided in accordance with the subdivision platting requirements of Florida Statute 177 and Chapter 130, Subdivisions, Land Development Code, prior to the issuance of building permits and that further information be provided to the Board on how the vegetation was removed without a site plan or any reference to previous vegetation.

NO. 9 – PUBLIC HEARING: ORDINANCE AMENDING THE LAND DEVELOPMENT CODE, CHAPTER 98, ADMINISTRATION, CHAPTER 3, PROCEDURES, TO ADD A FORMAL PROCESS FOR STAFF REVIEW OF SITE

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WORK PERMIT APPLICATIONS AND PLANS. Pursuant to advertisement in the Fort Myers News-Press, issue of April 29, 2008, Affidavit of Publication on file, a public hearing was scheduled to be held at this time on an ordinance amending the Land Development Code, Chapter 98, Administration, Chapter 3, Procedures, to add a formal process for staff review of site work permit applications and plans. Belinda Smith, Planner, Development Services Division, Community Development Department, stated that the public hearing on an ordinance amending the Land Development Code, Chapter 98, Administration, Chapter 3, Procedures, to add a formal process for staff review of site work permit applications and plans should be continued to the meeting of the Board to be held on June 11, 2008. Maureen Lund, Manager, Development Services Division, Community Development Department, stated that any comments from the Board should be submitted to staff because a discussion was expected. Ms. Lund stated that the proposed ordinance was relative broad so that the City was not locked into a codified ordinance that had to be tweaked for procedures later. Ms. Lund stated that any comments should be sent to staff. It was moved by Mr. Ford, seconded by Mr. Mudgett, and unanimously carried to continue the public hearing on an ordinance amending the Land Development Code, Chapter 98, Administration, Chapter 3, Procedures, to add a formal process for staff review of site work permit applications and plans to the meeting of the Board to be held on June 11, 2008.

Mr. Ford left the meeting at 3:50 o'clock p.m.

NO. 11A – OTHER BUSINESS: APPLICATIONS FOR APPOINTMENTS TO ADVISORY BOARDS Maureen Lund, Manager, Development Services Division, Community Development Department, stated that an Application for Appointment to Advisory Boards had been provided in the agenda packets by the City Clerk's Office. Ms. Lund stated that the City Clerk wanted the board members to be aware that reapplication was necessary if a board member wanted to be reappointed to a board effective October 1, 2008.

NO. 11B – OTHER BUSINESS: SUMMER VACATION SCHEDULES OF THE BOARD MEMBERS Ms. Dalton stated that summer vacation schedules were on the agenda but there was no longer a quorum. Assistant City Attorney Migut stated that the Board could discuss summer vacation schedules if no action was taken by the Board. Ms. McCormick stated that summer vacation schedules was discussion at the meeting held April 9, 2008 but Ms. Dalton was not in attendance if she would like to discuss vacation plans.

NO. 11C – OTHER BUSINESS: SECOND MEETINGS OF THE MONTH Mr. Mudgett stated that whether a second meeting of the month would be needed during the summer was unknown. Belinda Smith, Planner, Development Services Division, Community Development Department, stated that there would be a second meeting in May, which would be held on Tuesday, May 27, 2008. Mr. Mudgett stated that if a second meeting was necessary in July, he would not be in attendance.

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NO. 11A – CONTINUED OTHER BUSINESS: APPLICATIONS FOR APPOINTMENT TO ADVISORY BOARDS Ms. Dalton stated that she had turned in her application for reappointment to the Planning Board and requested verification that the application had been received. Ms. Artuso stated that she had also submitted her application for reappointment to the Planning Board. Marilyn Fernley, Clerk to the Board, stated that verification that the City Clerk’s Office had received the Applications for Appointment to Advisory Boards would be provided.

The meeting adjourned at 3:53 o’clock p.m.