

PLANNING SERVICES

**MINUTES OF THE PLANNING BOARD**

**August 13, 2019**

**MEMBERS PRESENT:** Chairman Paul Ritz, Danny Grundhoefer, Laurie Murphy, Ryan Wiggins, Charletha Powell

**MEMBERS ABSENT:** Kurt Larson, Eladies Sampson

**STAFF PRESENT:** Leslie Statler, Planner, Cynthia Cannon, Assistant Planning Services Administrator, Gregg Harding, Historic Preservation Planner, Heather Lindsay, Assistant City Attorney, Brad Hinote, Inspections

**OTHERS PRESENT:** Mayor Grover Robinson, Councilwoman Sherri Myers, Jonathan Connell, John Connell, Renee Foret, Sam Lundy, Steve Geci, Dottie Dubuisson, Rand Hicks

**AGENDA:**

- Quorum/Call to Order
- Approval of Meeting Minutes from July 9, 2019.
- **New Business:**
  1. **Amendment to Conditional Use Permit – 501 S. Palafox Street (Al Fresco)**
  2. **Aesthetic Review – 501 S. Palafox Street (Al Fresco)**
  3. **Preliminary Plat Review – “Whispering Creek” subdivision**
  4. **Reconsideration of LDC Amendment – Ice Machines**
  5. **Appointment of Planning Board’s Representative to the ARB**
- Open Forum
- Adjournment

**Call to Order / Quorum Present**

Chairman Ritz called the meeting to order at 2:02 pm with a quorum present and stated the new Board would be sworn in by Ms. Tice of the City Clerk’s office. **Ms. Wiggins made a motion that the Board observe a moment of silence for the passing of Councilman Wingate, seconded by Mr. Grundhoefer, and it carried unanimously.**

Chairman Ritz explained he would be glad to serve as Chairman of the Board should no one else be interested. **Mr. Grundhoefer made a motion to elect Mr. Ritz as Chairman, seconded by Ms. Wiggins, and it carried unanimously. Mr. Grundhoefer made a motion for Mr. Larson to continue as Vice Chairman, seconded by Ms. Wiggins, and it carried unanimously.**

**Approval of Meeting Minutes**

**Ms. Murphy made a motion to approve the July 9, 2019 minutes, seconded by Mr. Grundhoefer, and it carried unanimously.**

**New Business** – Chairman Ritz asked that the reconsideration of the LDC Amendment for ice machines be moved forward since Mayor Robinson had another meeting to attend. **Ms. Wiggins made a motion to move the item to the front of the agenda, seconded by Ms. Murphy, and it carried unanimously.**

**Reconsideration of LDC Amendment – Ice Machines** – Ms. Statler reminded the Board this item was unanimously denied at the last Board meeting. Mayor Robinson explained that the Code in a lot of ways discouraged mixed use and thought there were some weaknesses within it, one of which was dealing with the ice machines. He advised people were driving all over for cheap ice from the vending side, and we were denying them the opportunity to be present in other places. He understood the cosmetics and other issues, but pointed out one of the ice machines was in the expensive area of Pensacola Beach, which had not brought down the value of the area in any way and in fact it was actually a compliment to the surrounding area. Ms. Wiggins stated the concern last month was the advertisement, the colors and the locations. Mayor Robinson explained C-1 was multiple use, and the person operating the ice machine on 9<sup>th</sup> Ave. stated the structure came as is, and he could not modify it. Ms. Wiggins pointed out the ice machine in East Hill was very busy, and the advertising on the side told what the machine was for; she had no problem with it. Chairman Ritz also agreed that many of the customers appreciated it, but understood it was a vending machine. It was also designated for C-1 and would not go into a residential neighborhood with the exception of a neighborhood located in a C-1 district. It was determined the machine was currently non-compliant because of the lattice. Mayor Robinson explained if we allowed the lattice at the top, advertising, and the metal, it would become compliant. The current machines were grandfathered in, but if they were removed, they would not be able to return. Chairman Ritz stated what was built at that time was in compliance. Mr. Grundhoefer did not have a problem with placing these ice machines in certain areas and was not opposed to allowing them in the city. He was in favor of retaining some dignity and aesthetic restrictions to these and not allowing them to become billboards. Mayor Robinson was not looking for a change in the sign ordinance but trying to meet the demand of citizens. Ms. Statler confirmed the vending machines were not protected by the sign ordinance. Ms. Murphy pointed out the importance of looking at the long term maintenance of the lattice, and if we were going to have something long term, it should be sustainable and attractive. She asked if there was a compromise where the Board could look at the aesthetics. Mayor Robinson stated railing would be fine, but the question came down to the issue related to the coverage, and if that was the case, maybe the item should be tabled to research the amount of that coverage since the advertising is already displayed on the machine.

Ms. Dubuisson advised when this issue came up previously, there was a debate on whether this was light manufacturing because it was being made at the moment or a vending machine because a product was being loaded into it. She cautioned that there were now several things which could be included in vending, so if the Board changed the aesthetics, it should be noted we could be bringing negative things to neighborhoods which have to overcome negative architectural elements already. Chairman Ritz advised his home was in a C-1 zoning, and a vending machine could be placed in this location.

**Ms. Wiggins made a motion to deny without prejudice, seconded by Ms. Powell, and it carried unanimously.**

**Amendment to Conditional Use Permit – 501 S. Palafox Street (Al Fresco)**

Ms. Statler commended the applicants for meeting with staff on several occasions after the last Board meeting, and the project did comply with the conditional use requirements as cited in the LDC; it had met with the notice requirements as well. The following was the aesthetic review which was a formality since the kiosk design had changed since the July 2019 meeting, and staff brought the entire package to the Board for review.

Mr. Sallis presented to the Board and gave a background on the project for new Board members. He explained that in order to ensure everything was in compliance aesthetically with the LDC, they had relocated one of the Airstream trailers. He further explained this was an effort to build an open cover for the existing food markets on the corner of Palafox and Main. He then presented a video illustrating the project.

Chairman Ritz had reviewed the additional comments received, and there were very little comments directed toward the project, and those that were made were addressed during the submittal of final drawings and permitting. He explained in the Conditional Use Permit, they were looking to allow for the placement of mobile restaurants downtown at this corner on private property; for this particular installation, the mobile restaurants and kiosks were being proposed for review. Their existence was covered under a previous Conditional Use Permit, and to place roofing over the trailers would improve comfort for them and customers. He also appreciated the aesthetic changes made. Mr. Sallis explained they had met with the City and confirmed they would be able to maintain the type of anchoring they have for the Airstream trailers, and the retail kiosks would be moveable on casters for emergency plans. **Mr. Grundhoefer made a motion to approve the Conditional Use Permit, seconded by Ms. Wiggins, and it carried unanimously.**

#### **Aesthetic Review – 501 S. Palafox Street (Al Fresco)**

Chairman Ritz asked for any comments on the aesthetic side of the project. With no additional speakers, **Mr. Grundhoefer made a motion for aesthetic approval, seconded by Ms. Powell, and it carried unanimously.**

#### **Preliminary Plat Review – “Whispering Creek” subdivision**

Ms. Statler presented to the Board and advised this was a 20-lot subdivision for residential use, and the development had self-imposed setbacks since the zoning did not have setback requirements; the project also had the minimum required parking spaces. She also pointed out revisions had been made according to the Board’s comments, and a letter from Mark Norris was submitted stating for the most part the surveying comments had been addressed. Chairman Ritz pointed out that it was indicated anything further could be worked out prior to the final plat approval. He then opened the floor for Board comments.

Ms. Murphy advised during the previous meeting, there was some discussion about going back and making a few changes to possibly save vegetation, to create some type of stormwater infrastructure, and some type of mindful development since it is along an impaired water body. She also remembered Mr. Grundhoefer suggested reducing the number of lots, and when reviewing the packet, she noticed there were no changes on the physical components to the plat. She explained in the Comprehensive Plan and the City Code of Ordinances, the plat review should also encourage the discussion of the health and vitality of impaired water bodies, including the City taking advantage of obtaining easements along Carpenters Creek which had yet to be done, to protect wildlife habitats, and she felt the developer had not gone above and beyond to try to work with the Board to reduce the impacts to the wildlife habitat especially regarding Carpenters Creek. Even though she did receive a copy of the agreement between the City and the developer donating the easement to allow stormwater mitigation for the Whispers, she did not feel it was land donated as an environmental easement but donated as a requirement for development of the Whispers. She explained she could not support the project until there were some protections in place.

Mr. Connell advised this project was just a continuation of the Whispers. He stated the existing holding pond was in good shape and pointed out that in the 2014 flooding event, it did not flood into Carpenters Creek. He emphasized this zoning was C-2 which allows 135 units per acre, and they were only proposing 20, which was the most conservative use to be found. He also pointed out the animals would always have

access to the creek. He indicated if the holding pond needed attention, they would consult the City when developing the engineering drawings.

Ms. Murphy pointed out she was the one who gets the phone calls when residents get flooded. When you clear cut vegetation and remove trees of that size, you remove nature's way of handling sheet flow. We keep doing the same thing over and over and keep getting the same results. She advised when you build a new subdivision and use the same stormwater pond while removing the vegetation, the water will impact the neighbors. Mr. Connell stated they had not received any phone calls from the Whispers, Target had not been flooded out, the holding pond was sufficient, and they had met all the criteria for the City.

Councilwoman Myers, who represents District 2, stated the reason the stormwater pond looked as good as it did today was because of her complaints filed with Code Enforcement. She indicated the pond had to be restored several times, and Carpenters Creek would be negatively impacted by another subdivision. She pointed out she got numerous flooding complaints from Whispers, Cordova Regency and Ellison Place. She emphasized this property could be developed in a way that was more environmentally friendly to the creek. She indicated Fairhope developed houses in harmony with the environment, but she did not see that happening here. She suggested looking at the LDC and asking if this project was keeping with the LDC, especially the conservation part of it; she would love for the area to be developed responsibly.

Mr. Hicks, President of the Pineglades subdivision, was concerned with the water flow that carried debris into the creek to the point that it was nearly dead. They asked that maximum restraint be exercised in further development to avoid any further damage to that creek. He indicated the engineer for the City advised that all the water would be poured into the holding tank and would not escape to the creek. If there were creative ideas on how to reform this project, he would encourage that. He wanted to see a constructive conversation between developers and citizens to work in harmony.

Mr. Geci designed the previous pond and the pond for this development and wished every pond worked as well as this one, and he did not see an issue at all. He explained the State put a drag line in the creek under the mosquito control program which drastically changed the area. Mr. Grundhoefer reminded Mr. Geci that the Board had requested that they consider other practices with bio swales and things that would be environmentally friendly, but they basically came back with the same thing which involved clear cutting. Mr. Geci advised the land could not be developed without cutting down the trees. The only other way would be to go mid-rise, going straight up or reducing the lots. Ms. Murphy explained when they clear cut the lots, the sheet flow would go in all directions.

Ms. Wiggins indicated she grew up playing in Carpenters Creek but was not sure the Florida Statute allowed the Board to tell a developer what they could do on private property. Chairman Ritz asked staff what the Board could or could not do under this statute. Ms. Statler advised with the final plat approval a lot more of these concerns would be addressed. She read from the LDC, Section 12-8-8, Appendix B, regarding the preliminary plat requirements. Chairman Ritz agreed the Board should operate under the Code for preliminary plat approval. Ms. Powell pointed out it would be good for people to know that the Board had heard their concerns and asked was there an olive branch the developer could extend to the Board. Mr. Connell stated at this point they had not done any design work, but advised that they abide by the rules and go over the final plat with City Engineering staff. Derrick Owens had advised that the pond was good, and they would get his final approval before they could move forward. They asked the Board to let them take the first step up the ladder.

Ms. Dubuisson stated she had heard a lot of good innovative thoughts put out by the Board and thought that the developers were embracing those thoughts and would come back and cooperate with what they could. What she heard in today's meeting was that this was it, and this is all we can do. She explained that was not what the community had hoped for in regards to long range development, nor was it what was required in the Code because if in that Code you are to protect the surrounding areas and the environment, then they should meet the minimum Code, it down with any of the Board members who have ideas or ask

for any advice outside of the current staff working on it since our City engineers cannot design for them. She encouraged the developers to meet in a creative spirit with someone who sees opportunity that currently has not been presented, because she believed there was a solution which would work for them. She also pointed out with every storm, we are finding we have a weaker and weaker infrastructure that is not capable of responding to the increasing frequency with which we have rainfall. She stressed this was a prime site and could be one of the premiere developments to come out of our community in a while.

Ms. Wiggins asked if this piece of property was anywhere else, what would be the role of the Board – to make sure they followed the Code and to approve if they followed the Code. She did not feel the Board could tell a developer they had met the Code, but because of this location, they should go above and beyond. Mr. Grundhoefer pointed out the Board could not just ignore the things around the development and the community which the Board represents. Ms. Murphy believed the Board was put together to utilize creativity and represent the public and allow people to speak, and she felt it was the Board's opportunity to intercept at this point before it proceeded to Council. The bottom line was did the developer come back with a better plan to indicate they were willing to work with the City.

Chairman Ritz explained if the developer was allowed 135 units, and they were only putting in 20, they had already come down off the Code, and if the Board suggested 18, he believed that was legislating. Ms. Statler read the requirements for a subdivision plat subsection (F), but advised basically staff reviewed the plans for compliance with the Code and the Board would subsequently assess staff's review. She also pointed out that this project would return to the Board for final plat approval and then proceed to Council. In this review, Engineering would be taking a deeper look into their drainage calculations and drainage plan which was not a requirement of this preliminary plat review. If the Board voted to deny the preliminary plat, it would be required to furnish the applicant detailed reasons for rejection (**Section 12-8-8-A thru N**).

Mr. Grundhoefer asked the applicant if there was a way to implement some of these suggestions. Mr. Connell advised he would work with the Board and the community after the preliminary plat approval. Chairman Ritz emphasized that the applicant was also a citizen of the community. Ms. Powell asked if the Board would be able to submit Mr. Grundhoefer's drawing and suggestions before the next Board review, and was it worth holding up the process since the Board would have another review. Chairman Ritz explained the Board was approving the layout, and if it rejected the preliminary plat review, a list would have to be furnished to the applicant telling them what they needed to do. Ms. Statler confirmed the final plat would return to the Board. Mr. Connell asked if rejected, that the Board come back with engineering data and calculations they could go by. Ms. Statler pointed out for the developer to do any further work on the site and to possibly incorporate some of the ideas the Board would like to see, this would be the first step in that process.

**Ms. Wiggins made a motion to approve the preliminary plat, seconded by Ms. Powell, and it carried 3 to 2 with Ms. Murphy and Mr. Grundhoefer dissenting.**

**Appointment of Planning Board's Representative to the ARB** – Chairman Ritz explained one of the Board members was required to be on the ARB per the City's requirements. Ms. Statler advised that person would be a voting member who would also be approved by Council. She also explained the functions and districts covered by the ARB. Ms. Wiggins volunteered; **Ms. Murphy made a motion to appoint Ms. Wiggins to the ARB, seconded by Ms. Powell, and it carried unanimously.**

**Open Forum** – Ms. Dubuisson thanked the Board for their service and for thinking about the community as well as the applicants coming forward. She asked that the Board carry from each level of their decision making the memory of why certain things happen so that we can be corrective anywhere along the process to bring the best forward.

Chairwoman Myers thanked the Board for the very difficult decision and for a very thoughtful and respectful discussion even though she would have liked the vote to be different. She felt the vote was correct in her opinion legally but was hoping moving forward, the Board could come up with some ideas based on facts and the requirements of the law to address the issue of what has been done to Carpenters Creek. She advised if it was not for Ms. Murphy's cleanup, there would still be 30,000 pounds of trash in that creek which is impacted by these developments. She explained the City was not doing enough to protect the natural resources that we have, and they are quickly vanishing in District 2 and District 1. She asked if the Board could think of ways to improve the LDC to protect the environment, it would be greatly appreciated. Ms. Powell explained that the Board was in the position where it could not make the difference they wanted to make, but in the next phase where the applicant must give specifics, the Board would be in a better position to make those suggestions. Chairman Ritz reminded the Board of the Sunshine Law. Ms. Wiggins suggested submitting emails to Ms. Statler as an option to ensure all Board members were aware of the information before the next Board meeting.

**Adjournment** – With no further business, Chairman Ritz adjourned the meeting at 4:17 pm.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Cynthia Cannon".

Cynthia Cannon  
Secretary to the Board