



MINUTES OF THE PLANNING BOARD

November 9, 2021

MEMBERS PRESENT: Chairperson Paul Ritz, Vice Chairperson Larson, Board Member Grundhoefer, Board Member Powell, Board Member Van Hoose, Board Member Villegas

MEMBERS ABSENT: Board Member Sampson

STAFF PRESENT: Assistant Planning Director Cannon, Historic Preservation Planner Harding, Assistant City Attorney Lindsay, City Surveyor Odom, Help Desk Technician Russo

STAFF VIRTUAL: Planning Director Morris, Senior Planner Statler

OTHERS PRESENT: Rand Hicks, William Van Horn II, Todd Snyder, Charlie Krasnosky

AGENDA:

- Quorum/Call to Order
- Approval of Meeting Minutes from October 12, 2021
- **New Business:**
- REQUEST FOR PRELIMINARY PLAT APPROVAL - THE LANDINGS AT DEVILLIERS SUBDIVISION
- COMPREHENSIVE PLAN AMENDMENT - PROPERTY RIGHTS ELEMENT
- Discussion
- Adjournment

Call to Order / Quorum Present

Chairperson Ritz called the meeting to order at 2:02 pm with a quorum present and explained the procedures of the Board meeting including requirements for audience participation.

Approval of Meeting Minutes - Board Member Powell made a motion to approve the October 12, 2021 minutes, seconded by Board Member Grundhoefer, and it carried 6 to 0.

New Business –

2. REQUEST FOR PRELIMINARY PLAT APPROVAL - THE LANDINGS AT DEVILLIERS SUBDIVISION

Robert C. Krasnosky, PE is requesting preliminary plat approval for The Landings at DeVilliers Subdivision located along the east side of DeVilliers Street between La Rua and Jackson Street. This property is located in the R-NCB - Residential/neighborhood commercial - B zoning district. Six (6) parcels will be subdivided into twelve (12) lots to accommodate single-family attached residences.

- Per Sec. 12-2-76: Subdivision of 5 lots or more constitutes a major subdivision
- Property area: 0.77 acres
- Maximum Density: 35 Units Per Acre
- Proposed Setback requirements per Section 12-3-7:
 - o Front Yard - 15 Feet
 - o Side Yard - 5 Feet
 - o Rear Yard - 15 Feet

The preliminary plat has been routed through the various City departments and utility providers. Chairperson Ritz noted that the City Surveyor had reviewed the process for meeting the basic requirements. Assistant Planning Director Cannon advised the Board would consider Section 12-7-3 for subdivision approval and 12-7-8 for preliminary plat requirements. An aerial photo was provided to the Board.

Mr. Krasnosky addressed the Board and stated they had the preliminary civil design ready which addressed the CRA parking requirements in the rear. Stormwater on the east side had been addressed with a 3' vertical pond. Their tree mitigation would be canopy style; the CRA requirement was 1 tree per unit.

Board Member Powell asked if there had been discussion with the community regarding the development, and Mr. Krasnosky was not aware of any correspondence concerning the townhomes. Board Member Powell stated her concerns about gentrification going on in that area and asked if there was input from the community. Mr. Krasnosky explained the developer might not be aware of that need. Board Member Powell suggested it would be in the developer's interest to have the discussions with the community. Chairperson Ritz explained he did not know if he had decided on any particular approach, but it was something he thought about when driving in the area. Board Member Villegas asked if the developer was ready to begin after the preliminary plat approval, and Mr. Krasnosky did not know the timeframe but felt it would be upon approval. Chairperson Ritz advised the applicant would return for the final plat approval, and staff advised the Planning Board recommendation would proceed to City Council as a quasi-judicial hearing and the applicant has 365 days to submit the final plat.

Mr. Hicks then addressed the Board and stated that the Belmont DeVilliers neighborhood would like to be part of the conversation. He invited all parties to their Christmas party to get acquainted, discuss the plans, and begin to address gentrification. He considered the preliminary plat approval as an open door to something even better. Staff addressed the lot width for R-NCB which was neighborhood commercial that required 16' lot width minimum with the lot coverage of 75%; it was noted the project lot width was mostly 21'. Board Member Van Hoose asked if the Board was approving the preliminary plat with the understanding any comments would be addressed in the final plat, and Chairperson Ritz advised if there were heavy comments or some material item missing from the plat, there would be something noted to disapprove; simple comments would carry forward for correction on the final plat. Mr. Odom, City Surveyor, explained at the point when the final plat returns to the City, he would sign and seal that the plat met the State statutes, which would mean all the technical pieces were taken care of prior to coming to the City. Board Member Grundhoefer explained he had seen developers want to construct the

townhomes, and they might take out a house or two to put up 12 houses; sometimes there was an existing structure with historical significance. In this case, there was one structure which was a business and did not seem to have historical significance, and he felt this project was an improvement to the neighborhood. Historic Preservation Planner Harding advised the vacant commercial building referred to had undergone the Historical Structures Demolition Review by the ARB who had approved its demolition. Board Member Powell explained this was a good opportunity to do something great and not just fill a space.

Board Member Grundhoefer made a motion to approve, seconded by Board Member Larson, and it carried 6 to 0.

3. COMPREHENSIVE PLAN AMENDMENT - PROPERTY RIGHTS ELEMENT

The attached Property Rights Element is in accordance with the provisions of SB 59 (Fla. Stat. 163.3177 (6)(i)), passed during the 2021 Florida Legislative Session, signed into law by Gov. DeSantis, and incorporated into Florida's Community Planning Act. Every city and county in Florida shall "include in its comprehensive plan a property rights element." As such, the City of Pensacola, must adopt this new element "by the earlier of the date of its adoption of its next proposed plan amendment that is initiated after July 1, 2021 or the date of the next scheduled evaluation and appraisal of its comprehensive plan."

Staff explained we were modeling this language after the neighboring counties of Walton, Okaloosa County, and the City of Milton. Chairperson Ritz explained this language would go into the Comprehensive Plan and was not a part of the LDC Chapter 12. Board Member Powell asked why this language was necessary when one would think their property rights would be protected. Staff advised for the past four years, there was an effort to get this language passed, and they had the votes to do so this year. Assistant City Attorney Lindsay stated the state of Florida was one of the best states to reside in if you were a property owner, and the property rights were very well protected before this legislation. She did explain there were some circumstances which had originated in other jurisdictions in south Florida which caused some legislatures to receive calls from upset property owners; her statement to legislature was to not punish the whole state because some folks were upset with a situation in south Florida.

Board Member Larson pointed out **line 9 "impacted by the action of the County" which needed to refer to "City."** Board Member Powell addressed line 25 "possess and control his or her interests in the real property, including easements" and asked the real meaning. Assistant Planning Director Cannon advised her understanding was that statement was more inclusive of your property rights, taking into account mineral rights, etc., and to expand that language. Chairperson Ritz pointed out in taking a property for eminent domain, mineral rights might not have been a part of the process to determine the value of the property; this language would mean they would consider compensating for mineral rights. Staff explained if the government were to take your land and not consider the mineral rights, you would not be getting a fair value, so the language was meant to leverage more weight to the property owner.

Chairperson Ritz advised the language would begin with this Board and proceed to Council. **Board Member Larson made a motion to approve with the noted correction, seconded by Board Member Van Hoose.** Staff advised the language was composed from the State statute template from the governor's office. Board Member Van Hoose explained the language would always be subject to interpretation, and it might give homeowners and property owners the idea they have more rights than they did before,

even though the language states they do not. Board Member Grundhoefer did not know why it could not stay with the State statutes and not be required to be incorporated into the local jurisdiction. Chairperson Ritz pointed out the language stated every city and county in Florida shall “include in its comprehensive plan a property rights element” so each jurisdiction was mandated to create that language; it was not a rubber stamp, but the City was being instructed to do this.

Board Member Powell pointed out there were concerns that Board members wanted Council to consider; she suggested amending the motion to have Council consider those concerns. Chairperson Ritz asked if the language was not accepted by the Board, what would go in its place. Staff asked if it was the language or the process in question. Board Member Van Hoose did not have a solution to the language, but the notion itself was a concern more than specific words. She asked if the amendment was to ask Council to review the document; Board Member Powell clarified it should be determined what the Board wanted Council to review. Chairperson Ritz advised Council would review the document no matter what, so if the intent was to alter the language, the Board would need to come up with that language, but if it was the process, then the Board would need to talk about that. In an advisory capacity, the Board’s decision moves to the Council. Staff advised the current document contained the key elements of what was signed into legislation. Assistant City Attorney Lindsay stated the Comprehensive Plan flows from the Statutes, but if the Board was not satisfied with the language, it could ask Legal to provide more information so the Board could create the model Council should consider. Chairperson Ritz explained there were certain rights by right – with commercial property in the C-1 district, you could build a 10-story building, but when someone asks for something that is not by right, the property rights do not include what is not by right. Board Member Van Hoose pointed out line 14 for “nothing in this Property Rights Element is intended to grant additional rights not already in existence or to supersede existing rights in accordance with the law.”

Chairperson Ritz advised if the Board approved the motion as it stands, and did not edit it, it would proceed to Council. If the Board did not support the motion, it would need criteria on why it didn’t that was clear and concise, since Council would want to consider that. Board Member Villegas asked if it was more beneficial to have more language associated with this document. Assistant City Attorney Lindsay advised if the Board did not have enough information to evaluate the language, then perhaps the recommendation to Council would be to evaluate other ways of wording this property rights element - we have these concerns, etc. Staff explained they were trying not to reinvent the wheel and less was more, and if the Board was confused with this one-page document, 10 pages would exacerbate the confusion.

Assistant City Attorney Lindsay read Florida Statute 163.3177 that every city and county in Florida shall “include in its comprehensive plan a property rights element.” A local government may adopt its own property rights element or use the following statement of rights. The following rights shall be considered in local decision making: 1) the right of the property owner to physically possess and control his or her interest in the property including easements, leases, or mineral rights. 2) The right of a property owner to use, maintain, develop, and improve his or her property for personal use or for the use of any other person subject to state law and local ordinances. 3) The right of the property owner to privacy and to exclude others from the property to protect the owner’s possessions and property. 4) The right of a property owner to dispose of his or her property through sale or gift.

Staff advised the document would proceed to Council and then to the State for final approval or corrections – the State would have the last word on compliance with the statute. **It was noted line 17 should be researched for circuit courts not the "County" to possibly be changed to "City."** Board Member Villegas stated the discussion had provided clarification.

Assistant City Attorney Lindsay explained the language added potential legal complications because someone could say you violated the Comprehensive Plan, and this is how you did not follow it. She felt it would increase litigation since it adds a new avenue; the law had not added a new right, but if you violated that right, it added a new way to enforce that right by claiming a violation of the Comprehensive Plan.

The motion then carried 4 to 2 with the noted corrections with Board Members Larson and Grundhoefer dissenting. Board Member Grundhoefer stated he was not going to suggest an alternative and thought Legal would draft the shorter version. Board Member Larson had no problem with the way the document was written but would like to make it shorter since the first paragraph repeats the second paragraph, with the meat coming in the last four items, and those are spelled out by the State Legislature – why could we not do it by reference. Staff advised the document would go through Legal review before proceeding to Council. The preference of the Board was for more clarity and brevity.

Open Forum – Mr. Van Horn addressed the CRA Overlay District for C-2 properties. He had discussed the code design with DPZ and the possibility for administrative variances, and he knew this was hindering some commercial developments. He explained it was hard to work on some properties under the current CRA requirements, glazing being one of them. Staff advised on November 15, the Council agenda conference begins at 3:30, followed by the CRA meeting addressing some of the amendments they plan to bring to the Planning Board.

Adjournment – With no further business, the Board adjourned at 3:20 p.m.

Respectfully Submitted,

Cynthia Cannon, AICP
Assistant Planning Director
Secretary to the Board