
From: Lauren E. Williams
Sent: Monday, October 21, 2019 2:15 PM
To: Andy Terhaar; P.C. Wu; Ann Hill; Sherri Myers; Jewel Cannada-Wynn; John Jerralds; Jared Moore
Cc: Don Kraher; Christopher L. Holley; Susan Woolf; Grover C. Robinson, IV; Sonja Gaines
Subject: Forward WRD-1
Attachments: Memo Requested re: Maritime Park Rezoning - Public Benefit, Fit with CRA Plan, and Alignment with CivicCon Speakers and Urban Planning Best Practices; Memo - 2019-10-16 - WJD to A. Rothfeder (A3625448xA3759).pdf

Good afternoon Council,

Please see attached for the documents Mayor Robinson referenced in the below email ----

1. Email from Andrew Rothfeder
2. Memo from Will Dunaway

Please let us know if you have any questions.

Thank you!

Lauren

-----Original Message-----

From: Grover C. Robinson, IV <GRobinson@cityofpensacola.com>
Sent: Monday, October 21, 2019 1:11 PM
To: P.C. Wu <pcwu@cityofpensacola.com>; Sherri Myers <smyers@cityofpensacola.com>; Andy Terhaar <aterhaar@cityofpensacola.com>; Jared Moore <JMoore@cityofpensacola.com>; John Jerralds <JJerralds@cityofpensacola.com>; Ann Hill <AHill@cityofpensacola.com>; Jewel Cannada-Wynn <jcannada-wynn@cityofpensacola.com>; Don Kraher <DKraher@cityofpensacola.com>; Susan Woolf <swoolf@cityofpensacola.com>; Lauren E. Williams <LEWilliams@cityofpensacola.com>
Cc: Christopher L. Holley <CHolley@cityofpensacola.com>
Subject: WRD-1

Dear Council,

I am sorry I am not there today. I wanted to write to all of you in advance to the discussion on WRD-1.

When we first met about developing a set of parameters for the Development of the Community Maritime Park, I posed the question why couldn't we look to incorporate the lessons from Civicon into a zoning district. I believe the exercise DPZ went through did that. However, we really did not sit down to explain that as a specific public purpose.

There is a memo you have from Greg Stewart that explains that any change without a public purpose, which he concedes was not communicated to him, would create spot zoning. By this email, I am asking Lauren to share with you an email from Andrew Rothfeder that does outline 6 public purpose reasons. There are 7 listed but while I agree #6 profitability is important to success, it is not a public benefit.

The entire purpose is to create a walkable, misuse community that maximizes activity and improves public use of amenities included in the park. It is a separate district because we did not want to impact other WRD properties that are not in the Park.

I also ask that Lauren send you the email from Will Dunaway that also does a good job to answer the issue of the Stewart letter.

Thank you again for your time and consideration. I look forward to seeing you soon in Pensacola.

Grover

Sent from my iPhone

From: Mercedes Simpson <mercedes@studercdg.com> on behalf of Andrew Rothfeder <andrew@studercdg.com>
Sent: Wednesday, October 16, 2019 12:35 PM
To: Grover C. Robinson, IV
Cc: Lauren E. Williams
Subject: Memo Requested re: Maritime Park Rezoning - Public Benefit, Fit with CRA Plan, and Alignment with CivicCon Speakers and Urban Planning Best Practices
Attachments: Memo - 2019-10-16 - WJD to A. Rothfeder (A3625448xA3759).pdf

Dear Mayor Robinson,

Thank you again for sponsoring and supporting the Item coming before City Council next week regarding the creation of sub-zoning district WRD-1, within WRD, allowing for the realization of the master plan created by Jeff Speck and DPZ on the 7 remaining private development parcels. As we discussed, Speck and DPZ were engaged to study all previous plans and studies, as well as a new marketability study by Peter Bazeli (Weitzman), and create a long term master plan which accomplished the following goals:

1. Create a vibrant destination community that serves as gateway for further west side development.
2. Connected, walkable, mixed use – within ECUA/Maritime/Beach, and connection to adjacent properties. Places to live, work, play and learn.
3. Public access to waterfront with amenities – opportunities include Bruce Beach and public portions of Maritime.
4. Inclusion and Local – neighboring community input in the concept stage, local and minority workforce goals in the development and construction stages, handicap accessible.
5. Job creation, property tax revenue, ground lease revenue to City for infrastructure and schools
6. Financially sustainable with reasonable profit. Business model that creates opportunities for other private developers to take separate pieces.
7. Compliance with 2010/2011 CRA plan

As you know, this zoning change was unanimously approved/recommended by Planning Board 2 weeks ago (5-0) vote, and will now come before Council. While unanimous approval was granted, three issues were raised in that public process that we were able to fully address:

1. Question of “public benefit”. Third party legal opinion suggested that they were not made aware of the public benefit. Thus, absent having that information, they said it had the “potential” of a legal issue, should there not be a public benefit. Please see attached memo which fully and clearly explains the public benefit, thus alleviating any concern that this could be considered spot zoning. We hope that you agree, and that your memo to City Council will specifically state that this WRD-1 district indeed furthers a public purpose.

2. Increase of lot coverage ratio on the individual private development parcels from 75% to 95%. Jeff Speck will go into detail in his presentation on Monday to address this. This recommendation from Speck/DPZ was based on urban planning best practices, and, if the parcels are fully developed per this plan, has the entire park with actually much MORE green space than 25% - it is about 40%. The current plan leaves all of the previously planned green space (the waterfront park, amphitheater, stadium and baseball field, DeVilliers Park, and regional stormwater retention area). Thus, the remaining 7 private parcels do not need to be

additionally burdened with keeping 25% green as stormwater for all the parcels is handled by the existing pond, and parking is proposed to be handled in structured shared facility, and under the buildings. Additionally, best practices of urban planning suggest that views, walkability, and pedestrian experience are all enhanced by the framing of buildings around the green space without large green lawn areas separating pedestrians from ground floor retail and restaurant (a much more suburban concept)

3. Change of height limitation from 60' to 6 stories. Jeff will address in his presentation. For many reasons, 60' is not desirable nor best practice. First, it will encourage all buildings to be the exact same height, and it will encourage small squatty ceiling heights, which is highly undesirable at ground floor retail level, and certainly sub-optimal for residential ceiling heights. Also, it is much easier for the public and developers to understand and relate to building heights described in stories rather than feet. Finally, the marketplace will ultimately limit the height of the stories, as construction costs and financing will force developers to design only the amount of height desired by residents and commercial tenants to be marketable and livable.

I hope this information is helpful. Please let me know if you have other questions or would like additional input as you draft a memo of support to City councilpersons. Thank you again for your support, for the difference you make, and all you are doing to improve quality of life for all our citizens.

Best,



Andrew Rothfeder
President
850 232 3003

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TO: Andrew Rothfeder (andrew@studercdg.com)
FROM: William J. Dunaway
Date: October 16, 2019
Subject: City of Pensacola – Proposed WRD-1 – Community Maritime Park

Background: City staff, as part of their internal due diligence, requested an outside legal review of staffs' decision to implement the changes required to the Community Maritime Park (CMP) parcels resulting from the months long public charrette process of developing a Master Plan for the CMP and West Main parcels. From discussions with the City's Planning Director, Sherry Morris, I learned that she and Mr. Rusty Wells, City Staff Attorney, discussed the background and scope of that outside review with Mr. Greg Stewart of the Nabors Giblin Law Firm. Mr. Stewart is a respected land use attorney in Tallahassee. Mr. Stewart did not participate with staff in the initial scoping, public charrettes, or city planning meetings regarding the development of the CRA Overlay or the WRD-1 zoning district. Based on the phone conversation with staff and a review of the proposed WRD-1 zoning district, Mr. Stewart concluded that he was unable to identify whether a public purpose existed for the proposed WRD-1 zoning district. As such, he raised a concern that the action might be "spot zoning."

Legal Issue: The "classic" definition of spot zoning is "the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area for the benefit of the owner of such property and to the detriment of other owners."¹ When considering spot zoning, courts will generally determine whether the zoning relates to the compatibility of the zoning of surrounding uses. Specific factors to consider include; the characteristics of the land, the size of the parcel, and the degree of the "public benefit." Perhaps the most important criteria in determining spot zoning is the extent to which the disputed zoning is consistent with the municipality's comprehensive planning process and its Comp Plan.

¹ Anderson's American Law of Zoning, 4th Edition, § 5.12 (1995).

WRD-1: Studer Properties hired Jeff Speck and DPZ to Master Plan the CMP and West Main properties. The planning team approached City Planning Staff and asked for guidance on how best to put in place the planning documents that would further the City's desired development of these publically owned parcels of land. The planning staff in consultation with City legal staff proposed a sub-zoning district in the WRD. The past year of preparation is only the latest in the long process of realizing the City Council's goal of a responsible and publically beneficial plan of compatible development of these important public parcels.

Mr. Stewart's legal memo is correct to note that all changes to the Land Development Code (LDC) must legally be consistent with the Comp Plan. City staff certainly knows this as well. In fact, the fundamental land planning document for these parcels (and others), the Community Redevelopment Plan 2010, addresses this directly on page 33 when in the first sentence it states that "The Plan identifies a number of areas within the Urban Core Redevelopment Area that should be considered for policy amendments to the City of Pensacola Comprehensive Plan." It goes on to state that the CRA should carefully review the existing land use categories and zoning districts to determine if the creation of new policies and zoning districts should be considered to support the recommendations of and to carry out the Redevelopment Plan.

The proposed creation of the WRD-1 zoning district for the CMP parcels is doing exactly that deliberate, carefully planned evaluation of the zoning districts called for by the City Council when they approved (acting as the CRA) the 2010 Community Redevelopment Plan. The same is true with the City Council's recently enacted CRA Overlay District.

Mr. Stewart concludes his memo by stating that he has "been unable to identify whether such a public purpose [for this zoning change] is served and therefore, it appears that there is a potential legal issue that the new WRD-1 classification is arbitrary and capricious and constitutes spot zoning." City staff, the Planning Board, the Master Development team (Andrew, Jeff, and Marina), hundreds of citizens involved in the charrettes, along with prior actions of City Council, can all supply the information that Mr. Stewart, an out of town attorney that was not involved in the process, did not have – the fact that this planning process serves precisely the very real public purpose of executing on the public plan put forward by the CRA in 2010.

As stated on page 3: "The 2010 CRA Plan establishes the framework for the transformative policies and investments in the [CRA]. Within that context, the plan provides policy, programmatic and fiscal direction for the CRA as Pensacola reshapes its urban landscape and waterfront. The purpose of the plan is to define the strategic framework, conceptual themes, goals, principles, and objectives for the future of Pensacola's Urban Core Community Redevelopment Area."

Conclusion: The proposed WRD-1 zoning district is not spot zoning because it is not a singling out of a small, isolated parcel of land for a use classification totally different from that of the surrounding area for the benefit of the owner of such property and to the detriment of other owners. Importantly, the public (City) is the owner of the CMP parcels impacted by the WRD-1 zoning district and the proposed WRD-1 district is consistent with the planning documents put in place by the City Council for the redevelopment of the City's waterfront.

Mr. Stewart is correct to this extent; **if this** planning process was an arbitrary and capricious attempt to benefit a single parcel of property with no public purpose where only a few would benefit over the many, then this would be a potential legal issue. Thankfully, the opposite is true. This public planning process is a step forward in the ultimate goal of fulfilling the public purpose envisioned by the decades of public planning for the CMP site and it is entirely consistent with the comprehensive planning process the City has been working to put in place since 2010.

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