

**MINUTES
PLANNING AND ZONING BOARD
CITY OF DELRAY BEACH
REGULAR MEETING**

MEETING DATE: December 15, 2014

MEETING PLACE: City Commission Chambers

MEMBERS PRESENT: Jay Jacobson, Christopher Davey, Steve Mackey, Mark Krall, Joseph Pike

MEMBERS ABSENT: Gerald Franciosa and Robin Bird

STAFF PRESENT: Mark McDonald, Asst. Director of Planning and Zoning, Scott Pape, Noel Pfeffer, City Attorney, Janice Rustin, Assistant City Attorney and Diane Miller Board Secretary

1. CALL TO ORDER

The meeting was called to order at 6:00pm by Christopher Davey, Vice Chairman. Upon roll call it was determined that a quorum was present. Vice Chairman read the Quasi-Judicial Rules for the City of Delray Beach and Ms. Miller swore in all who wished to give testimony on any agenda item.

**MINUTES FOR 4TH AND 5TH DELRAY (iPic) ABANDONMENT
NORTH/SOUTH ALLEY RIGHT OF WAY**

V. PUBLIC HEARING ITEMS

B. Abandonment of a portion (north 196.18 feet) of the 16 foot wide north-south alley right-of-way.

Exparte Communication

Jay Jacobson – A conversation with Dr. George and Ms. Connell
Christopher Davey – A conversation with Dr. George and Ms. Connell
Joe Pike – Conversations with Dr. George and Ms. Connell and others.
Mark Krall – Conversation with Dr. George, others and emails.
Steve Mackey –email from SAFE
Christopher Davey – email from SAFE

Mark McDonnell, Asst. Director Planning and Zoning - Mr. McDonnell then entered into the record 2014-146. Mr. McDonnell presented the item through a review of the staff report. Staff recommends approval only if,

1. The cross access is maintained through the proposed development to either the east/west alley along the north side of the block, or through the parking garage to SE 4th Avenue and

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a public access easement provided. If this re-design is not presented, positive findings cannot be made and request would not have staff support.

2. That the applicant resolves any concerns of the affected utility service providers.

Applicant Presentation

Bonnie Miskel for the applicant.

I would like to clarify some incorrect statements that were made:

1. It was not an unwillingness of the petitioner to try and make changes, they actually asked the architect to redesign and there were significant safety issues associated with what staff is asking. You simply could not just move the stairway and elevator shaft over. It would have had to go out into the parking garage and it could not be done. There was not unwillingness. Also let me refresh your memories of how this started. A little over a year ago the CRA submitted a request for proposals. iPic theaters was awarded the contract, since then a contract has been executed. The plans that were given then that were presented to the CRA and approved by the CRA are the plan that you are looking at tonight have very few changes. The contract has an exhibit this plan. One specific criteria that was required in the RFP was a statement that said, "Responsive bidders should abandoned the right of way between the parcels that had the alley in between them". That was part of the RFP and Mr. Costello is here and can speak about this on behalf of the CRA. As a responsive bidder the partitioner did in fact incorporate that into their plan and designed around it, and that site plan is part of the contract that we were required to put forth in this process.

As to the utility provider, we have met with every single one of them, both in person and out in the field and not one of them have a objection to this request. Obviously we will have some obligations that will result from this where we will be required to relocate certain utilities which we have agreed to do at the partitioners expense. But not one of them objected to that and you do not have anything in your records to suggest otherwise.

Also, the CRA is receiving market rate value for this site and a non taxable parcel is going back on the tax rolls and addition to the value that is being given to the CRA, so there is public benefit. The CRA didn't suggest that a portion of the street was supposed to be abandoned in the design, that is exactly what we did and we have a contract provision to that affect.

Public Comments

Bruce Gimmy – 439 E. Atlantic Avenue

Representing Blairs Square, we own 7 properties. In a mall they control things, they make things right, here Planning and Zoning has to do it, and you have to suggest things to the Commission and hopefully they do it. I have attended many proposal meetings for redevelopment for the downtown. All of the proposals were publicly announced by the Chamber of Commerce, joint ventures, CRA, mailed or emailed, flyers, etc. Last year the CRA had many meeting with the community about the Fairfield Inn proposal. No notification was sent to nearby businesses or property owners. The RFP selection was held with none of the 20 something merchants or restaurateur's that I know attended. They were unaware of this important decision making meeting.

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Robert Brewer – 339 East Atlantic Avenue

I was the owner of the building that is now the Periwinkle. I am at the Green Owl every day and I have not spoken to one person that thinks the theater is a good idea. Rerouting the traffic on the alley with trucks, will be a horror.

Allen Costilo – Big Al's Steak

I agree with Bruce that the CRA had a meeting, nobody was notified to cancel the alley, and nobody really saw the RFP or any meeting prior to the big meeting last year. My business is well suited to acquire benefits or economic impact from the iPic. If there is no actual restaurant on the premises as promised the project should bring needed life and needed income to our area. I am not sure of the projections that were promised in the promotional material are correct, but new jobs and movie patrons, new employees spending will be a benefit to the downtown area. Our east/west alleys are used for hundreds of trips a day and with all the entry ways in and out, we must protect this area. Closing the north/south would be devastating.

Phyllis Martini – 59 SE 4th Avenue

I own the building just south of the old library. I welcome the iPic theater, but are very concerned about my tenants, because my tenants have parking in the rear and they will be affected by this.

Carol Anderson – 1441 Bexley Park Drive

I am speaking on behalf of SAFE. We have already submitted to the board our comments on the overall project which we oppose as it is too dense and safety problems in this area. I have observed at length the alley way and there are a lot of trucks using both alleyways. Both of these alleyways are very important for servicing the existing businesses. As citizens have been very clear in many presentations we value our alley ways and we do not want our buildings to be too dense.

Bob Ganger – Florida Coalition

I can't believe that back in 2009 we were having a discussion on abandoning a whole street and we did that and the project is still not built. Then we decided to re-do our LDRs and if there was one message that came through loud and clear is that we are not going to abandoned alleys. Now here we are where you have another decision to make of whether or not to recommend the allies be abandoned. But the answer is we don't abandoned allies.

Robert George – Ft. Lauderdale

I was born and raised here in Delray Beach. I want to speak against the abandonment of the alley.
(Mr. George read from a document that he wrote that was submitted into record)

Hannah George Connell – Abilene Properties

Our family has been here for over 100 years. When we met with the City Attorney we asked why a portion of the north/south alley in Block 101 was being requested for abandonment he handed us a copy of the RFP on this project and it contained the words "should be abandoned" on page 6. On page 4 that the Planning and Zoning LDR to be used for this proposal in Section 4. 4.13 clearly states *"the purpose and intent of the CBD zone is established in order to preserve and protect the cultural historic aspect of downtown Delray Beach and simultaneously provide for the stimulation and enhancement of the vitality and economic growth of this special area"*.
(Ms. Connell read from a document that she wrote)

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Sandy Simon – Resident of Delray Beach

I was born here and wrote (2) books on Delray Beach. I have respect for the CRA but in my view and of many that the CRA is way out of bounds in recommending the alley be abandoned. If you close that road trucks will begin to deliver on Atlantic Avenue. I am opposed to this, it is bad planning and I think they just want to increase tax revenue.

Joan Goodrich – Office of Economic Development

I am here tonight to ask for your support for this project. As being an economic developer for more than 25 years I know the great value and positive impact of office space to house new headquarters operations of iPic. The point I am making is there is solid demand and interesting companies that would consider Delray Beach as their preferred business address.

Peter Humaniy – Delray Beach

This project is just wrong.

I like Delray Beach, I like that it is crowded, but you can't get around if we start any more fooling around with the allies. The CRA, public good is not generating money in among itself. What is the public good of closing an alley, besides generating money. There are other ways to do it, but I have not heard it yet.

Jeff Costello – CRA

The CRA respectfully request that the Planning and Zoning board approve this abandonment. This dates back to 2004 when the City, CRA and the Chamber of Commerce entered into a tri-party agreement concerned of the redevelopment of that site. Part of the new development would be to dedicate 4' of right of way along the east/west alley. East/west alley is insufficient for loading. Regarding the dumpster, CRA has been working with 2-3 property owners, and will be funding relocation of a dumpster on their site to accommodating, but not including the ability to install compactors. In regards to the north/south portion, the SE 1st Street will be converted to 2/way traffic in July.

Tyler (could not understand his last name-did not sign in) – Chamber of Commerce

I am not here to speak on behalf of my board for or against.

I wanted to correct something from Mr. Gimmy, he indicated that no announcements had gone out about the RFP for this project from the Chamber of Commerce. We did sent (3) announcements in August and September of 2013.

Michele Soudry– 226 S. Swinton Avenue

Regards to the Delray Beach Chamber of Commerce I arranged for the Sun Sentinel to be at that meeting, there was 50,000 email blast that were sent out about that meeting. There were a lot of people there and we also had Delray Beach Pineapple and several other news organizations.

Hamid Hashemi – CO of iPic theaters

Mr. Costello addressed that we are dedicating 4' to the alley at north end of the property. We are going to make that a 2/lane road. We also had a traffic engineer go out and do a traffic study and he spent time from 7am – 7pm and here are the results (*Mr. Hashemi had a presentation on the screen that he referred to*)

These studies are available for anyone to see.

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Christine Dayaset (spelling not correct, did not sign in) – Florida Coalition

I want to say be very very careful in your decision making. There is always the law of unintended consequences. I think the CRA is realizing that they have given away something or the intent of something that they had no legal right to do. If the abandonment is approved and passed onto the City Commission it is the law of unintended consequences being the precedent that you set, cause you can't tell one project something and the other one to follow the same suit.

Board Comment

Jay Jacobson

The alley is owned by the City, is that correct or is it the CRA?

Mark McDonnell

It is owned by the City.

Jay Jacobson

So this is public ownership. Did the CRA have unilateral right in the tri-party agreement to require any respondent to the RFP to close the alley? Where did that right come from without going in front of a board similar to this one and then to the Commission? It is my understanding under the existing LDRs that any alley/street vacation, which can happen under the existing LDRs in the CBD, you have to have public hearing, it has to come before the Planning and Zoning board, and final approval from City Commission.

Mark McDonnell

Are you talking about when the negotiations for the RFP happened.

Jay Jacobson

We all know that the LDRs in the CBD are being revised and it says that in the CBD no alleys and/or streets get vacated. Under the existing LDRs there is a process that we go through as a City to vacate a alley. So if those LDRs are in place today, and were in place when this RFP was put together by the CRA, under what legal right or what opinion did the CRA have in order to say this alley can be vacated?

Mark McDonnell

I can not answer that.

Jay Jacobson

Is there someone here that can answer that?

Jeff Costello

The language is 'should' not 'shall'. It was part of the agreement with the City, and putting it out there for RFP the City was involved with the original selection committee. The in-lieu of abandoning they were to dedicate 4' along the east/west alley. Typically it might have been 2' dedicated, but in the future Dr. George, and other properties would dedicate the other 2'. In this case thought it would appropriate, that was the most heavily used, that alley needed to be preserved, east/west, and the additional dedication.

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Jay Jacobson

So you are saying there is a differentiation between 'shall be' versus 'should be'. So whoever responded to the RFP throughout the years, whether it was this process or prior process, we are counting on the 'should' as a statement of positive fact that the City is going to say 'should be, so I don't have any risk as a developer or business owner of this alley not be vacating. If I was reading it as a developer looking to respond to the RFP I would sit back and say, 'should be, the City wants it, the CRA wants it, the 3rd party wants it, so I don't have any risk'. So I am going to design my building without that alley.

Mark Krall

When you have a contract, and a RFP is generated and the CRA enters into a contractor with a developer, and they have their contract amongst themselves, isn't that subject, whatever that development has to go through, isn't it subject to approval by City Commission with regards to any aspect of the project that may require to be modified or fit under the LDRs...correct?

Janice Rustin

This is a legislative hearing, so contemplating the alley being closed it does say no successful application for the alley to be closed. So the RFP always contemplating the abandonment comes before this board. I am looking at the 4 corners of the RFP, I haven't looked at the contract between the CRA and the developer, so I can not speak about that, but the 4 corners there is language that indicates that things that 'should' be done and items that 'must' be done. Abandonment of the alleyway is something that 'should' be done. It is recommended, but ultimately the final decision rest with you.

Mark Krall

The bottom line is that the CRA is the seller, the developer is the buyer and within contract in the approval process the seller may envision what they want to do and what to accomplish, but still subject to the approval.

Janice Rustin

That is correct.

Jeff Costello

It is subject to the given the 10 years with the development, but they agreed that if there wasn't purchase to sell the City will benefit financially to from the development.

Janice Rustin

And that being said, it is incumbent of this board to treat the applicant fairly. So look at the facts and take all that into consideration of what the proposal was, and the facts surrounding the application and weight all those things.

Mark McDonnell

Let me clarify, we keep talking about abandonment of the alley, staff has no objections to abandoning the alley provided that the access remains open. Abandoning the alley and closing the access are not one in the same. An example was Uptown Delray.

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Christopher Davey

The difference was on that project, they were going to abandoned the alley and something already on the table to go above it.

Mark McDonnell

It was associated with that project.

Christopher Davey

But this alley abandonment was not associated with something where they allow something to be built up.

Mark McDonnell

It is going right through it.

Joe Pike

I am struggling with this as others, are because I feel that we have been dealt a hand of cards that I am not comfortable with in terms of what the RFP said and what I feel is the right thing. In fairness to this applicant I can see why they would of approached it the way they did. In fairness to the CRA and the other parties of that contract things have changed since 2004 and 2005. Back then we were in economic times that perhaps invited incentives and maybe more incentives that we don't see today. As an engineer and somebody that knows that particular area, I mean commercial alleys are the life blood of those retail business that provide utility services, circulation, and house services. Truly those alleys are heavily used, and probably the best benefit is the relief of the roadway themselves. What I did look at as an engineer, and what we are being told is that it can't be done, I know that there has to be some options, I would be surprised if one of those options has not already been looked at. I am sure there is a happy medium, but some way to turn around trucks or be able to back out. I would like to send this back to the drawing board to see if there are any creative ideas that could come forth.

Steve Mackey

One thing that we should do is make a distinction between, the alley is a tool and what you need is access to property, access for the trucks to the back to load. Unfortunately this alley is dissecting this property right in half. I don't know how you are going to do any type of development on this property.

Christopher Davey

I concur with Mr. Pike and Mr. Mackey said. My concerns, if you look back on this on my perspective, there was a proposal submitted by in March 2009 and at that time it included retail, offices and hotel. At the time of submittal the development proposal included abandonment creating a dead end alley. At the urging of staff during technical review phase the applicant agreed to keep the alley open so traffic could flow through the garage to and from SE 4th Avenue. As it is noticed the project never got to board review and the project files were closed. When our staff in 2009 (5 years) ago wanted to keep this alley open, it is interesting that someone would come forth at a later date and say, well there is another piece of property who owns this alley in between the properties we own, which is the City and they should abandoned it. As a person who makes their living in real estate I understand the 'should' is a lot different than 'shall' and a lot different from 'will'. If the RFP said 'will' abandon this it is a much different situation. And the last thing, when you read the required findings, pursuant to LDR 2.4 6(M)5, Prior to any right of way

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abandonment being approved the following finds MUST be made. There are (3) criteria that must be met. (2) of them absolutely does not meet and (1) does, but how they get there is a little troubling. And the one that troubles me the most is under Item C, *the abandonment of the alley will result in a detriment to the provisions of the access to the adjacent properties in the general area.* That is a finding that the City's own professional staff came to. When we see that as a board it is extremely difficult for us to grant the benefit to one property owner that our professional staff is going to say it is going to cause a detriment to other property owners. There are many aspects of the project that I like, but to encourage you to go back to the drawing board and do what you can do to come up with something that will not leave us with this situation we have before us tonight.

Janice Rustin

Our LDRs do provide for conditions. You can vacate, you can move to approve, recommend approval of the alley with certain conditions.

Christopher Davey

We can continue with direction and they can come back to us in the future.

Mark Krall

I am more willing to move on to what we are going to do tonight. I am reluctant to move for a recommendation of approval provided that the following conditions are met, and then it needs to be redesigned and represented. I don't think that makes any sense, because the whole reason this alley way perhaps as it stands right now is not being abandoned is because of the current project. Until something else actually comes before this board and City Commission, I don't see the point. With all due respect, motions have been made in the affirmative or positive, yet in alternative actions there is always a way you can do a recommendation of denial. I don't know what you would suggest in a legal respect.

Janice Rustin

You would recommend approval for the vote, if there no vote you can then recommend on the 2nd vote, recommend denial.

Mark Krall

I am uncomfortable approving something saying 'subject to redesign you have to come back'. I just don't see that. It doesn't make any sense.

Jay Jacobson

I am kind of torn; it is like putting the cart before the horse. I am asked to abandoned an alley on a piece of property that I don't know what is going to go on it and I don't know what use is going on it, because that is another item that comes later. I am really opposed to willingly abandoning and vacating allies without knowing what the attended use is going to be and what the overall ramifications will be. I don't know how we got to this agenda item first before we even understand what a condition use may or may not be based on 58 pages behind this. Also recommending a lot of building plans revisions that really we as the Planning and Zoning board aren't going to be seeing, that will be the SPRAB board. I am uncomfortable in approving this.

Janice Rustin

Mark can you speak about approval with access.

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Joe Pike

Is there any benefit, we have this action coming before us later. Can Mark share some light on this for us. Can we stay on this decision and circle back?

Janice Rustin

If it is the boards pleasure

Jay Jacobson

It is kind of hard to separate them. When I was reading through the pre-board things, I came to that conclusion that we needed to change this order.

Joe Pike

Even in the public comment it is hard to draw that line. So if that is something we can do.

Christopher Davey

If we could get a motion to table this item to later on in the meeting.

Janice Rustin

Yes, if the applicant concurs. Then what you do is make a motion to table until a vote is taken on Item V.C.

Christopher Davey

We will table it to later on in the meeting and it will become Item V.D. and bring it back up after V.C.

Motion made by Christopher Davey and seconded by Steve Mackey to **table** Item V.B until after hearing Item V.C of this meeting.

Motion tabled, 5-0

B. Fourth & Fifth Delray: Conditional use requests to allow an increase in the building height to exceed 48 feet (59.5 feet proposed) and to allow the establishment of a movie theater (iPIC Theater), to be located south of East Atlantic Avenue, between SE 4th Avenue and SE 5th Avenue. Quasi-judicial Hearing

Mark McDonnell, Asst. Director Planning and Zoning - Mr. McDonnell then entered into the record 2014-143. Mr. McDonnell presented the item through a review of the staff report.

Applicants Presentation

Bonnie Miskel – 14 SE 4th Street – Representing iPic.

Let us tell you about who we are and what this use is and something that is very unique. You don't have one in Delray, you have never had one like this and it is something that is being rolled out across the country. Let me introduce Mr. Hamid Hashemi, CEO and founder of this concept.

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Hamid Hashemi – CEO and founder

Thank you for letting us share with you the concept. 430,000, that is how many people that would attend this theater on an annual basis. As part of the office complex we are building, 221 people will be working at this location. The theater alone will have 208 people working at it. The net proceed on the sale of the property is to the City is \$3,480,000.00. All together the benefits to the City of Delray Beach is about \$8.2. That is what 4th and 5th is all about, it is about creating jobs and generating revenue for the City. The project is about 8 auditoriums designed just like Boca, and we are not building a restaurant. We have agreed not to do that as we want the traffic to go back to the City. Most of the people that go to the movies go in the summer time, that is peak time. That is also the time that most businesses in South Florida are looking for business. Above the auditorium is 2/layers of office space and in the back you have a parking garage. The parking garage as you have heard is about the abandonment of the alleyway and will not go back into that. When we offered this to the CRA we offered a single phase project, we are financing it all ourselves, it offers entertainment, office space, and parking garage where 50 spaces are dedicated to the City. Most important we offer over 400 jobs and this would be a big benefit to the City. This will be a great movie experience and a place to hang out at night. Average trip to our theater is 4-1/2 hours. You have 24,760 members that live in the City and that is the number of people that average going to the movies 4-6 times a year in Boca Raton and spending their money. They are leaving this town and going away. When we originally designed the project we had the access into the garage from the alley way, but with the recommendation of the City and several meetings and rotated it and the access here *(Mr. Hashemi pointed out on the screen where that was and continued to speak from his presentation on the screen)*

Bonnie Miskel

Some things I would like to clarify from mis-statements. The first slide that you saw was our original submittal back in April. 2 months ago we submitted this new reversed flow/plan where access for the parking garage comes off of SE 4TH Avenue. There is a ramp that goes up to the 50 public parking spaces, so office tenants and customers will come in SE 4th Avenue and exit back to SE 4th Avenue. The only cars that will be exiting to the alley will be the valet. *(Bonnie show a diagram)* As mentioned by Mr. Costello, normally you are expected to dedicate half of what you need to make the alley standard, which would have been 2', and we were required to do 4' and we have agreed to do that. The 4' will make this alley non-conforming to a more of a conforming alley at the expense of the developer.

There are two conditional uses request here. First it is a movie theater and we are required to ask approval because it is a movie theater. This is not like other movie theaters. This is a high end movie experience with a lot of amenities with service to your seat. Parking ratios and everything we used was based on an old model. We did not ask for parking relief and we are providing the parking that you need for a standard movie theater, we are just providing parking required by the code and then some. Finally, going back to the parking spaces, should it be 50 should it be more, and the CRA decided for this applicant, they should replenish what is truly public parking which is under 50 spaces.

Christopher Davey

Just to let the board know that there is someone who has asked for party status and we need to approve that this can be given to Dr. George.

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Bonnie Miskel

We have never been provided any record on this.

Janice Rustin

There is a letter in your packet and we need the board to approve this request.

Christopher Davey

Motion to approve party status for Dr. George by Mark Krall and seconded by Jay Jacobson.

Motion approved 5-0

Dr. George *(has been give party status)*

(Dr. George read from a written presentation that expressed concerns about the proposed development)

In regards to the Conditional Use, I want to point out that what is being removed is the library, Chamber of Commerce building, public parking lot with 58 spaces and other parking equaling 45 spaces with a total of 103 spaces that are gone and the northern one half of the north/south alley. In return there will be a parking garage with 279 parking spaces and we should be happy about that. Please note this is a that a expressed concern private parking lot and 50 spaces that will be allocated to the public to replace those 103 spaces and that will probably be at a charge. The City has stated that the developer has satisfied the City parking requirements because it is shared parking ordinance that is being applied. But the loss of the open free 103 parking spaces and the effect on the surrounding small business will be profound. In conclusion, we have been here over 100 years and looked at this property carefully. We implore you not to abandon the north/south alley and have a building that would complement the area.

Public Comments

Dr. Allen Costello – Big Als Steaks

Nobody wants a movie theater more than me and the office space. All the businesses on my block are in love with it, but there are (6) restaurants on my block and if we only had (7) cars drive through the back alley every day we would be out of business. We have hundreds that use the alley. Give us 4' and the trucks will still park on the alley. We need to address the problems that exist on our property. Work with what we have.

Roy Simon – Resident

We used to have (3) theater in Delray but they were a lot smaller. In regard to the property, this use to be City Hall and the Fireman's Hall, Fire Station and the Police Station. But this property does not serve the capacity of the occupants. Where are they going to park and right now we have difficulty with parking and they don't come downtown because of this. This is the wrong project at the wrong site.

Dr. Victor Kirson – Tierra Verde

First, I don't care about the CRA, they just want the money. Our taxes were raised while they keep piling in millions of dollars. We have gotten to a point where the investors, the developers, commercial realtors are no longer in control of this City. If you attend Commission meetings they are not closing alleys, they are not going to give variances in the new LDRs. You had the right, why did you let it go because the attorneys said there is another avenue. Everything you heard said no so you say NO. The City Commission is going to tear this to pieces.

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Bruce Gimmy – 439 E. Atlantic

I have heard a lot things here tonight and Joe Pike was right on. Its 2014, its not a give away. Totally against giving height, we are too desirable to do that today and things have changed. I am Chairman of the Parking Management Advisory Board, we looked at this issue and we even thought it is to code, Dr. George said it, there is no provision in the CBD for theaters. With this many people where are they going to park and this property is a poor choice for all the reasons that we have heard. I think they should talk to the CRA and north Federal Hwy and put it there.

Michelle Sedri (*spelling is wrong and she did not sign in*) –

I am a resident of Delray Beach but I am the founder of the ‘Gab Group’. I have represented and worked with countless restaurants on the Avenue to launch them like Cut 432, Vic and Angelos, Deck 84, Prime, etc. One thing that I hear is that businesses are strangled not from the parking from lack of locals patronizes the Avenue all year round. The City’s events bring thousands of people that do not patronize your business. I have seen 1st hand how the iPic theaters revitalized Mizer Park. I spend my Saturday delivering flyers downtown and looking at the small business they were empty. This is a project that will revitalize the City and give the customer with a disposable income that Delray Beach does not attract.

Alexander Simon

I have built malls and shopping centers and I would challenge any movie theater owner who can show that theater goers shop along the street nearby after a movie. I have looked at all the numbers and they mean something to the CRA, but it’s the theater that makes the money but not in the CBD.

Carol Anderson – SAFE

I want you to know that SAFE wants more development in the downtown area, but everybody downtown needs to move, but they are not going to sit in their car and cruse around to find a parking space. We have been looking at how many spaces there are now which is 92, if another 50 spaces are added, that will be part of the movie theater parking. When SAFE met with the applicant they agreed that those spaces will be for the movies. The traffic report underestimates the turnover of the parking and traffic and when I went on SE 4th Avenue I was gridlocked.

Shelly Tylec – 72 SE 6th Avenue

I live at the very entrance of the movie theater. Across the street from 5th and 6th Avenue is now a parking lot because of the new extra wide walkways. The village atmosphere that I came to see is going to change with 6/story high. This is very sad.

Christine Bilenki – 3015 Florida Blvd.

I want to speak in support of this project, it will be a great addition to our downtown community and something that is missing. I have to go west in order to go to the movies and money out of the city. A great addition to the City and a beautiful building.

Jeff Costello – CRA

We do respectfully request that the Planning and Zoning Board approve the conditional use and the abandonment. This building provides Class A office space which is needed in the downtown area and has been identified in the Master Plan.

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Regarding the alley in 2009, the alley was not going all the way through the development north. That north/south was not going to be retained, that was going to end up as a "T" at the south end. Parking agreement that was approved in 2012, identified that 50 public parking spaces should be provided in conjunction with the redevelopment of this site. In regards to the CRA getting money from this project, we will receive \$2.3 million from the purchase/sell agreement.

Bob Lipp – 65 SE 5th Avenue

6 months out of the year I come from tall buildings as I live in New York but I live across the street from this project. All along 5th avenue they used to be able to park cars, they being the people that come to go to the restaurants, use the stores, and on the weekend I would see as far as I can see cars parked right across the street in an area that no longer has parking. That is a point that no one has brought up. I see when I am walking people rushing to find parking as there are few spots to park on Federal. You are creating an undesirable situation which makes people not want to come here. This town is something worth preserving and worth fighting for.

Jim Knight – 123 E. Atlantic Avenue

I think there is a great need for office space in the downtown. I am not here to talk about the alleyway as I am not an expert on this, but I do see an abundance of parking spaces in the ramp garages. They are not all used and plenty to use. I am sure there is a solution that will satisfy everyone.

Peter Humanik

We are a good town and we don't need to be revived and we don't want to be Mizner. If so, then move there. You have done a fine job with this town, but what you are creating is a perfect storm in the CBD.

Bob Ganger

With respect to the decision you have to make do you or do you not want to see a 60' building on that location which I assume will be offices full of people who run the business? With the movies not in the CBD, but do we want them with a large building on top of it. But think, with this there will be a lot of cars and traffic.

Cross Examination

Mark McDonnell – None

Dr. George

I wanted to know the difference between a regular motion picture theater and iPic?

Bonnie Miskel

Not in this case. The difference between here and the one in Boca is that they have a full service restaurant. We will not have that in Delray. They will have a concession area.

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Rebuttle

Staff – None

Bonnie Miskel

There seems to be a lot of confusion on parking. We are exceeding the parking requirement and we are providing 50 public parking spaces. No one has ever suggested these are not available to the public. We will have no jurisdiction over managing those so it is whatever the City and CRA decide.

Board Discussion

Steve Mackey

We have (2) different issues here; we have a use issue and then height, but discuss the use first.

Christopher Davey

If we start with one person at a time I think that some of our questions will be answered by other people.

Joe Pike

Thank you for explaining the 50 spaces, I didn't know they were free. Now if staff or the CRA wants to let me know how they would be regulated, as I question how they will not be used by patrons of the theater.

Jeff Costello – CRA

There is a parking agreement that needs to be executed and that would depend on moving forward in that stage of the negotiations and then how it will be regulated. It will tie into whatever the City does.

Joe Pike

I have heard comments in regards to additional office space and I recognize that. I also see the significance of bring in additional patrons to the theater and other businesses. But to have the patrons stroll the avenue after the movie, is contrary to the parking issue. Mr. Hashemi said that the average stay is 4-1/2 hours. I am not sure what the real parking count is, we have applied a shared parking requirement here and I understand that you are meeting that, but I am trying to reconcile this in my own mind. Let's say the average movie is 2 hrs. and you need 200 spaces for that and I know they are staged, but what if the average patron is there 4-1/2 hours it just doesn't seem like the parking is available. I need someone to help me understand as I see a shortage there.

Bonnie Miskel

What iPic intends to do is manage this non parking component but the iPic component is they will validate for free to encourage theater goers to use the iPic spaces and not the public. I went to a DDA meeting the other day and one of staff was presenting what is going to happen is converting to a paid parking system for all of their parking both on street and in the parking garage. So our spaces will be free to the theater goers and with the free validation we will be limiting the amount of time that you can stay in that space.

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Joe Pike

That is my point, you want a certain amount of turnover in that garage to serve your own patrons, but I did hear that 209 employees, and where do they park.

Bonnie Miskel

The employees are also phases into their shift so they are not all there at the same time.

Hamid Hachemi

The numbers that you saw, the 209 employees, that is a total staff that will be working. Each shift is 30-40 people.

Joe Pike

And will they be in the garage also?

Hamid Hachemi

Yes, unless we can find parking adjacent to that.

Christopher Davey

Let me clarify, you are going to have 221 office worker and then 208 in the theater. Now the theater employees are staggered. What about the office workers?

Hamid Hachemi

The office workers at 5pm they are all gone. Theater is 6pm and after. Length of stay is 4-1/2 hours, but 78% of those people eat before or after the movie and that is what is going to filter out.

Joe Pike

There is a fairly good size kitchen there and it seems more than popcorn.

Hamid Hachemi

We will be serving food but not a full restaurant.

Steve Mackey

I have some questions on the use. I have heard through lectures that from movie theaters, we are trying to promote the retail and office space on Atlantic Avenue. Everyone is late for the movie so they rush right in and when the movie is over all the stores are closed and of course the restaurants benefit from that as they eat afterwards. So with that being said in your other locations, I'm concerned that we are promoting more night time activity on Atlantic Avenue vs I'm a big component of filling the rest of the spots...retail/office. Looking at the plans we are getting some office space, is that built on spec or just for your people. We have a very small piece for retail, and I assume you are doing that cause the City asked you to do that and other than that we are getting a movie theater. How is that movie theater going to benefit the rest of the City by way of retail and office which we are trying to promote?

Hamid Hachemi

Reference I will make is Mizner Park and that is a place you have all been there. Since the movie theater went in the occupancy went up 70%. There is no empty space at Mizner Park. Our corporate office is there and we are moving it here. Your city needs Class A office space and it is

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a great downtown. People are not building malls, they are building life centers and what is that...a downtown.

Steve Mackey

Life style centers, I am sure you are in the hottest cities in the country, and a lot are built around community open spaces. One area I like the most is the park in front of Park Tavern that Worthington Place created and given some identity to the western portion. With that said you are asking for height increase except the open space, even if you can call them that, I certainly would not consider benches around the perimeter of the building really creating a place for people to congregate. Can you speak about some of the designs?

Hamid Hachemi

We are not building a life style center here, we are going to be the driving force to bring people there. The common areas, we actually moved our entrance way back from where we had it in order to create public space.

Steve Mackey

I understood from your that comment you are one component of the Life Style Center, but you can not pawn off open space green component to someone else. You are going on land that was put up by the CRA which was originally owned by the City and its something to please consider.

Bonnie Miskel

We are going to continue to work on that. People have been throwing around the term 'Public Space' and I want to correct that. That is not the correct term in your code and I know you did not say it, but heard a lot of people talk about public space and even staff did. The requirement allows and speaks of open areas just like you did, and it refers to them as: courtyards, plazas, and landscape setbacks. So we are considering other alternative to expand what we are showing as open space. But the purpose of it is to provide relief from building mass. One thing that we did on the plan and we are not getting any credit for and it is not really usable space covered area, but half of our 3rd floor is all open space with lots of trees and fountains and greens that we get no credit for.

Steve Mackey

So what is that going to be used for? Is that opened to everybody.

Bonnie Miskel

It doesn't have to be under your code, it doesn't require it to be public. Also, as we went up everything go pushed back with more green areas.

Steve Mackey

And I would just say take into consideration because you are also asking for consideration from us to go higher.

Hamid Hachemi

One more thing with that open space on the 3rd floor, we offer it to the City for art exhibits.

Joe Pike

You talk about Mizner and parking, what have you negotiated with them.

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Hamid Hachemi

Mizner has 466 seats, we have 526. Also Mizner has a 200 seat restaurant. The garage behind us only has 400 spaces. We have no exclusiveness on the parking, it is open space to everybody. We just have no charge for parking.

Christopher Davey

Can you repeat about how many seats you have.

Hamid Hachemi

466 seats
200 seats in restaurant
400 parking spaces
90,000 sq.ft. of office space

Jay Jacobson

How many non-patrons do you have in the restaurant?

Hamid Hachemi

In our restaurant we are about 80% of our business in that restaurant in non-patrons.

Jay Jacobson

Mr. Hachemi, your reputation supersedes you, business is great, we would be lucky to have this in our town and I am all for movie theater and diversity in the appropriate way, appropriate manner and the appropriate locations. I feel like we are talking 10pounds of whatever and put it into a 5pound bag, maybe even 2pounds. There are ways to do that but I still don't get the parking and we as a board are tasked with not only looking at each individual proposal that comes in front of us regardless what happens to the rest of the City around this particular use. Taking your example of downtown being a Life Style Center, take it from the bridge and go to Swinton. That is our life style center and that is why people come here. We don't want to be Boca or anything else that was mentioned here tonight, we want to be Delray. I don't understand how a 500 seat theater, 8,000sq.ft of retail space, 45,000sq.ft of office space and 50 additional city spaces can be parked in what I calculate as 235 spaces. I understand traffic studies but the math does not work for me. The one block off of Atlantic Avenue, which during peak hours is over capacity, with a traffic pattern that has one way in and one way out for your valet service. So basically every car that comes into your garage has to be touched by the intersection of the alley and SE 4th Avenue (2) times and sometimes (4) times all coming out on 4th Avenue. I would caution you people to go back and look at how this parking will work. This is a intense use that really needs to be thought of. I agree there is no Class A office space in downtown Delray and we desperately need it and hope you can find parking for it.

The plaza areas, by the description of what is going on in any of your open space is not meeting the open space requirement. The new LDRs won't allow what you are trying to do they actually ask for public open space. I would think that through before you make your presentation to the Commission and SPRAB. What you have is open space and it is unusable space. 208 employees, 50 or 60 at a time, trying to find parking with a minimum wage for a full day is almost nonexistent unless you park in the City garages on the top floor and at night it turns into valet parking.

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Hamid Hachemi

Do you agree that the office space and the theater are non-conforming?

Jay Jacobson

I am a firm believer that shared parking tables don't work at all. I think the traffic/parking tables are way under stated and based on what people work now vs how they worked when the tables were put together. The kinds of business you are going to attract in Delray are private equity guys, financial service guys and iPic. Those are 24/hour business. I think the shared parking on the table was like 10% overflow, I think it is more like 40%.

Hamid Hachemi

When you look at the theater side of parking, the average number of patrons per car is 2.9. Let assume that the theater is 100% full, 520 divided by 3 = 170spaces. We have 279 parking spaces there and you are assuming that everything is full which does not happen. We can not service 500 people, we have to get them in and out.

Steve Mackey

What happened with that development out west of Atlantic and they had to buy land to accommodate additional parking.

Jay Jacobson

Delray Marketplace. They built to the Palm Beach County code, they have so much business that you could not park and they built to the minimum.

Steve Mackey

My point is that I hope you know how to run your business properly and park it properly, because looking at their parking and having to buy more land, we are not in that position.

Jay Jacobson

I am more concerned even if you are at 80% capacity, that number of people circulating on to SE 4th Avenue without any kind of relief in any other direction. I think there will be an overload.

Mark Krall

I think all the points that were brought up are relevant for what is before us tonight. I don't think we are there yet on this thing. The elevations are beautiful, the idea is beautiful, and I like the seat style. When the LDRs first came up and a whole concept of coming up with incentive to bring people downtown to open up restaurants and develop. Those thing are still in place today and tailored today as people are scared of over-development. This particular thing is something totally different from Atlantic Crossings as you are trying to put 10 pounds of something into a 5 pound bag. I have seen projects fail because there is just not enough acreage for the project and this is one and that is not even mentioning the alley way. This is my third time around of Planning and Zoning Board and I don't think in 30 years that I have been in Delray have never been against something. It is not that I am against it, but against where it is.

Christopher Davey

I would like to get clarification on one thing. You said that you were not going to use all the office space, you are going to sublease it. What portion of the building are you going to lease?

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Hamid Hachemi

The total office is 40,000 and we are going to use about 25,000, so 15,000 left.

Christopher Davey

You said you have 220 office workers in this space.

Hamid Hachemi

220 is all the office worker, we have about 55 workers now.

Christopher Davey

I have to concur with some of the other members of the board, I think you have a great product here, but unfortunately I think the size of the project on a 1.5 acre lot in this particular location is a very difficult project to engineer. Conditional use and height are before us tonight, and I would like to see a movie theater come to Delray, however regarding height, when you look at our code increase in height is based on and will result on (2) or more of the following on the staff report. Clearly you only meet (1) of the criteria and not (2). So really there are no grounds that we should grant you the height. In addition one of the concessions that the developer should give to the City in return for getting additional height is additional setback which we are not getting. Also numerous meetings over the past year with Treasure Coast, I understand your argument or opinion of the open space on the 3rd floor. All the planners here in the city want to see open space on the ground level. Also looking at the entrance you have on SE 5th Avenue, I noticed you have cars parked and people congregating. But to look at Federal Hwy as it is now, it would be very hard to pick up or drop off. The traffic that will be created on SE 4th Avenue is a height of poor design.

Bonnie Miskel

They are clearly hearing the message and significant concerns with our client. If we could take what we have heard and get with our architect and engineer and step back and sit down and resolve and address your comments and concerns where you have a plan that you can make a decision on.

Christopher Davey

We have enough information to make a decision on what the information that is before us. We wish there was different information.

Bonnie Miskel

We can go beyond this and go to City Commission but I have concerns that if we were turned down ultimately that we would have a waiting period before we could submit. We would like to wait a month and present something that you would be more comfortable with than to not present at all. If you could give us 30 days.

Christopher Davey

We could table this to a date certain or can you be ready for the January meeting?

(The board consensus was that with the holidays February would be better)

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Bonnie Miskel

If we can ask for 60 days.

Christopher Davey

We did postpone Item 5B and made it Item 5D, so do we need to make separate motions on each one.

Janice Rustin

Yes

Motion was made by Jay Jacobson and second Joe Pike to postpone the deliberation on Item 5C to a date certain in February 23, 2015.

Motion approved to postpond 5-0

We need a motion on what was former Item #5D now Item 5B

Motion was made by Jay Jacobson and second Joe Pike to delay deliberation on Item 5D and move it to a date certain of February 23, 2015.

Motion approved to postpond 5-0

Jay Jacobson

I would like to say to the members of the audience that we appreciate you coming out and showing your concerns and apologize for moving this another 60 days. We are sorry that we did not come to any resolution but as far as the growth of the City and the fabric of our town, this is a really important item to discuss and debate and to make sure we get it right.

Dr. George

It seems you are a recommending board and you are not recommending anything.

Christopher Davey

This is not moving to the City Commission this is coming back to us in 60 days and we will vote on it before it goes to City Commission.

Dr. George

So from here there is no recommendation.

Christopher Davey

The developer and applicant will come back to us in 60 days on February 23, 2015 with a revised plan.

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ADJOURNED

There being no further business to come before the Board, the meeting was adjourned at **10:00pm.**

The undersigned is the Secretary of the Planning and Zoning Board and the information provided herein is the Minutes of the meeting of said body for **December 15, 2014** which were formally adopted and approved by the Board on **August 17, 2015.**

Diane Miller

Diane Miller

If the Minutes you have received are not completed as indicated above, then this means that these are not the official Minutes. They will become so after review and approval, which may involve some changes.

(These notes are abbreviated version of this meeting. The full dialog is available in audio at City Hall for anyone that would like the full information)