

MINUTES OF THE PLANNING AND ZONING BOARD  
PUBLIC HEARING/REGULAR MEETING

CITY OF DELRAY BEACH  
DELRAY BEACH, FLORIDA

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MEETING DATE: February 28, 2011

LOCATION: CITY COMMISSION CHAMBERS

MEMBERS PRESENT: John Miller, Mark Krall, Clifford Durden, and Craig Spodak

MEMBERS ABSENT: Cary Glickstein, and Connor Lynch

STAFF PRESENT: Paul Dorling, Mark McDonnell, Brian Shutt, Terrill Pyburn, and Denise Valek

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I. CALL TO ORDER:

The meeting was called to order by Chairman Miller at 6:00 p.m. Upon roll call it was determined that a quorum was present.

II. MINUTES

The minutes of July 19, 2010 and August 16, 2010 were postponed to the March 21, 2011 meeting as a quorum was not present to approve said minutes.

Motion made by Mr. Jacquet, seconded by Mr. Krall, and approved 5 to 0 to approve the minutes of the December 20, 2010 meeting as written.

III. COMMENTS FROM THE PUBLIC:

None

IV. PUBLIC HEARING ITEMS

- A. Privately initiated Future Land Use Map amendment from (Medium Density Residential 5-12 du/ac) to GC (General Commercial) and rezoning from RM (Medium Density Residential) to AC (Automotive Commercial) for a 0.287 acre parcel located on the south side of Avenue "L" approximately 357 feet east of South Federal Highway and immediately east of Presidential Auto Leasing and Sales dealership.  
Quasi Judicial Hearing
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Mr. Krall stepped down.

Ex-Parte Communication:

Dr. Spodak informed the Board that he was a personal friend of Mr. John Guistolisi, owner of Presidential Auto Leasing and Sales dealership. However, Dr. Spodak advised that this would in no way would this affect his vote on the project.

Mr. McDonnell entered project file no. 2011-049 CPA, and 2011-048 REZ into the record.

The property subject of the proposed FLUM amendment and rezoning are Lots 55 through 58 of the Del Raton Park subdivision and consists of 0.22 acres. This property is currently

vacant and the applicant proposes to utilize it as a parking area for the adjacent Presidential Auto Leasing and Sales Company.

At its meeting of June 23, 1992, the City Commission denied a privately initiated rezoning application to change the designation of the subject property from RM to CF (Community Facilities). A conditional use application was submitted concurrently with the rezoning application to establish a 23-space parking lot for the adjacent automotive use. Action was not taken by the City Commission on the conditional use application due to the denial of the rezoning application. The denial centered around concerns over the compatibility of the proposal with adjacent residential uses.

Review By Others

The subject property is not within a geographical area requiring review by the Community Redevelopment Agency, Downtown Development Authority or the Historic Preservation Board.

Courtesy Notices:

Courtesy Notices have been provided to the following civic and homeowners associations:

Neighborhood Advisory Council	Pelican Harbor	Tropic Isle Civic Association
Delray Citizen's Coalition	Pelican Pointe	Tropic Palms
Eastview Village	Tropic Bay	Spanish Trail Condo
Captain's Walk	Tropic Harbor	Serena Vista Condo

Public Notice:

Formal public notice has been provided to property owners within a 500' radius of the subject property. A letter of support has been submitted from the Tropic Isle Civic Association and is attached.

Mr. Miller inquired if there was a wall around the property. Mr. McDonnell advised there was a wall on the east side of the property.

Applicant:

Michael Listick, Esquire, representing the owner of the property, distributed an aerial of the subject property to the Board, and advised there is no substantial impact as this is a small parcel. Staff said something that I found interesting, residential would generate fourteen trips and this might generate 1,400 trips per day. We submitted a traffic report that basically said there was an insignificant difference in trips. To suggest that 1,400 trips would be generated, use your good judgment. Staff said this was determined nine years ago, it was nineteen years ago. Has anything changed in nineteen years? What was going on in 1992? In 1992 the auto dealers were fighting the residents, the reason for that was because the auto dealers had bright lights, and repair bays in the back by the residential units. They were not landscaped and the people at Tropic Isle fought hard because they were against it. Now they support it. Something must be different. Looking at what I showed you to the east of the property it is all built up. In 1992 there was a big gap going east from the commercial properties to where the homes and apartments were. The Tropic Isle residents were upset because there was going to be encroachment. There is not going to be any major changes to the neighborhood with this business. This is so minor there is no encroachment. Let us talk about compatibility. Staff can look at a zoning

map and say it is residential on two sides. Avenue L goes from east to west on the north side. What do you see if you look north? You see parking and a shopping center. You look east and you see Presidential Leasing, there is residential to the south and what do you see a big landscape berm and south you see a driveway and a parking area and a swimming pool. So what you really see is parking on three sides and a vacant property on the east side. I think this project is compatible. I am going to suggest to you that a one-quarter acre parcel could be used for residential (two units). What will you get on one quarter acre with a 78 foot frontage, perhaps two duplex apartments consisting of 1,200 square feet? I think there is a need not to have residential as Avenue L does not look very good if you drive down it. Tropic Isle residents would rather have the Site Plan and Appearance Board requires my client to landscape Avenue L to improve it rather than see it vacant and ugly as it presently is. I think common sense shows this is the right move what was done in 1992 does not apply to today. Do the right thing as we are compatible.

Public Comments:

Mr. Patrick Heaney, 220 Avenue L, advised this is a very busy road and the cars move way too fast. I have young children, and the road requires speed bump like Lindell Boulevard. There has been a flat bed in order to put the vehicles on the truck. This issue has to be looked at deeper. It is an encroachment. Anybody who lives on that road know just how fast the cars go on Avenue L. Safety is an issue. Delray Beach's traffic has gotten worse over the years.

Mr. McDonnell advised the traffic number were derived from their report.

Mr. James Guistolisi, owner, Presidential Auto Leasing, advised as far as the 1,400 trips, I am making it accessible only from my property. There will be no other trips it will be contained by the six foot wall. The wall will continue to the west and landscaping along Avenue L. This gentleman's concern is one I want to address. Right now with this property there is one entrance to this property. A truck can't pull in on one entrance. That is the problem we have when they deliver vehicles the truck is too big. I was going to propose putting a second entrance on my existing property and that would be across from the Mobil gas station across the street. Behind the Mobil station there is a road that runs parallel. I was going to try and have the truck pull in and pull out of the second entrance and not block Avenue L. I need that piece rezoned as my business has gotten busier and we are at maximum capacity. We need to convert this land

Mr. Listick advised he understands about the traffic problem. We need a speed bump on that road as there are no sidewalks. The things you would have for residential are not there. There are no sidewalks. The kind of housing you will get is not suitable for families or children. The parcel next door is a lot bigger where you might be able to have townhouses.

Mr. Jacquet inquired how many people do we have living east of the property, and is it congested. Mr. Listick advised there is a mix of single family homes, condominiums, and townhouses. Tropic Isle is an old neighborhood and east along Spanish River there are mostly duplexes and small apartments. Further east there are expensive single family homes. These residents use Avenue L.

Mr. Heaney advised traffic moves too fast on this street and it is very dangerous. Mr. Jacquet said since you are here and raising a concern most of the residents would share in that concern regarding traffic. Mr. Shutt advised you can address what is in front of you.

There could be other issues but you are facing what you have in front of you now and you base your decision on whether this meets the LDR requirements.

Dr. Spodak advised he knows the street is a concern, however, I am not sure the people that are flying through are gaining speed as they go through Presidential. I don't know if this has an impact on what the issue is tonight.

Mr. Durden advised in looking at the map where would the customer go. Mr. Listick advised it is a street. Regarding the first entrance getting a truck to pull in and pull back out is a problem. Dr. Craig inquired if this item would go before the Site Plan Review and Appearance Board (SPRAB). Mr. Miller advised yes it would. Mr. Jacquet inquired if this Board could make a recommendation to SPRAB. Mr. Shutt advised this cannot go before SPRAB until this Board approves it. Dr. Spodak inquired who has the responsibility of the traffic issue. Mr. Shutt advised a lot of it is done here and you look at the traffic patterns and counts and it would go to SPRAB as well. Mr. Durden advised based on what I see I don't see how that could affect traffic in terms of speed. All they are doing is making an area larger to store cars and it has no impact on the streets. Mr. Jacquet advised after listening to both sides it makes sense. Our job is to decide whether to change the zoning. After considering everything I think it is compatible and meets the LDR and changing it to GC would be a good thing.

Mr. Miller advised his view was that it is an encroachment on residential. In this case I can see the whole block going commercial. I don't know if it is in the best interest of the neighborhood. We are not here to address speeding. I am not here to see what type of home would be approved here. I am not in favor of this.

Motion:

Motion made by Mr. Jacquet, seconded by Mr. Durden, and approved 3 to 1 (Mr. Glickstein, and Mr. Lynch, absent, and Mr. Miller dissented) to move a recommendation of approval to the City Commission for the City initiated request for a small scale FLUM Amendment from MD (Medium Density 5-12 du/ac) to GC (General Commercial and rezoning from RM (Multiple Family Residential) to AC (Automotive Commercial) for land with a total acreage of 0.22 acres by adopting the findings of fact and law contained in the staff report, and finding that the request and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in Sections 2.4.5(D) (5), 3.1.1 and 3.2.2 of the Land Development Regulations.

- B. Consideration of three City-Initiated amendments to the Land Development Regulations (LDRs) related to the deletion of special regulations that pertain to Residential Licensed Service Providers (Section 4.3.3) and to further allow them as permitted uses in specified zoning districts (Article 4.4); creating a Medical Arts Overlay District (Section 4.5.18); adding Institutional Uses when located within the Medical Arts Overlay District in specified zoning districts (Article 4.4); amending Appendix "A" to provide updated definitions for Residential Licensed Service Provider, Non-residential Licensed Service Providers, Medical Office, and Institutional Uses.

Mr. Krall returned to the dais.

Mr. Dorling entered the project file into the record.

Following is a brief description of the three (3) ordinances:

Ordinance No. 10-11 pertains to Section 4.3.3 (D), "Residential and Non-Residential Licensed Service Provider Facilities". It is being repealed in its entirety in order to clarify that the residential component of these facilities shall be permitted as of right, the same as other residential uses in the various zoning districts where residential uses are allowed. These changes are being processed to bring our code up to current legal standards based on recent case law. Recent case law has determined these Residential Licensed Service Provider uses must be treated similar to any other residential use. The Special Regulations Section 4.3.3 currently contains restrictive elements specific to Residential Licensed Service Providers, such as minimum separation distances, minimum floor area for bedrooms, minimum floor area devoted to common areas, locational restrictions (not within 1200 feet of any private or public school), etc. These Sections are being repealed, as they are inconsistent with current case law. Further, Residential Licensed Service Providers are allowed as a conditional use or not at all in certain residential districts. To comport with current case law they are to be added as permitted uses subject to regulations applied to all residential uses. These include compliance with ordinances relating to transient residential uses, landlord permits and definition of family. Also nursing homes where allowed are being moved from uses permitted by conditional use to permitted by right, to maintain consistency.

Ordinance No. 11-11 revises the Medical Office definition to include the Outpatient programs referenced in Section 397.311 of the Florida Statutes dealing with Substance Abuse Services. This is to clarify and differentiate between outpatient medical treatment and intensive inpatient medical treatment including detoxification facilities which are institutional in nature. Non-institutional medical uses are currently, and will continue to be, allowed in medical office districts. Institutional medical uses including intensive inpatient treatment facilities will be allowed in the new Medical Arts District. Many of our zoning districts that allow medical office uses are in mixed districts that allow residential uses or are located in close proximity to residential uses. Recent case law has found that intensive inpatient treatment facilities are less like dwellings and more akin to hospitals and can be legitimately prohibited from residential districts.

Ordinance No. 09-11 creates a Medical Arts Overlay District to include institution-like uses including hospitals and non-residential licensed service provider facilities (intensive inpatient/ detoxification type facilities) within the overlay district which encompasses CF, POC and PC zoning districts. These institutional uses are included under the list of permitted uses within the portion of these zoning districts that are included in the Medical Arts Overlay District. An amended definition for Institutional Uses is also included. The overlay district encompasses the general area of Military Trail and Linton Blvd. and includes the existing Delray Medical Center, the South County Mental Health Center, Inc., Fair Oaks Hospital, Palm Court Plaza, Wal-Mart Center, Delray Town Center, Delray Outpatient Properties, Linton Oaks Square, Linton Office Park, and the South County Professional Centre Condo.

#### Courtesy Notices

Courtesy notices were provided to the following civic associations:

Neighborhood Advisory Council	Spanish Wells
Delray Citizen's Coalition	Crosswinds
Citation Club	Abbey Delray South
Shadywoods	Andover

Lakeview Civic Association  
Sherwood Park Civic Association  
Rabbit Hollow  
Verona Woods

Hammock Reserve Homeowners Association  
Country Lake Homeowners Association  
Del-Aire Homeowners Association

Mr. Miller inquired what was the difference between intensive use versus non-intensive use. Ms. Pyburn advised it is defined by the State statutes. It is identified in the definition of non-licensed service providers versus medical offices.

Mr. Durden advised currently you have in-patient and out-patient facilities there. Mr. Dorling advised the hospital has an in-patient facility at Fair Oaks and the South County piece is where involuntary people that are Baker acted are taken and held. This includes a detox facility that has a lock down component. Mr. Durden inquired if they are already there at this time what is the purpose of the overlay? Mr. Dorling advised this would allow other facilities to locate there rather than other areas of the City which may be more residential in character. Currently without the distinction (institutional versus non-institutional) we have to treat them like a regular medical office and they could be in the middle of a neighborhood. This type of institutional use is not appropriate in residential areas. Ms. Pyburn advised there was a legal case that allowed these types of institutional uses to be placed in institutional/hospital districts.

Public Comments:

Mr. Keith Sweers, 3519 Lakeview Drive, President of Lakeview Estates, advised it was a confusing presentation. How is this going to affect us tax wise? We are surrounded with people who rent their homes out to six or seven addicts at a time. We are getting a negative impact in our neighborhood. You are making changes, and we are going to have to have more police and fire. I don't understand the drive by this City to accommodate this. We are the laughing stock - as you know we have them everywhere. Can we make money at this?

Harold Jonas, Ph.D., 297 NE 6<sup>th</sup> Avenue, advised this is some good stuff to effectively regulate this industry in a little corner of our community. I have been in the City for twenty-three years and have had many go rounds with the attorney's office on the regulation of this industry. This is an issue that came out of Boca Raton. It is going to effectively eliminate additional facilities and limit any other business coming into the City. Under this ordinance options would be limited and property would be expensive to acquire. We do have an abundance of recovery centers (sober houses) in the City now and some do a great job and some don't do such a great job.

Mr. Scott Henger, advised he attends the Emmanuel Church and wanted to know the distance of this facility to the Church. What you are doing might preclude Emmanuel from putting a school on their property. Ms. Pyburn advised in regard to the initial question "who initiated this"? The City initiated this. There is a Federal case law that found that people in recovery are protected as an individual who is disabled or handicapped. The City did this in order not to discriminate and allow the residential use as permitted in the City. Our current code does not reflect that. We are bringing the code up to date. There should be no effects tax wise. We are not looking to make any money. We are not trying to create disincentives, the Medical Arts Overlay District is based on the Department of Justice vs. the City of Boca Raton case where the court said detox is more akin to a hospital like setting and those facilities can be relegated to the Medical Arts Overlay District. As far as in terms of a school, I believe you were referring to Emmanuel adjacent

to the Medical Arts Overlay District which would not preclude a school. There is a requirement under State Statutes you cannot sell drugs within 1,000 feet of a school. There are also other State Statutes that would protect the children which would not preclude the ability to place a school there.

Mr. Dorling advised the original regulation does not allow these facilities within 1,000 feet of a school. That distance requirement is being removed with this ordinance.

Mr. Shutt advised we are trying to put things in place and come up with better regulations.

Ms. Pyburn advised we have consulted with an outside attorney who specializes in this type of law and it would be in our best interest to go forward with it.

Dr. Jonas inquired if there is a facility of the more intensive use already operating that is grandfathered in? Mr. Dorling advised yes, and it has to maintain its operational status to be eligible. We have one facility that is in process now and we will allow it to continue as is. Mr. Miller inquired how many there were in the City.

Mr. Dorling advised he is aware of two. Mr. Durden inquired what is the description of intensive outpatient. Mr. Dorling advised this is contained in Florida Statutes and includes a mandatory residential stay within a detox facility usually about a week and then about a three week period of controlled living arrangement with very limited flexibility. Mr. Durden inquired about different homes throughout the City. Mr. Dorling advised those are not medical and these are what is known as sober houses which are residential service providers that are subject to requirements in residential districts. These include definition of family, transient residential uses, and a requirement for landlord permits. Ms. Pyburn advised the residential component or Residential License Service Providers are allowed as permitted uses. Residential components do not provide treatment on site. They usually provide that service at a medical facility located elsewhere. They are living in the home in a group setting.

Mr. Jacquet advised he would like to hear what Dr. Jonas has to say. Dr. Jonas advised he is not opposed or in favor of the ordinance. This is a very complicated issue. Most people comply with sober house requirements and do a Reasonable Accommodation Request. This is about putting licensed service providers in too small an area. What you are getting is a mixture of two different issues, Sober Houses and Detox Facilities. This ordinance is pushing the treatment providers (Detox) out of business. Intensive residential is a thirty to ninety day model where they are medically supervised. There is one facility off of George Bush Boulevard. There is another detox pending approval subject to a Reasonable Accommodation Request. The other detox is on South Swinton Avenue. South County Mental Health on Military Trail is for indigent care only. There is one detox facilities (Palm Partners) that is driving this ordinance change. The people in recovery stay here because we are in paradise. This is about one issue on regulating an industry into one small section of the City where there is no room for growth. That is where the discrimination is going to come in.

Dr. Jonas advised there is no opportunity here and there is no land for additional facilities.

Mr. Miller inquired if it is an intensive use facility in a split location and one is for detox, do both have to be in the same location now. Ms. Pyburn advised the residential components could be permitted in a residential zoning district. The intensive care portion would have

to be in the Medical Arts district. We took a lot of care to make sure we were referring to the correct statutes with case and state law. We are not trying to discriminate in any way.

Mr. Jacquet advised he has confidence in the City Attorneys. This issue is even being addressed on a State level.

Motion:

Motion made by Mr. Krall, seconded by Mr. Jacquet, and approved 5 to 0 (Mr. Glickstein, and Mr. Connor absent) to move a recommendation of approval to the City Commission of the amendment to Land Development Regulations, Special Regulations That Pertain To Residential Licensed Service Providers (Sect. 4.3.3) And To Further Allow Them As Permitted Uses In Specified Zoning Districts (Article 4.4); Creating A Medical Arts Overlay District (Sect. 4.5.18); Adding Institutional Uses When Located Within The Medical Arts Overlay District In Specified Zoning Districts (Article 4.4); Amending Appendix "A" To Provide Updated Definitions For Residential Licensed Service Provider, Non-Residential Licensed Service Providers, Medical Office, And Institutional Uses., by adopting the findings of fact and law contained in the staff report, and finding that the text amendment and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in LDR Section 2.4.5(M)

V. REPORTS AND COMMENTS:

A. Board Members

- Parking Management Advisory Board (PMAB)

Mr. Krall advised Waterway (east of the intracoastal) is experiencing development. An optician will be moving into the eastern corner. The owner of Vic and Angelo's is getting a lot of complaints from customers because they were being charged \$15.00 for valet parking, and there was no discount if you ate at that particular restaurant. Luna Rosa is charging \$5.00 and \$10.00, however, if you valet there you pay \$10.00 and if you eat there you pay \$5.00. There is a particular valet queue in front of Cuigini's. Apparently the restaurant is being advertised for sale and it includes a very private valet queue. Maybe the City Attorney's office can get involved in this issue. There is no constant program regarding valet parking. In order for it to be profitable you would have to charge a lot more than \$5.00 or \$10.00. Mr. Shutt advised he did not know if it will come up before Planning and Zoning. When we renew the agreements we have the right to put whatever terms we want to implement.

Mr. Krall advised he will have an update regarding the Parking Study Plan at the next meeting.

B. Staff

Meeting Dates for March

City Commission Meetings

Tuesday, March 1, 2011, City Commission Regular Meeting, 6:00 p.m., City Commission Chambers

Tuesday, March 15, 2011, City Commission Regular Meeting, 6:00 p.m., City Commission Chambers

Planning and Zoning Board Meeting

Monday, March 21, 2011, Planning and Zoning Board Regular Meeting, 6:00 p.m., City Commission Chambers:

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1. Final Plat approval for Franklin at Delray Beach, located on the west side of South Federal Highway, between SW 10<sup>th</sup> Street and Linton Boulevard and immediately north of the Plaza at Delray.
2. City initiated amendment to the Land Development Regulations Section 7.9.11 regarding boatlifts.
3. City initiated amendment to the Land Development Regulations Section 4.6.9(E)(3) modifying the in-lieu parking fee within the expanded Pineapple Grove Main Street Area.
4. Consideration of Public Infrastructure comments submitted at the 2011 Citizens Roundtable Meeting.

C. Board Members - No comments

VII. ADJOURN

The meeting adjourned at 7:30 p.m.

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 February 28, 2011 which was formally adopted and approved by the Board on March 21, 2011.

*Denise A. Valek*

Denise A. Valek, Executive Assistant

If the Minutes that 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.