

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

**MEETING DATE:** December 21, 2015

**MEETING PLACE:** City Commission Chambers

**MEMBERS PRESENT:** Jay Jacobson, Mark Krall, Louis Smith, Steve Mackey, Robin Bird, Joseph Pike

**MEMBERS ABSENT:** Joycelyn Patrick

**STAFF PRESENT:** Michael Dutko, City Attorney, Mark McDonnell, Assistant Director of Planning & Zoning and Diane Miller, Board Secretary

**I. CALL TO ORDER**

The meeting was called to order by Chair Robin Bird at 6:01 P.M.

**II. ROLL CALL**

Upon roll call it was determined that a quorum was present Chair Robin Bird read the Quasi-Judicial Rules for the City of Delray Beach and Mrs. Miller swore in all who wished to give testimony on any agenda item.

**III. APPROVAL OF AGENDA**

Agenda was approved

**IV. COMMENTS FROM THE PUBLIC** – (Comments on items that are NOT on the Agenda will be taken immediately prior to Public Hearing Items.)

None.

**Exparte Communication** – All Board members except Steve Mackey have had some communication as far as emails.

**VI. LAND USE ITEMS**

**A. Fourth & Fifth Delray (aka iPic Movie Theater):** – Approval of the Preliminary Plat associated a mixed-use development located south of East Atlantic Avenue, between SE 4<sup>th</sup> Avenue and SE 5<sup>th</sup> Avenue.

**Mark McDonnell, Assistant Planning Director**, is presenting it for preliminary plat approval only. Staff recommends approval of the plat and the conditions are outlined in the staff report.

**Applicant's Presentation**

**Dwayne Dickerson – Attorney, Dunay, Miskel & Backman**

It was a very thorough staff report and we do not have anything to add at this time. We have already addressed some of the conditions and comments in the report and any remaining ones we will work to resolve as well. At this time we will address a question you may have.

**Robin Bird** – Just want to point out that in the staff report you have your comments addressed to the commission but in actuality this is not to the commission but to us for preliminary approval. So that needs to be changed.

**Mark McDonnell** – That is correct. It has to go through another step then back to you then back to you again for final approval.

**Public Comments –**

**Hannah Conall – Advilee Property**

We have a lot of property in the area and surrounding this project. We are asking that you table the item. If it contains the northern twelve feet of lot 7. On July 1, the city commission held a meeting about this lot. The public notice that was given was improper. Property owners were not given proper notice and the city attorney's office has been advised that it was an improper notice. We need clarification on ownership of the plat in question.

**Michael Dutko** – The attorney's office has no concerns at this time and is well aware of the issues brought up in regards to this plat.

**Hannah Conall** – We have found a number of legal irregularities.

**Robin Bird** – I think at this point those questions or comments need to be handed to Mark or Mr. Stallings.

**Michael Dutko** – Those issues have been brought up before but we did not know of any new issues.

**Hannah Conall** – I was advised to get an attorney. As a City of Delray land owner for over 100 years it is important that these proceedings be done correctly and legally. There should not be any rush.

**Dr. Victor Kirson -**

2056 Alto Meadows Lane

I've been in every meeting where tid bits of this have been brought up. I don't like your attorney's opinion. He does not state facts that this has been investigated and never says

he did. Personally we are going to wind up with another Atlanta Crossing. So you may want to postpone to see it is thoroughly owned by the CRA.

**James Quellan –**

925 SE 2<sup>nd</sup> Avenue

I own the property south of the iPic and no notification was given at all. Overall I like the development that is going on but so many issues have been brought up and a lot of issues were not taken care of when they were brought up and just brushed to the side and then issues came up later. So I just want to make sure that it is being thoroughly looked into.

**Bob Ganger –**

1443 North Ocean Boulevard

Plating is dull but if you have any issues now is the time to get them resolved before a final plat comes in. The plat is the most legal document that you have to deal with. I know in the past we have brushed this off but now is the time to get it done to resolve any of these issues.

**Rebuttal**

**Dwayne Dickerson –**

We are in full compliance with all requirements in regards to the plat requirements.

**Board Comments**

**Robin Bird** –Ownership of the land. Does your client own the land to your knowledge?

**Dwayne Dickerson** – Yes. And we have title insurance so the title company would also double check and look into making sure the title was clear. The title underwriter makes sure you have the right to take the title of the land.

**Jay Jacobson** – My question is to Mark Krall actually. At what time point is the title search and policy come into play?

**Mark Krall**– I've seen it different ways. On this plat they do not have the entity defined that is actually going to own the property. Which means they may not own the property or don't have the title yet. We don't know who is going to certify the plat and someone has to examine all the prior transactions in the past to make sure that the title is clear and that has to happen before the final plat is approved. So from what I see right now on a preliminary basis I don't see that it is a problem right now.

**Jay Jacobson**–SPRAB was delayed? Was it in regards to the plat?

**Mark McDonnell** – No. SPRAB tabled the project for a later date due to various other conditions and concerns they had. Nothing in the way of major redesign and no plat issues.

**Steve Mackey:** In regards to the Martini project, I think it was an afterthought. Does the Martini property have any effect on this plat?

**Mark McDonnell** – It can be a separate property. It was added as an easement.

**Michael Dutko** – That property is not a part of it and has a separate plat.

**Steve Mackey**– Is the Martini property being used in any of the calculation in regards to the agreement?

**Michael Dutko** – No

**Joseph Pike**– So there is no abandonment process going on tonight. There are technical conditions that need to be addressed before final plat. So new title ownership needs to be done before final plat.

**Motion to approve** the Preliminary Plat associated with mixed-use development (iPic) located south of East Atlantic Avenue, between SE 4<sup>th</sup> Avenue and SE 5<sup>th</sup> Avenue, was made by Mark Krall and seconded by Jay Jacobson with conditions as stated in the staff report and also evidence of a title certification prior to final plot approval.

**MOTION CARRIED 6-0.**

## **VI. PUBLIC HEARING ITEMS**

**A. Delray Beach Boxing:** Recommendation to the City Commission for a privately initiated rezoning from AC (Automotive Commercial) to GC (General Commercial) for the property located at 2455 Old Dixie Highway, on the east side of Old Dixie Highway, north of NE 22nd Lane

**Exparte Communication** – None

**Mark McDonnell, Assistant Planning Director:** Presented the items through a slide show and staff report. Staff approves and recommends approval for requested rezoning.

### **Applicant's Presentation**

**Peter Carney, 135 SE 5<sup>th</sup> Avenue** – Staff gave a very comprehensive report and I am here to answer any questions you may have.

**Public Comments** – None.

### **Board Comments**

**Steve Mackey** – Was the property re zoned because the owner wanted to do repairs? This is more of just a comment on this issue. It seems inconsistent and a lot of work to re zone things just because one owner wants to do a different thing.

**Robin Bird** – So we have rezoned it because the sales were allowed but the repairs were not correct? So instead of doing a code amendment we did a re zoning and it seems that we are just patching things up instead of doing it the right way.

**Steve Mackey** – This seems very cumbersome to re zone for a new tenant. Now we have a tenant that wants to serve beer and wine and next to a golf cart place that wants to do repairs. I don't have an issue with rezoning it because it probably should be GC anyway. Maybe it's time for Mr. Stillings and you guys to look at some of these re zoning requests so that we don't have to re zone it every time there is a new owner. And the beer/wine is that just covered under the general license or a business license issue?

**Peter Carney** - As long as it's kept ancillary to the principal use of the boxing.

**Joseph Pike** – I just don't think we should re zone just for the market but I don't have a problem with this instance.

**Robin Bird** – So I have a question about the non-conforming is that going to go away. I don't like do a re-zoning and render something as non-conforming. So my condition to you is that there should be some sort of condition that the new owner has to confirm to that.

**Motion: Motion to approve** the request for rezoning from AC (Automotive Commercial) to GC (General Commercial) for the property located at 2455 Old Dixie Highway was made by Jay Jacobson and seconded by Steve Mackey, as outlined in the staff report with the condition that they include a date when non-confirming use will be disused.

**MOTION CARRIED 6-0.**

\*Let the record show that Mark Krall & Joe Pike have stepped down for the next item.

**B. Parking Lifts:** Recommendation to the City Commission for a privately-initiated amendment to Land Development Regulations (LDR) Section 4.4.24(C), to add Single-level Mechanical Parking Lifts as an accessory use in the Old School Square Historic Arts District (OSSHAD).

**Exparte Communication** – None

**Mark McDonnell, Assistant Planning Director:** Presented the items through a slide show and staff report. Staff approves and recommends approval for request.

**Applicant's Presentation**

**John Szerdi, Architect** – \*Presented Slide show. Staff made it clear that we needed to scale it back which we have. I've been working in Delray a long time myself and have already implemented some single lift stations in residential historic areas already. This will also reduce parking pressure. If we can park it on site we will not be pushing cars onto different areas.

**Wes Blackman, Principal, CWV Associates** – We are using a parking implementation that will be as unobtrusive as possible. The direction that we are heading is to concentrate parking and make it as less intrusive as possible.

**John Szerdi**– In summary what we are saying is that we wish that we had this tool years ago. We think it is a great tool and we think it will be even more effective in the OSSHAD than the CDB.

**Public Comments** – None.

**Board Comments**

**Steve Mackey** – I’ve seen this before and I think this is a great idea and it just makes sense. I see that the technology is going in this direction and it’s just the future. Was there resistance that you were getting from the community? Is that why you guys pulled your request?

**John Szerdi** – It was really an evolving process, we decided that the expense of a larger project. We decided that we could just scale it back.

**Robert Bird**– I went to a presentation years and years ago and the point was brought up on how loud it was going to be.

**Steve Mackey** – My recommendation is to look at this as a whole here.

**Jay Jacobson** – We definitely need to look at how to make the LDR more feasible.

**Louis Smith** – I think that we have a very unique historic district that is not being utilized to its potential. I don’t really see a parking problem.

**Robert Bird**– I understand all points made on both sides. I don’t think on the inside that we have a parking problem. I have been on both sides of this issue for a very long time.

**Louis Smith** – To me it’s more than just the ability to stack more cars.

**Steve Mackey** – I think that people have to stop this mindset of “don’t touch this” when it comes to historic district. Everyone is terrified of losing their historic district and I think that you can touch the just in the right way to keep the historic feel.

**Motion to approve** a privately-initiated amendment to Land Development Regulations (LDR) Section 4.4.24(C), to add Single-level Mechanical Parking Lifts as an accessory use in the Old School Square Historic Arts District (OSSHAD) as recommend by the staff report; was made by Steve Mackey and seconded by Jay Jacobson.

**Motion Approved 3-1**

**IV. REPORTS AND COMMENTS**

**City Staff**

**Mark McDonnell** –The next meeting will be January 25<sup>th</sup>. We will be looking at a preliminary plat for 1010 SE 7<sup>th</sup> avenue and a preliminary plot for the metropolitan area, and an amendment to the LDR to the Double Beach District.

**Joseph Pike** –I feel that we need to streamline the preliminary plot approval process. We need to look at that holistically and my concern is that in the interim it's a two-step process but let's get that process fixed.

**Mark McDonnell** – We are looking into that process and in the workshop coming up it will be discussed.

**Robert Bird** – Discontinuance use of business tax receipts. I don't know if you're using business tax receipts to use as non-conforming. How are we going about telling them they haven't been there for a certain amount of time? How would you verify that?

**Mark McDonnell** – Typically the burden is on them. They can use the water bill, etc.

**ADJOURNED**

There being no further business to come before the Board, the meeting was adjourned at 8:00 P.M.

The undersigned is the Administrative Assistant with City Clerk Office and the information provided herein is the Minutes of the meeting of said body for December 21, 2015 which were formally adopted and approved by the Board on January 25, 2016.

*Shanene Wright*

Shanene Wright

Administrative Assistant of The City Clerk's office

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 an abbreviated version of this meeting. The full audio dialog is available at City Hall for anyone that would like the full recording.)*