

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

**MEETING DATE:** May 18, 2015

**MEETING PLACE:** City Commission Chambers

**MEMBERS PRESENT:** Robin Bird, Jay Jacobson, Christopher Davey, Steve Mackey, Mark Krall, Joseph Pike, Gerald Franciosa,

**MEMBERS ABSENT:** None

**STAFF PRESENT:** Mark McDonnell, Amy Alvarez, Scott Pape, Michael Dutko, Assistant City Attorney and Diane Miller Board Secretary

**I. CALL TO ORDER**

The meeting was called to order at 6:00pm by Robin Bird Chairman. Upon roll call it was determined that a quorum was present. 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.

**CHANGES TO THE AGENDA**

Item 7A&B (Uptown Atlantic-Rezoning) and (Uptown Atlantic-Future Land Use) will be presented together, but they will be voted on separately. Actually the FLUM will have to be recommended before the rezoning.

**Joe Pike** – There are a couple of request for postponements, are we going to be discussing these items?

**Robin Bird** – I do not see their attorney present, but I think we should go ahead. We kind of zipped through it last time the request for postponement came to the board, but if we are going to do we need to amend the agenda, talk about it and if we are going to postpone it, then postpone it, and if not we need to go back and talk about it in order. So we are going to take them out of order. That is going to be 7D and 7E.

**Joe Pike** – I they are not here should we wait, as there are people here from the public that wants to hear this.

**Mark McDonnell** – I believe that the applicants counsel is planning on being here tonight. Where the items is farther into the agenda maybe that is why they are not here yet.

**Joe Pike** – I would like to disclose to the Board that I will be stepping down on Item 7A, 7B & 7C. as I am associated with that job.

**Mark Krall** – Also, to disclose to the Board, I will be stepping down on Item 7A, 7B & 7C as my law firm is currently working on those project.

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### **II. MINUTES** – None

**Mike Dutko, Assistant City Attorney** – I think there should be a decision by the board, regarding Item 7D & 7E, if the motion is to continue the item there won't necessarily be a public hearing on that issue, on that motion. The board needs to decide since comments from the public are typically limited to items that are not on the agenda, whether that is going to include discussion on that issue or not. If you go in favor of that there will not be a Quasi-judicial hearing tonight. If there is no Quasi-judicial hearing there are no public comments.

**Gerald Franciosa** – How many votes are there tonight? Can we put it off tonight?

**Mike Dutko** – Regardless whether it is put off tonight or not there is going to be a vote by this board, therefore there is going to be a vote on an issue.

**Robin Bird** – I think what the Asst. Attorney is trying to tell us is maybe we want to reconsider amending the agenda and then put it before that and we need to make a decision, as people may want to speak.

**Mike Dutko** – I think there are two ways you can do it. That is one or you can allow public comment during the public comment time on that issue of granting the request.

**Robin Bird** – If we are going to do a postponement I don't want to get into an unnecessary hearing and have to repeat that hearing. If we hear the items and we are not going to postpone it we are going to take comments and it still may end of being postponed because I don't have anything in my backup for this item. So I ask for the pleasure of the board, and I highly suggest that we bring them up now, amend the agenda. I see that Ms. Miskel just came in, so their attorney is present and we can discuss it, she can tell us why it is being postponed, the public can hear it, and she can be here for any comments from the public and get those out of the way. I don't have any back up so I don't know how we can have a full hearing.

**Mike Dutko** – Public comment on that issue needs to be limited to that issue. Public comment should not be on the application as a whole. There are due process concerns that this is not a Quasi-judicial hearing for public testimony regarding the pros and cons of that particular project.

**Robin Bird** – If we move this up, we are going to hear about if we are going to postpone or not and then in fact make that decision. Then we will go forward. There will be no public comment at that point.

**Joe Pike** – If you like a motion to that effect then we proceed. I would like to make a motion to modify the agenda to move up Item 7D & 7E ahead of Item 6 (Public Comments).

**Gerald Franciosa** – What happens to the second addendum when they ask for another postponement?

**Robin Bird** – I think it is one request. They posted one agenda, they didn't want to take this agenda down, and so they did an addendum. If it comes down for 15 minutes they have to re-advertise. I have to agree with Mr. Franciosa that I was confused also.

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At this time we have a motion on the table to modify the agenda by Mr. Pike, seconded by Christopher Davey.

**Motion approved 7-0**

### **PUBLIC HEARING ITEMS**

**7E. (Inserted as 5A)** Abandonment of a portion (north 196.18 feet) of the 16 foot wide north-south alley right-of-way, lying within Block 101, of the Plat of the Town of Linton (now Delray Beach), as recorded in Plat Book 1, Page 3 of the public records of Palm Beach County, Florida, in conjunction with the Fourth and Fifth Delray development. (Quasi-judicial Hearing) NOTE: **The Agent has requested that this item be postponed to June 15, 2015.**

**Bonnie Miskel** – I am here on behalf of the applicant. As you may remember, it was a long time ago, we came before you and there was a lot of discussion and much confusion with many things we needed to work on. We had a Plan B that we had just started working on at that point as a potential solution to a couple of the big issues that night. We completely redesigned the site and found that our Plan B did not solve 50% of the issues that were raised. We are now working on a Plan C that will actually address 100% of the big issues that will be raised. The reason we changed the dates is that we the plans are not final yet and it would not give staff sufficient time if we were on your June 15 date for them to review this new plan and be able to provide you with comments. So we are requesting a July meeting. If it is necessary for us to re-advertise we have no issue with that.

**Robin Bird** – Now this is for Item 7D & 7E.

**Bonnie Miskel** – That is correct, these are for the iPIC.

**Robin Bird** – Does anyone have any questions?

**Christopher Davey** – Why is this taking so long?

**Bonnie Miskel** – There were a lot of pieces, but as it relates to Plan B, the plan was to add another parking deck to provide additional parking spaces and also to bump up the 1<sup>st</sup> level in order to enable thru traffic so that the ally would not be a dead end. Once we did that we had to bump out portions of the building and we didn't get any additional parking even though we were adding additional parking deck. That one was canned and it took us 2-3 months to design the plan and figure out that we were not netting any parking for that. We then came to a new plan which is not quite buttoned up at the moment but that plan would allow again another deck. It would actually provide a through area that would be outside of the building, so we would net a full deck of parking which is our desire to make public parking to improve the deficit as well as create that through. That plan is in draft and not final yet and it has not made it to Mr. Pape yet but very close to that. We essentially re-designed twice; it was a lot of work.

**Christopher Davey** – 5 months? Initially you asked for asked for a 2 months postponement, that was your request, and then we postponed you to a date certain of February. That then became April or May and it was postponed to a time before this. This is at least your 3<sup>rd</sup> postponement.

**Bonnie Miskel** – This last plan also included is requiring additional property in order to provide through access and that has not been negotiated.

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**Robin Bird** – So you are adding property to it, so does this not go back and start the process over?

*(There were many “Yes” comments from the other board members)*

**Bonnie Miskel** – Not really, but they have not even had a chance, in the event that is the case, it would be so. They have not had a change to look at this yet.

**Robin Bird** – The site plan review process at the staff level and what you are adding, I can't imagine not having something of a new application. I am of the opinion that when you have lengthy postponements it must be completely re-advertised.

**Bonnie Miskel** – We have no issue with that.

**Robin Bird** – and I am sure it is not a big expense for the applicant but you think it will be absolutely necessary, and we don't have any plans so it is the pleasure of the board at this time if we are going to go through with the postponement.

**Christopher Davey** – My issue, at one of the previous meetings Mark McDonnell mentioned that there had been almost no contact between the applicant and the City. And I don't understand why something would go on. I understand it takes time to redesign something, but there has been members of the public who come to meeting after meeting and you look at the Atlantic Crossings projects and other projects here in the City that are very large projects, they redesign them. You yourself came to us and asked for the date certain of February. I just tend to think that when I asked staff today, they can't recall anybody asking ever for a postponement 3 times and for 7 months. I think at some point this board; we are setting a precedent that we are going to allow things to get extended. I don't think it is fair to the public that keeps coming here, meeting after meeting expecting a hearing.

**Robin Bird** – I think that is an excellent point, and at this point we need to bring this up during our reports section at the end to have some direction and have some time frame on applications. If you apply for a building permit you have a certain amount of time between reviews to respond to those or you it should automatically cease and there should be a process. An application such as this or any site plan application there needs to be a reasonable time frame for the process. Whether it is 7 months or 1 year, when you get rezoning involved, 6-8 months is not an unusual thing.

**Steve Mackey** – I know the county, once you make application you have 6 months for a final decision.

**Christopher Davey** – We are at 13 or 14 months right now on this item since they made application. To me I think the Board at some point we need to draw a line in the sand, because people in the future will come and say, well they got 3 deferments, and we have gone along with everyone of this applicants request and they are their request dates and they are not meeting their own dates.

**Bonnie Miskel** – We are going to 2 different bodies of government, it is not just the City's process that we are going through, we are also dealing with the CRA process. We had a contract that was coming to an end, so we had to get that extended before we could even come back to you

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or we might not have had a contract. We have done that so we are dealing with (2) different bodies, and though I do understand typically you are not doing that and going through one body we are going through two. Gaining approval by each one through this process in order to come back to the other.

**Christopher Davey** – I understand what you are saying, but we did not suggest these dates, you asked for them, so you are meeting the deadlines that you set for yourself. We granted them at least (3) times.

**Bonnie Miskel** – We had the two dates, but we haven't come back to you yet.

**Jay Jacobson** – Do the LDRs address any of this, as in application times, response times?

**Michael Dutko** – I am not aware of any general application deadlines timeframes in the LDRs. There are timeframes once you get your approval, as far as general application and timeframes I am not aware of any.

**Jay Jacobson** – We have a new Planning and Zoning Director, and I suggest that we address this issue because what Chris has raised is a legitimate one. If I was coming next year in front of this board and one person was granted a year, plus 3-4 extensions and I ask for it and don't get it, I will call my attorney from the back of the room and tell him that we have a problem. I am very concern about setting a precedent.

**Steve Mackey** – I do believe that other cities and towns do this. Once you make application you cannot jockey for summer time hearings or winter hearings.

**Jay Jacobson** – I do have some empathy for an applicant who deals with a couple of government municipals agencies to get a contract negotiated and a contract extended. Coming before this board or coming before a CRA board, and that is painful. However, I am at the end of my ropes on extensions. I would be willing to go one more and if this is not in front of us next meeting than I am done. I do not see any valid reason to continue allowing them to continue under the process they started under a year ago. I understand the complexity of these projects but 5,6,7 months to redo a plan, but I do this every day and this is ludicrous.

**Joe Pike** – Under normal circumstance if we were to say no to this extension what happens next? Do they go back under the new rules?

**Robin Bird** – What would happen now, and we don't have any back up, if we were to open it up, Bonnie Miskel would be forced to make a case, hear from Jeff, hear from the public, we would have no choice but to postpone it. Even after this we would have another hearing. That is what is going to happen if we hear the case tonight. As a board we are forced into our motions at this point. In the future we can put them on notice now that we want a presentation at the next hearing, and I think they got the message from the board. They have lived through this a little longer than I have, so I think you have heard this, you know we are going to have a presentation on July 20, 2015, the public has heard it now, we are going to re-advertise it and that should be included in the motion at the applicants expense, whatever that is.

Also, at the end of the meeting I would like to spend a little bit of time to give staff some guidelines as to what everyone could be expecting. There is another issue, that if we render a

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decision and we render a denial, how long do they have to reapply for that. Typically if you get denied on a variance request, you have to wait one year for an identical request.

**Joe Pike** – If we don't let it go through now, do they have to go through the same process.

**Robin Bird** – With my experience you tweet the request a little bit and you make it slightly difference, it's not the same request, and you circumvent the year. Sometimes it is worth going through the pain of these hearings and work with the applicant on the postponement so everyone gets the whole thing. Be careful what we ask for is my only point.

**Christopher Davey** – Obviously this applicant has extremely competent legal counsel and I am sure they equally competent engineering/architect balance. I find it hard to believe as Mr. Mackey .brought up the perceptions of some people might me that people are jockeying for certain times of the year for these extensive postponements. I don't think it serves us well as a board to, when an applicant comes to us and say I want to postpone in December to a date certain in February, February becomes April, May and then June and so on. I understand you will probably get another postponement, I would just want to say as a board member that it is 2-3 months for re-draft of plans until you realize that it is not a net gain in parking.

Gerald Franciosa – If we don't approve the postponement tonight is it appealable?

Michael Dutko – Yes it is.

A motion was made by Steve Mackey to postpone Item #VII.D (Conditional Use, increase height) to July 20, 2015 with re-advertising at applicant's expense, seconded by Joe Pike.

**Motion approved** 5-2, Dissenting, Christopher Davey & Gerald Franciosa.

A motion was made by Steve Mackey to postpone the Alley Abandonment to July 20, 2015 with re-advertising at applicant's expense, seconded by Joe Pike.

**Motion approved** 5-2, Dissenting Christopher Davey & Gerald Franciosa.

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

#### **Joanne Harrison – 65 SE 5<sup>th</sup> Avenue – Courtyards of Delray**

I am one of these people that have come to every single meeting to listen and to watch and observe your process and to be able to comment on what is going to happen with the IPIC Theater and the impact on the community of Delray. I am disappointed on the vote that was just taken place because you have process and went out on a RFP and you clearly stated what was expected of this project from the beginning. I am always listening to the discussions and the concerns that were discussed. This board was very clear as what was expected to occur during the time period that this project was to take place; you gave clear direction. The last time you postponed it I called the City and I asked if I could come and speak and they said 'No' it is an automatic postponement you can come. So I as a citizen do not have the opportunity to speak to you and I did not have the opportunity to voice my opinion. I don't have the opportunity tonight to voice my opinion about my concerns even if they do what they say they will do and I agree with the fact you're somebody that wants to get business and do business, then you get the job done in the timeframe. Even if it means you work 24-7 and now you have given then an extra few months. But I do live in a community that a lot of us will not be here in July and I feel you have

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denied my right as a citizen, and I have sent you a letter, I have communicated to each of you with the concerns of the community about this and I feel very strongly that when I send a letter to you about my concerns they will be taken to heart by each and every one of you. There are safety concerns and there are issues and I think if you have a process I think you are absolutely correct. You put yourself in a very tenuous position by allowing people extensions after extensions, because the next time someone comes along, my feeling is that if you have a process, stay with the process. I hope you listen, and even though I will not be here in person on July 20<sup>th</sup> that my concerns will be heard and not just be another letter in your inbox.

**Mike Dutko** – Before the next comment, I feel that I need to make this legal comment. I understand the concern that was just raised, as many people here have the same concerns, especially the people that are not in town at the time the next hearing will be called. I would just point out if you do have those concerns, any letter that you send to the City, regarding the application, becomes part of the record so that becomes evidence that you will consider during the quasi-judicial hearing, so if you do have concerns and issues that you want raised, send a letter in with your issues. That essentially is the same exact evidence as it would be if you stood here at that hearing date. So before anyone goes out of town if you have those concerns you can write a letter.

**Robin Bird** – Except the individual cannot be cross-examined and then it becomes here say at that point. It is their word against someone else, and it can't be contested. It is a big difference.

**Mike Dutko** – I do know that it is a big difference I just wanted people to be aware.

**Robin Bird** – It does go into the record, we do see it and we do read it. I agree.

### **Noi Fazzio – Courtyards of Delray**

I have made a point to be at each of these hearings. Yesterday I was in New York and I came here just to be at this hearing, I had scheduled it, I am a practicing attorney in New York. This is so absurd, so unheard of. At this point half of our town has emptied out; the applicant has manipulated the commission on its own timetable, its own advantage. The disadvantages is that most of us are not here; July, August and September. Our voices through a letter are not as strong as our voices as if we were here in person. I am telling you at this point in time we have been manipulated here by the applicant. Come July 15<sup>th</sup> there might be 20 people here, and in February this whole room was full waiting to be heard. Those people will not be heard in July. At this point you have already voted on what I don't understand why you didn't hear from the public before you vote this evening. I feel like I am in a kangaroo court here tonight.

**Robin Bird** – You have said that you are an attorney?

**Noi Fazzio** – That is what I wish to say at this time.

### **Jim Smith – SAFE**

They are wasting staff time, that is exactly what they are doing and costing us as tax payers. They should be denied their postponement; I don't think you have the correct option in front of you. When you denied the postponement they must go forward with the project they have right now with the staff. That is the project that should be going forward. Postpone it, go with the plan they have on file. I have been here since October; they were asking how much time they needed

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because of the holidays. Someone said we will take January. The board said what about February that might not be enough time, now its July. Staff cannot design the plan for them. If they could we would have had this done a long time ago. They have to give advice; they have to say NO, they have to suggest this. They are wasting staff time, preciously that they could us on other projects. This is becoming another Atlantic Crossing and it will last as long as Atlantic Crossing did and it is still not done, and I predict that, and I will come back in a year or two and I will be saying the same thing. Postpone the project; make them go with the plan they have and move it forward and say yes or no on a project. Don't keep wasting valuable staff time. It is costing us.

### **Ari Whiteman – Washington Road**

I would like to ask a question, is the applicant required to submit a new application. Doesn't that constitute them to abide by the new LDRs on a conditional use?

**Robin Bird** – I believe that is where they are going to be going. I think that will be determined by staff.

### **Jim Knight – 123 E. Atlantic Avenue**

I am not here to talk about iPIC. I want to say that we have gone through and changed the LDRs and we are working on all this clear space on Atlantic Avenue, it was brought up by one of the commissioners that we just finished this great work on Federal Highway, but you don't have but 2-1/2-3ft. because of the trees that they have put in. Hopefully they are going to look at putting in some grates along Atlantic Avenue because of the root balls. We go and make all these changes yet we don't even meet the guidelines with our own projects.

### **Bruce Gimmy – 439 E. Atlantic Avenue**

I was a member of the Ocean Ridge Planning and Zoning department for 20 years and one of the tactics that the people used there was delaying things until the summer comes and that is the way they do it. Hopefully the new LDRs will kick in on this because they need to reapply, but my question is, from what I hear from the attorney, is the plan is going to be changed so much including more land, do they need a new RFP? I am very unhappy that the precedent has been set that you can keep on delaying, delaying and delaying till summer time.

### **Dr. Victor Kirson**

I cannot believe that this board has the legal authority to postpone this again. I have never seen this in the 7 years that I have been up here. Something I would like to see in writing, and if you don't and you postpone it then I think the residence have the right to sue you individually. If you are telling me that because staff didn't give you back up you can't do it today then we have the right to sue staff. Atlantic Crossing, we have sued them 3 times, and maybe this project will be done 5 years from now. The citizens don't want it, they are postponing so we cannot be heard, and you (the board) don't have the guts to say no are making it worse.

### **Barry Silerman**

A good point was brought up; perception is a reality at public hearings. The attorney for the project, right, wrong or indifferent mentioned that they were going to acquire more land. That kind of sounds like a different project, and it is going to require different shaping, and different approvals. I am not sure how that works into the guidelines, but this can't be the first time something like this has been kicked down the road like this in the City like Delray. It has to be

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guidelines through the state I would imagine. Are we playing by state rules or just making them up as they go along. The perception of these people is very valid.

### **Hannah Collin – Abilina Properties**

We want to thank you, the Planning Board and staff for listening to our concerns about this massive 8 theater movie plex, national headquarters, office building, restaurant/bar, private parking garage. Although we have many unanswered questions, especially about the alley and parking, I will save that till another day. Today is still another postponement like last year on December 15, and again on December 23 (I think) although that meeting is a little cloudy, the staff has suggested several course of actions for you, (1) to allow postponement with some direction for staff and developer. We would suggest (2) items of direction. The north/south alley running parallel to and between 4<sup>th</sup> Avenue and US 1 should stay like it is and remain public property as it was intended by the W.S Linton family. The developer should be reminded that on Page 6, Para. C of the RFP, it is clearly stated the proposers should confer with the Planning and Zoning Department with any changes and contemplated changes to the LDRs. This seems to negate any type of grandfathering in of this project. Hopefully at some distance time in the future this board and the public will have the opportunity to review and make a recommendation on this project when all of its cards are finally on the table.

### **Robert George**

I would like to leave the board with a reminder that I came up here on December 15, 2014 and spoke to this same board and I made several comments, perhaps buried in that was something that might not be remembered. Ms. Collin who came here before me briefly mentioned the dedication of streets and roads of the town of Linton now called Delray Beach, by W.S Linton, James Ingrem of the Moodel Land Company on July 25, 1896 dedicated all the streets and roads of this town for public use as roads in perpetuity. Any contemplation to give away that alley would be a front of that dedication and we violate it. I have brought this up to City officials before and I just wanted to remind you again. Also, this complex that has been presented to you is a mammoth complex, it goes one city block wide, 2/3 of a city block deep, and it goes up as far as 5/stories as of this time. This is in contradiction to the intended purpose of the ordinances that govern the CBD.

**Robin Bird** – One thing, Jeff Costello, you were going to speak before? The RFP was the CRA RFP?

**Jeff Costello** – Yes it is.

**Robin Bird** – I am sorry that Bonnie Miskel left. You heard that the public wants you to look at the RFP. It is not this boards RFP, it is the CRA's RFP. People should get with the CRA to discuss the applicant and the RFP process, and whether it has to be re-done and city staff as far as the application is concerned, and with the addition of the new land.

We are now presenting Uptown Atlantic Rezoning and FLUM Amendment at the same time. We have two but we have to vote on the amendment first. Actually we need to be amending VII.B first and then we can combine them. Mark is going to make one presentation but we need to amend the agenda to hear VII.B before VII.A.

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**Motion** was made by Steve Mackey and seconded by Mark Krall to amend the agenda to hear Item VII.B before VII.A

**MOTION CARRIED 6-0**

**VII.B.** Uptown Atlantic: Future Land Use Map amendment (Small-Scale) from MD (Medium Density Residential 6-12 du/ac) to CC (Commercial Core) for two parcels measuring 0.31 acres, in conjunction with the Uptown Atlantic development, located on the south side of West Atlantic Avenue, between SW 6<sup>th</sup> Avenue and SW 9<sup>th</sup> Avenue.

**Mark McDonnell** – I would like to make a comment on one of the comments that was made during public comments. This is in regards to having back up. We do have the December alley abandonment and the conditional use; we were prepared to present that tonight.

I would like to recognize Amy Alvarez, Senior Planner. She is the project planner that worked on these first two items.

**Mark McDonnell, Asst. Director Planning and Zoning** - Mr. McDonnell then entered into the record 2015-009 CCA Uptown Atlantic and 2015-010 Rezoning Uptown Atlantic presented the item through a review of the staff report.

**Experte Communication** – All board members received an email from SAFE.

### **Applicant Presentation**

**Bob Currie** – Currie Soward Aguila Architects – 185 NE 4<sup>th</sup> Avenue

**Chloi Aronson** – Architect

**Dwayne Randolph** - Contractor

**John Flynn** – Developer

This project is 3/blocks that goes from Fairfield Inn east. We have a 4/story building in the first block (900 block), apartments with retail below. The middle block is the 3/stories, apartments above, retail below. The east block is 2/story predominantly with a grocery store and first class office building on the second floor.

**Chloi Aronson** – This is the middle building (there is a court yard in the middle) and here is the view of the rear with the townhouses that we are using to transition down into the neighborhood from the commercial buildings. This is the 800 building that is closes to the Fairfield Inn, which is a 4/story building and this is the townhouses that we are using as transition which is what the rezoning parcel will have on it.

**Bob Currie** – There are two small lots that we are asking for.

**Robin Bird** – It is more a conditional use that we are asking for than the rezoning cause we are just adding a couple of lots and extending the lines a little farther south.

**Gerald Francisco** – What is the need for those (2) lots. You have residential surrounded by commercial and multi-family, and then you have these (2) lots that you are adding into this commercial.

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**Choli Aronson** – The grocery store which is a heavy need for this community, as there is no access to a grocery store in this neighborhood, this needs a lot of parking. One lot is specifically going to be used for the grocery store use, and the other parcel on 7<sup>th</sup> is a community pocket park as a portion of a townhouse to step down into the neighborhood. The main reason we want them to be rezoned so we can do a unity of title to all the pieces of the property that we are developing can be one parcel.

**Robin Bird** – Are they going to be rentals or are they going to be owned?

**Bob Currie** – These are all rentals.

**Steve Mackey** – Is the assemblage complete after these two or as an additional parcel come available will we see you people again to keep going.

**Bob Currie** – We have been at this for a long time; right now we are going with this.

**Choli Aronson** – We have discussed that that would be a separate project.

**Bob Currie** – It would then only be separate townhouses.

### Public Comments

#### **Jim Smith – SAFE**

We support the rezoning for many reasons. Main reason is the promise of the grocery store. And that they are going to provide 200 shopping carts that they are going to give away to the neighbors and Bob Currie is going to trump that and buy an extra 100 and put it in the kitchens of new residents.

#### **Brenda Edwards, Speaking on behalf of my mother who lives at 702 SW 1<sup>st</sup> Street**

If you could explain what 'Accessory Use' is? Also, I saw a notice that was sent to my mother that there was property to be demolished for this project. Another question is the impact to the community on SW 1<sup>st</sup> Street. And finally, something was said about re-zoning.

**Robin Bird** – I will have staff come back and answer all these questions.

#### **Luc Loriston – 923 SE 3<sup>rd</sup> Avenue**

How is this going to impact 49 SW 7<sup>th</sup> Avenue.

#### **Chuck Ridley – 210 NW 2<sup>nd</sup> Avenue**

I am here as the Chair of the Community Benefits Agreement Coalition, which consist of WARC, NW-SW Neighborhood Alliance, and the Village Elders. For many years we have been talking about making attempts to revitalize the community. The residences are all concerned about how development can happen. They just want to make sure that it happens with the consistency of the desire of the neighbors. They also want to know that they can still live there after the development is complete. With this development they want to work with their goal, i.e. vacant property equates to blighted conditions, Increase in Jobs, and Workforce Housing that is not just about low income rentals or housing. This developer is setting a precedent of sitting down with us and working this through.

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### **Bruce Gimmy – 439 E. Atlantic**

This is a good project and so well done and so needed to keep things going on West Atlantic.

### **Jeff Costello – CRA**

The FLUM amendment and re-zoning is necessary as part of the conditional use request. Just to clarify, this is (2) lots, this is not extending down 2<sup>nd</sup> Street. The SW area overlay district extends to SW 2<sup>nd</sup> Street which is an area that you can increase residential density.

### **Peter Perri – 65 NE 4<sup>th</sup> Avenue**

I am treasurer of the West Atlantic Re-Development Coalition and on the Community Benefits Team. The developer has work tirelessly with us and the community to bring to the community what they have been asking for a very long time. This project is what W. Atlantic needs.

### **Robin Bird**

Mark McDonnell, if you would address the questions that were asked.

### **Michael Dutko**

I think if the Board Chairman would ask the questions and Mark to answer.

### **Robin Bird**

Questions:

1. What is accessory use? Surface parking lot, dumpster corral would be examples.
2. Demolition? This is the first I have heard about demolition permits.
3. Traffic flow on 1<sup>st</sup> Street? We usually get to that further along in the process.
4. Commercial/non-Residential uses? This type of development is proposed in this area.
5. 49 SW 7<sup>th</sup> Avenue? The church I do not know.

### **Michael Dutko**

If it helps at all in the conversation and follow-up question, I looked up ‘Accessory Use’ in the LDRs:

*The Land Development Regulations defines ‘Accessory Use’ as a building structure or use on the same lot with and of the nature customarily incidental and subordinate to the principal building structure or use.*

### **Choli Aronson - Currie Soward Aguila Architects**

To answer on the demolish properties:

1. Funeral Home on the corner of 6<sup>th</sup>
2. Shopping Center-between the 700 & 800 block
3. (1) house at 26 SW 6<sup>th</sup> Street
4. (1) house at SW 8<sup>th</sup> Avenue (Mrs. Flint house)

The rest of the property is vacant at this time.

As far as the traffic to the south we have had a traffic study done and submitted it to the City and most of the traffic will go to Atlantic Avenue.

In regards to SW 7<sup>th</sup> Avenue and the church, we don’t anticipate any impact.

### **Brenda Edwards**

The properties on Atlantic Avenue, the parking will be south of those buildings?

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**Robin Bird**

As far as I can see, yes, and I think this conversation should be with the Conditional Use.

**Chuck Ridley**

What would prevent from later on for them to obtain SW 7<sup>th</sup> Avenue as well?

**Robin Bird**

They have to approach you, they can't just acquire it. The City or CRA can only acquire property for City purpose.

**Staff Cross Examination** – None

**Applicant Rebuttal** – None

**Board Discussion**

**Jay Jacobson**

Nothing at this time

**Steve Mackey**

Is the grocery store a done deal? A little concern as I have seen this before where people dangle great concepts and ideas and then things change later.

**Bob Currie**

No question that we are going to put a grocery store in there.

**Gerald Franciosa**

Pass

**Christopher Davey**

It is nice to sit up here and hear the neighbors like the project.

**Motion** was made by Christopher Davey and seconded by Jay Jacobson to approve to the City Commission of a small-scale Comprehensive Plan amendment associated with a FLUM (Future Land Use Map)

**MOTION CARRIED 5-0, Stepping Down Mark Krall & Joseph Pike**

**Motion** was made by Christopher Davey and seconded Jay Jacobson to approve to the City Commission for the rezoning of the subject properties from RM to CBD.

**MOTION CARRIED 5-0, Stepping Down Mark Krall & Joseph Pike**

**VII.C. Uptown Atlantic: Conditional Use** request to allow an increase in the density in excess of 12 residential units per acre. A density of 18 units per acre is proposed. The development proposal involves the demolition existing improvements on the subject properties and construction of a mixed use development consisting of 112 dwelling units, 17,267.30 square feet of office, 6,250.0 square feet of restaurant, and 44,841 square feet of retail. The property is located on the south side of West Atlantic Avenue, between SW 6th Avenue and SW 9th Avenue. (Quasi-judicial Hearing)

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**Mark McDonnell, Asst. Director Planning and Zoning** - Mr. McDonnell then entered into the record 2015-011 Use. I would like to recognize Scott Pape, Principal Planner, he is the project planner. The review is done by one of our consultants; until we get re-staffed we are leaning on some consultant to help us.

Mr. McDonnell then presented the item through a review of the staff report

### **Applicants Presentation**

#### **Bob Currie – Currie Soward Aguila Architects – 185 NE 4th Avenue**

This is an enormously important project and we have gone to great lengths with the developer to make sure that everyone is on board. We also have agreements with the 3 tenants in the strip center. As far as conditional use, by right in the downtown you are allowed 30 units per acres, for some reason you are only allowed 12 units per acres. We are providing 20% Workforce Housing. Looking forward to getting the project going.

### **Public Comments**

#### **Jim Smith – SAFE**

Uptown Atlantic will be providing many more transportation demands provided by our LDRs. With this there will be fewer cars and far through traffic trips and they won't need those 45 in-lieu parking spaces, and with that we will make our case to the City Commission. They are also not asking for any sidewalk waivers which are consistent with the project. Your TDM will include: bicycle racks, parklet if the City wants it, (2) trash receptacle and dog poop bags, vouchers for each move in resident entitling them to a free month of transportation on Palm Tram, inside secure bike storage for 25 peoples bikes and 12 short term bike parking spaces, bike repair and more. Uptown Atlantic will be contributing \$50,000 to the City for a ped bike TDM coordinator. It will give away 200 shopping carts for residents so they don't have to drive to the grocery store. Various meeting will be held with Uptown Atlantic and SAFE during the development.

#### **Chuck Ridley – 210 NW 2nd Avenue**

On June 4<sup>th</sup> we are having a meeting with WARC, and while we are partnered with WARC our allegiance and who is accountable are you all. We are never going to forget that it is all about the vision of this neighborhood, so please come to this meeting. We know that the closer we get to this project, more concerns are going to surface.

#### **Jeff Costello – CRA**

We have been working on this project for a very long time and there is light at the end of the tunnel. As far as the density increase, the 22 units is part of the purchase/selling agreement. Positive findings are also made with the comp plan. In regard to Bob Currie's comment about density, that is in the West Atlantic Re-development plan and it is permitted.

#### **Mark McDonnell**

The recommended action on Page 15 of the staff report, there is slight language changes. 4<sup>th</sup> line down it reads '*partially inconsistent*' it should read '*consistent*'. Also, on line 5 it reads, '*does not meet*', it should read, '*meets criteria*'.

#### **Rebuttal –None**

#### **Robin Bird**

A question for the applicant, you mentioned something about the agreements you will have?

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### **Bob Currie**

There is the Community Benefits Agreement. It is a separate body from the West Atlantic, SAFE, and the (3) tenants.

### **Robin Bird**

I am more concerned with the outside agreements or private agreements. Do we include these in the back up?

### **Bob Currie**

CRA asked us not to put it in the development agreement and just do it privately with each one.

Robin Bird

Yes, but they can be submitted as evidence.

### **Mark McDonnell**

The latest word on that is that it is a private agreement between SAFE organization and the developer.

### **Board Discussion**

#### **Jay Jacobson**

What is the timing on this?

#### **Jeff Costello**

The RFP was issued and awarded in 2013. It is at least a 2 year process, and while we were doing this we were assembling other properties and we issued another RFP in 2014 and that was incorporated into this project.

#### **Jay Jacobson**

The real answer is that you are in the process that will continue. A couple things, I will take everyone at their word that there is an 18,000 sq.ft. grocery store and to be aware that there is going to be a lot of large trucks and to try and lineate truck patterns and timing. Also, it would have been good if there had been a little bit more separation between the neighborhood to the south.

#### **Christopher Davey**

Are the residential dwelling units for sale units?

#### **Bob Currie**

They are all rentals.

#### **Steve Mackey**

I liked listening to Jim Smith talking about alternative transportation and bikes and happy to hear all this. We only have a traffic issue if we continue to drive everywhere. Great job.

#### **Robin Bird**

I was not here last meeting, I was in Seattle, Portland and Vancouver, a very walkable city with a lot of bikes. We encourage it here and glad to have it. Also if for presentations, even if there was only one copy and we could pass it around.

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**Choli Aronson**

Would there be a way for us to email it to you?

**Mike Dutko**

The presentation needs to be part of the record anyways, so staff needs a copy of it.

**Motion** was made by Christopher Davey and seconded by Jay Jacobson to approve small-the conditional use request to allow for a density in excess of 12 units per acre within the CBD for Uptown Atlantic including conditions 1-13.

**MOTION CARRIED** 5-0, Stepping Down Mark Krall & Joseph Pike

*8:00pm-Let the record show that Gerald Franciosa left the meeting.*

**VII.F.** City-initiated amendments to the Land Development Regulations (LDRs) to revise LDR Section 4.5.1(E)(6), **Relocation**, to provide specific criteria and requirements for the relocation of contributing or individually designated structures; revise LDR Section 7.10.5, Cash Deposit, Bond, or Insurance Required, to require a historic structure relocation bond; and add LDR Section 7.10.11, Historic Structures, to clarify the requirements to obtain a permit when relocating contributing or individually designated structures. **Postponed from April 20, 2015**

**Exparte Communications** – None

**Mark McDonnell, Asst. Director Planning and Zoning** - Mr. McDonnell entered into the record 2015-011 Use. I would like to recognize Amy Alvarez, Senior Planner, she is the project planner. Mr. McDonnell then presented the item through a review of the staff report

**Joe Pike**

What is an example of 'Failed Relocation Project'?

**Amy Alvarez**

A failed relocation is when you are trying to move a historic structure and it falls apart.

**Joe Pike**

So it is damaged beyond repair.

**Amy Alvarez**

We are asking for a lot of information prior to the application approval that hopefully insures that it is a viable structure that can be relocated.

**Jay Jacobson**

So it is at the discretion of the board if they thing you did all you can do to save the structure. Things do happen but not sure why we should hold these people accountable for the structure falling apart.

**Amy Alvarez**

And that is why we would leave it to the discretion of the City Commission.

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### **Mike Dutko**

This provision is in line with what the City Commission has asked for during the last relocation.

### **Robin Bird**

These structures can become a City asset, your relocating it and you might not want to bear the expense of doing the whole thing. What happens to the bond if the structure is a loss and we are at a loss. What can we do with that money?

### **Amy Alvarez**

Hopefully we never have to collect the bond, but if the unfortunate day came we had to collect some money we would have to create some program or account that is preservation related.

### **Robin Bird**

What I do know is that every Supreme Court case that I have come across, you have to have a nexus when you're taking money and it has to be directed. This City has had it cases and the City of Boca Raton couldn't get money to improve the media's on N. Federal Hwy. and they had to pay it all back. So if you are taking someone's money for a destroyed structure and it is for historic preservation, you can't take that money for the south end of the City.

### **Mike Dutko**

I will say I am familiar with those cases regarding nexus and the requirements. From a legal stand point and policy stand point I would agree with everything you have said. Legally I am not concern whether that sort of detail needs to be within a bond requirement.

### **Steve Mackey**

I am having a real hard time with this whole concept. When you break it all down you are asking to modify the LDRs for a situation that somebody wants to move a historic structure. So if you could break it all down cause it seems like we are trying to brand it all in here, because someone dropped a house and we are tacking on a bonds that is money transfers we have nothing to do with. Why is this in front of us right now?

### **Amy Alvarez**

You can see on Page 2 of the ordinance, there are (2) points of the relocation criteria that the Historic Preservation Board considers. Part of this amendment is to add additional criteria for them to consider a relocation of a historic structure.

### **Steve Mackey**

When will they be required to relocate a structure in order to build something?

### **Robin Bird**

They asked us to relocate the structure; they wanted to build something different. It is a historic asset that they need to relocate to re-develop that property.

### **Steve Mackey**

So this is a private endeavor

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### **Christopher Davey**

Marc Julian has a sub division that they want to move a historic home on existing lot and add on to it. It is usually privately initiated by a builder or developer.

### **Steve Mackey**

So now you have a private developer that is initiating the request to move and preserve this structure. So now we are inserting 35 pages into our LDRs?

### **Robin Bird**

They have to be registered as historic structures.

### **Joe Pike**

I think what we are trying to do is safeguard the people who just want to get rid of the house that is historic and build something that is new.

### **Amy Alvarez**

That is part of the amendment, and also to provide additional information, i.e. a structural report from the engineer. We also want to know the method you are going to use to relocate the structure. We only have one example to use.

### **Steve Mackey**

I am very concern with drawing this amendment up, as it seems that this is solely based on this one issue and now we are going to insert a lot of pages into the LDRs.

### **Robin Bird**

I still haven't gotten the whole lost thing.

### **Christopher Davey**

I think by following this at the City Commission level, to me for many years you could get an engineer declares that the building was unfit and then you would have ability to make it go away. Also, moving a historic structure to another lot is not necessarily the highest investment.

### **Steve Mackey**

So we might see more moving in the future.

### **Joe Pike**

I think what we have been seeing is some people have just let these buildings fall in disrepair.

### **Amy Alvarez**

And of course we are trying to keep historic structures in the district.

### **Public Comments** – None

### **Board Comments**

#### **Robin Bird**

The good thing is that the Commission passes it, it is like any other ordinance, but what would we need to see done and also have formal policy.

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### **Jay Jacobson**

I would like to know if the applicant forfeits the bond what happens then.

### **Christopher Davey**

I think if you put a procedure in place like this, we are really going to force architects that the property is sound and able to move.

**Motion** was made by Christopher Davey and seconded by Steve Mackey to approve the City Initiated Amendments to revise LDR Section 4.5.1(E)(6), Historic Relocation Bond

**MOTION CARRIED 5-1, Dissenting Jay Jacobson**

**VII.G.** City-initiated amendments to the Land Development Regulations (LDRs) to eliminate LDR Section 4.5.1(E)(7), **Demolition**; revise LDR Section 4.5.1(F), Restrictions on Demolitions, to provide specific submittal requirements for requests for the demolition of structures within a historic district or on an individually designated site and provide criteria by which to review demolition requests; and revise LDR Section 4.5.1(G), Unsafe Buildings, to require that the Chief Building Official present documentation to the Historic Preservation Board when a historic structure is determined to be unsafe. Postponed from April 20, 2015.

**Exparte Communications** – None

**Mark McDonnell, Asst. Director Planning and Zoning** - Mr. McDonnell then presented the item through a review of the staff report

### **Public Comments**

#### **Jim Knight – 123 W. Atlantic Avenue**

One clarification, if someone wants to demo and the City has come out and they said it is unsafe, is it that you have to have a new site plan approval for that site prior to being able to demo the property.

#### **Mike Dutko**

On page 5 of the Staff report language, there is clarification of that. This suggested revision does little to change that.

#### **Jim Knight**

So if this structure is considered unsafe, is there a timeframe.

#### **Robin Bird**

If the structure is unsafe, it is only unsafe if there are people inside it. If the Building Official cannot board it up or secured then he can order it to be demolished.

#### **Mike Dutko**

One of the purposes of the appeal, and I think it is longer than 24 hrs. one of the issues addressed in the appeal is that appropriate action to take, whether it is necessary.

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### **Jim Knight**

So if the chief building official has determined that subject property is unsafe, does that specific piece of property need a new site plan approval.

### **Mike Dutko**

The other provisions do not apply to this issue.

### **Steve Mackey**

Can a land owner demo his own house?

### **Amy Alvarez**

If it is outside of the historic district.

**Motion** was made by Jay Jacobson and seconded by Steve Mackey to approve to the City Commission City Initiated Amendments to restriction on demolitions in the Historic District.

**MOTION CARRIED 6-0**

**VII. H. City-initiated amendments** to the Land Development Regulations (LDRs) to amend LDR Section 4.7, "Family/Workforce Housing", to provide the City Commission with the discretion to determine the most appropriate means of meeting the workforce housing requirement for each applicant; Providing that the applicant must elect the preferred option for meeting the workforce housing requirement at the time of application for conditional use approval; and providing a saying clause, a general repealer clause, and an effective date.

**Mark McDonnell, Asst. Director Planning and Zoning** - Mr. McDonnell then presented the item through a review of the staff report

### **Jay Jacobson**

What is the definition of Workforce Housing?

### **Mark McDonnell**

It is a formula based on a figure that is provided from Palm Beach County. It is our Community Improvement Department that really implements this program. We just need to make sure we get the 20%.

### **Jay Jacobson**

The agreement made with the City was 10% of the units have 440 built (44 units), and those units needed to be reserved for people that would fall in the moderate income. Moderate income according to HUD is defined as 80-120% AMI. AMI in Palm Beach County is \$54,000. Someone making 120% of \$54,000 is about \$6,500. I have always been concern on how we define Workforce Housing. An example: If I go before the City Commission and want 30 units workforce housing, 20 on site, 10 unit building on another site, and the City Commission says that they don't want those 10 units. The housing trust fund is a little short cash right now, we would rather you give us \$1.6 million. But I don't want to give that money. Can they stop you? Can they force you and can they just not approve you?

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### **Mark McDonnell**

They can just not approve you.

### **Jay Jacobson**

That is what I have a problem with.

### **Mark McDonnell**

They want that discretion because they are not really happy.

### **Steve Mackey**

The other way around, how do you force property or other workforce housing on site when the guy plans on just writing a check.

### **Jay Jacobson**

I think it should be at the discretion of the applicant.

### **Steve Mackey**

Is there another way to have the applicant staying with his original concept?

### **Mark McDonnell**

What has happened in the past we have not had Board Orders, and now we have Board Orders that provide very generic language and specific conditions are added in the back.

### **Jay Jacobson**

There has to be something that ties where an agreement is an agreement.

### **Jim Knight**

Yes, we did go through this and it would have been much less expensive to not write a check. By doing this it changed the number of units; the board order said one number and the applicant said another number. Many things change from the date you make your application to you get your approval. It is difficult on the developer and the City.

### **Alice Finst – 707 Place Tavant**

Do they scatter these units throughout the building? If they are scattered are they given the lowest possible interiors? Also, Delray is going to run out of land and where they say they are going to build off site, there might not be anywhere to put them.

### **Jay Jacobson**

All the units need to be of same quality and they are scattered throughout the building. No specific area and they keep track of the units and audited.

### **Alice Finst**

And where does the money go.

### **Mark McDonnell**

The money goes to Community Improvement to process and property can be purchased and buildings can be built.

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### **Jay Jacobson**

How much is the housing trust collecting.

### **Mark McDonnell**

I do not know, but each unit is \$160,000.

### **Christopher Davey**

How was the \$160,000 number per housing unit arrived at?

### **Mark McDonnell**

I don't know, and it used to be \$60,000 back when. It was never to pay for the house just to offset.

### **Christopher Davey**

When was that last adjusted?

### **Mark McDonnell**

I would have to look in the code. I can tell you it was in the last 10 years.

### **Robin Bird**

What is the percentage of Workforce Housing that we require on the land use change, when does it kick in.

### **Mark McDonnell**

It is 20% above the additionally granted units.

### **Christopher Davey**

Is this allowed for the rehabilitation of housing units? Someone can go out and buy a 2/bedroom duplex, rehabilitate it and call it workforce housing.

### **Mark McDonnell**

I am not certain

### **Steve Mackey**

Why are they asking to remove the flexibility from the process?

### **Mark McDonnell**

The applicant in one of these situations changed their mind and the commission wants it to come back to them. I think what is before us now, they have to make that election upfront and know that they cannot administratively change it.

### **Robin Bird**

My opinion is that we go forward here but that section really needs to be relooked at with the number and how we look at it, and how it is negotiable.

**Motion** was made by Christopher Davey and seconded by Jay Jacobson to approve to the City Commission City LDR Section 4.7 family/Workforce housing, to provide the City Commission with the discretion to determine the most appropriate means of meeting the workforce housing

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requirement for each applicant, by adopting the findings of fact and law contained in the staff reports and finding that the request is consistent with the Comprehensive Plan and meets criteria set forth in Section 2.4.5(M) of the Land Development Regulations *and to encourage the City Commission to evaluate the flat fee currently assessed at \$160,000 per unit before finalizing the amendment to the ordinance.*

### **Mike Dutko**

You might run into issues with that, as changes to the LDR you would need formal process.

### **Mark McDonnell**

It may not be but if this board wants to convey its concern to the commission with regard to this amendment, they certainly have the right to day please take a look at this.

### **Robin Bird**

I like the concept of the wording, but I think we need to work on it, not before the adoption, they can adopt it, just to know that we recommend additional work to be done on that.

### **Joe Pike**

Honestly, it is a fixed fee, we just need to have it tied in.

### **Jay Jacobson**

Really just to put them on notice

Maybe that the recommendation goes forward but considered separately.

**MOTION CARRIED 6-0**

## **VI. REPORTS AND COMMENTS**

### **A. Staff - None**

### **B. Board Comments**

**Robin Bird** – How many tabling they get, how many times they need to apply and when it comes to a dead end.

**Joe Pike** – Maybe we as a board need to authorize so many extensions.

**Robin Bird** – Any we should be able to do that.

**Steve Mackey** – It is out there, Palm Beach County has it.

## **ADJOURNED**

There being no further business to come before the Board, the meeting was adjourned at **9:30p.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 **May 18, 2015** which were formally adopted and approved by the Board on **July 20, 2015**.

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### **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)*