

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

MEETING DATE: February 22, 2016

MEETING PLACE: City Commission Chambers

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

MEMBERS ABSENT: None

STAFF PRESENT: Tim Stillings, Director of Planning and Zoning, Scott Pape, Principal Planner Michael Dutko, Assistant City Attorney and Diane Miller Board Secretary

**MINUTES FOR 4th & 5th Delray (iPic)
Project File #2014-145**

PUBLIC HEARING ITEMS

A. 4th & 5th Delray (iPic)

Exparte Communication –

Robin Bird – Saw a request regarding party status.
Joe Pike – Received email from Mr. Bruce Gimmy and a conversation with Robert George.
Jay Jacobson – Received emails from Mr. Bruce Gimmy.
Mark Krall – Received emails from Mr. Bruce Gimmy.
Steve Mackey – Received emails from Mr. Bruce Gimmy.

Michael Dutko – Second issue is the Party Status from Dr. Robert George. (Dr. George was not present at meeting). The request is the same request that has been made and granted by other boards. The reason for this is that the property owned by Dr. George is in proximity of the 4th & 5th Delray, and it will affect traffic and the ingress/egress to the properties. These have all been granted in the past. With party status, they need to be made in writing at least 3 days before the hearing. This time it was made in writing on Friday, and we informed Dr. George that it did not meet that rule of Quasi-Judicial of Procedure but it is up to the board to make that decision whether to grant that or not.

Joe Pike – He is not here is that a moot point?

Michael Dutko – I think the board should still act on it, and there is no guaranty that someone will show up.

Robin Bird – With all the times that they have requested Party Status this one time might have been out of their thought process. With a bit of caution I would grant them Party Status.

Bonnie Miskel – We would like the record to show that we object that they did not follow the procedural process and requirements.

Motion made by Mark Krall and seconded by Jay Jacobson to grant Party Status. ALL IN FAVOR.

Timothy Stillings, Director Planning and Zoning - Mr. Stillings then entered into the record 2014-145 and presented the item through a review of the staff report.
HOLD QUESTIONS TO END.

Applicant Presentation

Bonnie Miskel for the applicant.

This is the final plat, we have met all the requirements and have no problem with staff's comments and here to answer any questions.

Board Comments

Steve Mackey

I do not understand the whole process of Developer Agreement? Are they going to have an agreement? A couple of issues that the public brought up tonight.

1. Are there any plans? Someone said that there were no finances. They get their entitlement; they buy the property, any specific performances that are tied with this property. A year from now there is no breaking of the ground, it sits empty, they are getting ready to flip it, is there any contingency plans put into place in the developer agreement.

Tim Stillings

I am going to redirect that to the applicant representative as that is an arrangement with them and the CRA. In terms of the entitlement process we have with the development approval, there are no related provisions. Typically that would not be part of the Planning and Zoning process.

Steve Mackey

The entitlement process would be good for 12 months?

Tim Stillings

Entitlement process is good for 2 years. Before expiring unless they meet construction commencement process.

Steve Mackey

Also, would the conditional use expire too. Condition uses, movie theater, increase in height run with the site plan:

Tim Stillings

It would run with the site plan. They have a similar time frame.

Steve Mackey

So if nothing happens in 2 years and the site plan expires it goes back to what it was previously.

Tim Stillings

There is an opportunity for an extension request for the Conditional Uses and Site Plan.

Steve Mackey

But they would have to come back for that. Tim Stillings said that was correct.

Robin Bird

What is the extension request? Is that also whatever the state gives?

Tim Stillings

Our code does not reference any extension that the state gives. Typically the state puts a limit on how many extensions that they allow.

Steve Mackey

Is there going to be a contingency for the entrance off of Federal Highway and the traffic. We all know that this project is moving forward, and the developer is going to say that they are not going to stop the car, but it could happen. Is there a contingency plan in place now?

Tim Stillings

There is a condition of approval in place to require theater personnel to restrict any stopping along that frontage. And it is a prescribed time that they need to be out there.

Jay Jacobson

The 2 conditional uses that we passed on for height and use; it was not 7-0 it was 5-2. So the process, we are done with SPRAB, and 2 conditional uses?

Tim Stillings

There are (3) waivers:

- a. Transparency on Federal
- b. Setback along the alley
- c. Amount of building frontage and an upper story setback.

Jay Jacobson

Are any of those waivers reflected in what we have reviewed over this past weekend? Mr. Stillings replied no.

Jay Jacobson

This question is for the Civil Engineer. When using the turning calculations, you used a car that looked about the size of a Volkswagen Jetta. This is a 12' radius, but has anyone run this with a real car.

Cary Whittingham, Civil Engineer

I was asked to use an Auto Turn Program in parking garage to see if a car could make that turn. A Auto turn Program is not the program to use.

Jay Jacobson

So the process now is that the City Commission has not yet voted on SPRAB recommendation.

Tim Stillings

We are trying to bring all the remaining elements to the Commission at the same time.

Jay Jacobson

So timing on that would end the approval process, and I am assuming there is a development agreement that goes with that.

Tim Stillings

There is no development agreement for the City, there is with the CRA.

Bonnie Miskel

In our last extension with the CRA, and it has been extended 4 times, primarily because of site plans. The last one on October 31 is the date that we have to close and we had asked for the end of the year, but it got pushed up. At this point there is a number of things, including the site plan, has been incorporated with that contract. Also, iPic was qualified as a result of the RFP process.

Mark Krall

When we approved the preliminary plat and some issues came up in regards to title. So I wanted to clarify that and has all that been cleaned up.

Bonnie Miskel

We ran title a long time ago and we will be updating it for closing....the title is clean.

Joe Pike

I realize that our scope is narrow as it pertains to the plat. I do have a couple questions in regards to the property next door (Martini property) in relations to the circulation. That property is specifically excluded from this plat and the ownership. What is the status of this?

Tim Stillings

It is going to provide a connection between 4th and the north/south alley.

Joe Pike

I understand that but is there going to be an easement that is going to be offered. Tim said yes it is going to be a public easement across the property for that connection.

Bonnie Miskel

Yes, it a condition to our approval. We are required to provide it.

Robin Bird

Are we replating that alley?

Bonnie Miskel

It is not affected until we provide the easement.

Joe Pike

So the plat itself is not vacating the alley, it is going to be done under separate instrument?

Bonnie Miskel

It is conditional upon the perfection of the abandonment. It will not be perfected until we record the easement.

Joe Pike

My concern is this plat doesn't reflect any underlining book or page or alley there, so I don't know for a fact a separate application.

Bonnie Miskel

As you might see on many other plats, we don't have any provision in there that speaks to any alley or rights of way that are not shown on or here by abandoned or vacated. We don't have that provision on this plat. We can't abandon by the plat, the abandonment is done by separate document.

Mark Krall

Is that going to be done before you or after you record the plat? When the abandonment is finalized, a resolution gets passed by the City and recorded, is this reflected on the plat? Does the resolution get recorded?

Bonnie Miskel

Here is an idea of how the closings will occur:

- We will be closing on the Martini property simultaneously with the CRA parcel, so we could not grant the easement yet as we don't own the property. We can certainly incorporate that condition in.

Joe Pike

That is exactly what I was getting at, I don't have a problem technically with the plat calling it 'Final', but if it is recorded prior to the easement being process, then I have a problem.

Bonnie Miskel

We just need the plat recorded in order to get building permits. I think my client is going to have to take some risks and actually not record the plat till after they close.

Joe Pike

Also, isn't there a loading zone in that particular area?

Bonnie Miskel

Yes, and this was also added during the site plan process, so the loading area is going to be shown as potential parking, not incorporated into our approval, but extra parking. We had to open an area right at the garage in order for the fire rescue vehicles to gain access into the building.

Joe Pike

No public parking, it is just used for this project?

Bonnie Miskel

It is all private land, so the easement will be the drive area that will be across the site and the loading will be a part of that.

Robin Bird

We are not coming back with abandonment, we are just replating an alley, and this will put this approval out there and then we would have an abandonment request that would come later.

Tim Stillings

You have already acted on the abandonment request. It just has not been recorded yet.

Robin Bird

Hearing the public comments, the board does not have anything to do with the financial agreements that were made.

Joe Pike

I know that we have had discussions along the way about this separate parcel (Martini property), which was separate from the parcel on the RFP. If the loading zone is on that parcel, I am not sure if that project can stand on its own without that parcel.

Robin Bird

I understand that there are so many moving parts that they had to go back out and acquire this parcel.

Joe Pike

And is that a conversation does it need to be re-advertised, and I don't want to go there, but that is in the back of my mind. I would feel remised if I did not get this out there. This does not change my thinking about the approval of the plat, and I think the plat is sound and we don't have any reason not to approve the final plat.

Robin Bird

Does the actual loading happen there or is it just there? We have a public ingress/egress easement going there, and if there is a truck there I can't get out. Is this going to be part of the ingress/egress?

Tim Stillings

We are going to ask for it. Initially it was intended to be parking.

Bonnie Miskel

But are we going to be able to load if it is the easement. We don't really care as long as we can off-load there.

Tim Stillings

You see that it is a 24' wide drive out.

Robin Bird

Question for City Attorney, how likely is it the strength for a resolution to be approved from the City Commission of the final plat with the condition. I would think that the plat has to be perfect with no conditions to finally approve it.

Michael Dutko

Our LDRs specify that final plats can have conditions.

Tim Stillings

This is not a condition of the plat; it is for the time of the recording of the various documents as it relates to the alley abandonment and the easement.

Robin Bird

How do you say that it isn't a condition of the plat? I thought it had to be perfect when it goes to the City Commission. I don't know how we are granting this without the ingress/egress being solidified. I think these needs to be stated in the record.

Scott Pape

The ingress/egress easement for the Martini property is part of that site plan approval. So before I can certify the site plan, in other words until they can pull permits on Martini property they have to provide us with an ingress/egress easement across that property. It is separate from the iPic property. The iPic site plan approval was subject to and including the Martini property and providing a site plan approval for that property, so we kept it separate, but if they want their permits they have to give me the cross access for the Martini property.

Joe Pike

Here is my concern, I would much prefer to have that Martini as part of the plat as one package, as in the unlikely event this developer walks, we have abandoned the alley, and the City or someone would have to purchase the property to make that physical connection.

Scott Pape

Which part, the Martini property or the site plan certification? The site plan certification for the iPic project could not happen unless I get the Martini property and that easement.

Joe Pike

I understand, but if the developer walks, the site plan walks with it. We do have some leverage over this applicant, but if the developer walks, we have already abandoned the alley at least the northern part and we have no way to physically traffic going north back out.

Scott Pape

It would be the same even if the Martini property was not in the picture. If the developer walked away from the iPic project and the Martini property was not in the picture, it would be also a true statement.

Robin Bird

No it would not have been as it would have been designed differently and they wouldn't have acquired it and they wouldn't have that, so they had to acquire it to get the ingress/egress.

Tim Stillings

That is part of the alley abandonment not the project approval.

Robin Bird

I understand why it can't be part of the plat, because it is not owned by the same people and I would like it nice and neat. Another concern and I don't want to delay this, and I don't want to go out with a RFP, but say this closes and the City is not going to get it and they necessarily don't close on the Martini at the same time, I have a plat that has no ingress easement on either side, so I have a

dead ended alley. We have not solved that problem which was our concern at the abandonment, so we are pushing everything to the very last minute and the City is at an ultimate risk.

Bonnie Miskel

So when the abandonment came through and went to the City Commission, they imposed a condition that we were required to dedicate the easement to cross the Martini, so if we don't do that, technically that abandonment is not perfected, it is approved but not perfected. So the ingress/egress is a condition to abandonment that was approved.

Robin Bird

When abandonment goes through those are very similar to the platting process where they have to be perfect. Now we conditioned abandonment and my experience things need to be buttoned up.

Michael Dutko

The LDRs that require final plats that have conditions on it, it is in the platting section

Robin Bird

I know that there have been abandonments done and 5 years down the road they said they don't want to do that anymore and they already have ownership of the property, and then try and go back and get this done. Also, that ingress/egress is now paramount to this site plan design, plat and the abandonment and we are going to get it very late in this process.

Bonnie Miskel

The CRA is the land owner; they are the seller so this is a little different. Mr. Bird said this is the Martini property? Bonnie said no, this is the main property. We have no contingency to get out at this point unless we are denied approvals.

Also, there was a lot of discussion by a lot of people in the community about the abandonment and the replacement easement and the conditions that would be imposed to that. This happened right through to the site plan approval. Having said that that was part of the site plan and abandonment process, even part of the condition use process, but as it relates to this plat, we do comply with all the requirements of the plat. Mr. Pike, we are not abandoning anything from this site pursuant to the plat, which was done elsewhere. The hardest part is that there are a lot of moving pieces here including the CRA agreements and amendments, but this one of the easiest ones.

Robin Bird

One major flaw is that I have dead ended alley and I am platting a property without a way to get out of a dead ended alley.

Bonnie Miskel

But the dead ending condition isn't relative to the platting question. Mr. Bird reply's that it is. Bonnie said that you don't know technically, you have a site plan that was submitted, and if it doesn't proceed all you know is that you have a plat that is a different shape. You need to separate all and look at just the plat. Your concerns are looking at the site plan.

Robin Bird

I have a dead ended alley with no way out and during the platting process I would have solved that.

Bonnie Miskel

It is not prohibited in the code. Initially when we were not doing the Martini site, cause we did not have it under contract, we looked to see if the code would allow it and the code does not prohibit a dead end alley. The plat complies.

Joe Pike

If we have a specific LDR that prohibits any conditions perhaps we can call a recommendation that it not be recorded. I still have a concern that the alley would be a separate instrument. If the alley has not been abandoned and the plat recorded incorrect, cause it should be reflecting the right of way.

Robin Bird

The alley was abandoned and there were some conditions on it.

Joe Pike

We have voted on the abandonment, but I don't think it has physically been abandoned.

Michael Dutko

I have information on the conditions on a plat.

2.4.5 (j)(4)

'A final plat may receive a conditional certification by the Planning and Zoning Board but said conditions shall apply only to items which cannot be immediately obtained from other agencies by the applicant.

Otherwise, a final plat shall be in final form and ready for execution when forwarded to the City Commission.'

If this board feels that ability to execute that agreement, a condition that could not be obtained from other agencies by the applicant I think it could be a valid condition for this board's approval.

Robin Bird

We can condition it to City Commission.

Tim Stillings

We are not conditioning the plat, as the plat meets all the technical requirements.

Steve Mackey

In respect to what Bonnie has said about how the code does not prohibit a dead end alley, if you are just looking at the plat and not the Martini property and the alley is dead ended, is that where you are getting hung up on?

Robin Bird

The code does not prohibit, it is silent. In good planning practice you would not have a 20' alley where I can't do a 3/point turn to get out.

Joe Pike

The abandonment approvals contemplate that there would be a physical connection.

Robin Bird

If I can't do anything about it, and everyone is comfortable with this, then there should be a motion to the Commission I hate to dumb a problem like that, but they may or may not care. I don't have any problem with the plat, but I do have a problem with the loose ends. I should have that ingress/egress already before the abandonment process.

Steve Mackey

I think the Commission has gotten themselves into a position where they have asked for this property in the 9th inning and they are backing their way into this.

Jay Jacobson

We would end up with a plat with a dead end alley and if any other site plan comes through we would have to address the issue.

Motion was made by Mark Krall and second by Joe Pike for a recommendation to certify the Final Plat to the City Commission for the Fourth and Fifth Delray Replat, 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 criteria set forth in Section 2.4.5(J) (Major Subdivisions), Section 3.1.1 (Required Findings for Land Use and Land Development Applications) of the Land Development Regulations, subject to the assurances by the applicant to the City Commission. Plat should not be recorded without the dedication of the egress easement required from the adjacent Martini property.

MOTION 6-0, (*Louis Smith absent*)