



# City of Venice

401 West Venice Avenue  
Venice, FL 34285  
www.venicegov.com

## Meeting Minutes Planning Commission

---

Tuesday, September 3, 2013

1:30 PM

Council Chambers

---

### I. Call To Order

*A Regular Meeting of the Planning Commission was held this date in Council Chambers at City Hall. Chair Barry Snyder called the meeting to order at 1:32 p.m.*

### II. Roll Call

**Present:** 6 - Chair Barry Snyder, Helen Moore, John Williams, Jerry Towery, Shaun Graser and Tom Murphy

### Absent

*Vice Chair Sid Shrauger was excused.*

### Also Present

*Ex-Officio Councilmember Kit McKeon, Assistant City Attorney Kelly Fernandez, Senior Planner Scott Pickett, Planner Roger Clark and Recording Secretary Susan Schult.*

### III. Public Session

**13-1PP** Preliminary Plat Petition No. 13-1PP  
HIGELVILLE PRELIMINARY PLAT  
Owner: 0413, LLC.  
Agent: Jeffery A. Boone, Esquire  
Staff: Scott Pickett, Senior Planner

*(1:33) Chair Snyder read a memorandum dated September 3, 2013, stated there was one written communication on this petition, and opened the Public Session.*

*Mr. Pickett briefly summarized the petition, outlined surrounding property zonings, reported transportation and school concurrency has been satisfied, the petition is consistent with the comprehensive plan and zoning regulations, the applicant is requesting variances from the subdivision regulations pertaining to the sidewalk and curbing requirements, and relief from a cul-de-sac for a dead end road. He reported the fire department agreed if each residential structure in the new subdivision is equipped with a fire suppression system or sprinklers, then a cul-de-sac is not required. He reviewed the special conditions to grant the variance, and introduced attorney Michael Hankin previously employed by Hankin, Persson, McClenathen, Cohen and Darnell, who is the city's legal representation in this case.*

*Mr. Hankin explained access to the subject property is proposed to be through an easement granted in April 1999, and it served the property in question along with five lots to the north, totalling six lots. The present request would expand the use of the easement from the five lots to the north and one lot to the south to a total of ten lots; five lots on the southern subject property and five lots to the north. He spoke on a*

prohibition against expanding the use of the easement beyond what the grantor intended, stated the issue was raised to the applicant and the applicant was requested to obtain affidavits from the neighboring properties that stated the original intent was to include ten lots. He reported one affidavit from an original grantor and one affidavit from a relative of deceased grantor were received, which represent two of the five lots in question. Mr. Hankin explained the potential risk for the city should the preliminary plat be approved without the three affidavits.

Mr. Pickett continued the staff presentation stating the property is bounded by Higel Drive to the south, which is a private street and no access is being provided from Higel Drive, noted the proximity of houses to the south abutting Higel Drive, staff recommends two conditions; one condition is to establish a landscape buffer along Higel Drive and the requirement to have fire suppression systems in the newly constructed homes, and reported the applicant has no objection to the conditions.

Discussion took place on subdivision variances included in the petition, council having the final authority on the petition approval, the proposal calling for a fence, additional landscaping required, trash collection being curb side along Higel Drive, the number of affidavits received, whether there is a risk in moving the petition forward, the sidewalk variance, whether there is still a sidewalk fund, potential limit on liability by potential homeowners, obtaining affidavits from the current neighbors, entities that could possibly bring a suit against the city, six parties to the original easement, receiving two affidavits from the five northern properties, and an email from attorney Dan Bailey representing Mr. Pillitteri, who is one of the current owners to the north, but not one of the original grantors.

Mr. Pickett answered questions on the fencing included in the landscaping condition and the correlation of a cul-de-sac and in home sprinkler system.

Mr. McKeon interjected he spoke with the fire chief regarding this issue and explained the rationale in allowing the sprinkler systems.

Discussion followed regarding the width of Higel Drive, trash being collected on Higel Drive because it connects to Osprey Street, whether sidewalks would connect to any other sidewalk system, accessing the property from Pillitteri Place, there being a history of using Pillitteri Place to access the property, the treatment or barrier at the end of Pillitteri Place, and the condition and use of Higel Drive.

Responding to questions, Mr. Hankin reviewed the original number of grantors, current property owners, and the reason the affidavits were requested.

#### Presentation

Jeff Boone introduced builder Kerry Carper and engineer Patrick Mostyn, gave a brief history of his association with the property, explained why the property is called Higelville, noted this is an example of infill development, stated city utilities and garbage pick up is already in place on Higel Drive, the development will generate new tax revenue for the city, mentioned previous proposals for this property, and the solid waste department has signed off on the preliminary plat. He asserted every time the city approves a change to development there is an opportunity to be sued, and that the issue was reasonably addressed. He went on to review the modifications to the subdivision standards from the requirement of sidewalks, curbs and gutters, and the cul-de-sac, stated the city has signed off on these requests, explained how the cul-de-sac relates to sprinkler systems, how a road could have been developed that would have impeded the parking lot of Casa Seville, and the applicant has agreed to the staff stipulations.

Mr. Boone further explained the Higels originally owned all six properties and their future vision for the property, the 1999 easement agreement, the expressed intent of the grantors who submitted affidavits, stated there is no evidence to the contrary, three of the other four grantors are deceased, and the fourth lives in Michigan and is not doing well. He noted there were no objections to Mr. Pillitteri paving Pillitteri Place, concurred if sidewalks were installed they would lead nowhere, gave a brief history of the sidewalk fund and how it is applied, and stated his client's request is not to pay into the sidewalk fund. He reported fire, stormwater, and engineering compliance has been met, the petition is consistent with the comprehensive plan, and made himself available to answer questions.

Discussion followed regarding the six grantors in 1999, the two affidavits received, hearing from attorney Dan Bailey, there being no sidewalks and curbs currently in the neighborhood, the cul-de-sac question being answered, Pillitteri Place being widened from 12 to 24 feet, the petitioner being comfortable with the landscaping and buffering stipulation, the current parties that have standing, the possibility of action against the city for compatibility issues, the original Higel intent in granting the easement, whether there is an overburdenment issue, all of the property originally owned by the Higels, whether the five lots to the north are part of the easement, the new owners being able to use the easement, but not having rights to the easement, the only evidence before the commission being that the people who owned the property granted an easement to themselves, and potential risk to the city.

Mr. Carper recounted his contact with the grantors and there never being a question on neighboring properties.

Discussion continued on whether there is a risk to the city, the property owners at the time the easement was granted, Mr. Pillitteri improving a portion of the easement for access, only the grantors needing to be contacted regarding this petition, and whether there is documentation on the attempt to contact the third living grantor.

Mr. Mostyn answered questions on stormwater discharge and swale locations, stated the system is a passive design, a permit application is in to Southwest Florida Water Management District (SWFWMD), the development is subject to final SWFWMD approval, and stated there was no option to connect to the Casa Seville underground stormwater system.

Mr. Boone answered questions on whether there will be a homeowner's association for the development.

#### Audience Participation

Dan Bailey, attorney representing Mr. Pillitteri, stated Mr. Pillitteri owns four of the six lots on the north side, Mr. Pillitteri built Pillitteri Place and installed the utilities, stated the applicant has accommodated Mr. Pillitteri's concerns, deferred to Mr. Hankin and Mr. Boone on the standing issue, touched on the evidence of the intent of the original easement, and that Mr. Pillitteri has no objection to the development or use of the easement.

#### Rebuttal

Mr. Hankin answered questions on the initial intent to have approval from the current owners, noted the risk of the current owners suing the city and stated if all the evidence presented today is true then there is no risk to the city.

(3:05) Chair Snyder closed the public session.

A motion was made by Mr. Williams and seconded by Ms. Moore that based on the staff report and the presentation, the Planning Commission, sitting as the local planning agency, finds this request consistent with the Comprehensive Plan and subdivision regulations, the variance requests are acceptable, and therefore, recommends to City Council approval of Order No. 13-1PP with the stipulations recommended by staff. The motion carried by the following vote:

**Yes:** 6 - Chair Snyder, Ms. Moore, Mr. Williams, Mr. Towery, Mr. Graser and Mr. Murphy

**Excused:** 1 - Shrauger

#### IV. Public Hearings

##### 1. 13-3VZ

Variance Petition No. 13-3VZ (Re-Hearing)

THE CROW'S NEST RESTAURANT AND TAVERN, INC.

Owner: Stephen Harner

Agent: Mark Beebe, Architect

Staff: Scott Pickett, Senior Planner

*(3:07) Chair Snyder stated this is a quasi-judicial hearing; read a memorandum dated September 3, 2013, stated three written communications have been received regarding this petition; and opened the public hearing.*

*Ms. Fernandez queried commissioners on ex parte communications. Mr. Snyder, Mr. Murphy, Ms. Moore, Mr. Williams and Mr. Graser conducted site visits with no communications. Mr. Towery recounted a conversation with acquaintances regarding the Crow's Nest where he stated he would not comment on the issue.*

*Mr. Pickett, being duly sworn, reviewed the previous approval of the petition, reported that upon receipt of the approval letter, Mr. Harner requested the matter be re-heard by the commission, and explained this is a re-hearing which opens up the entire variance. He stated the owner wishes to amend conditions two and three to allow other noise mitigation treatment and to allow dinner services on the new addition year round, and noted Mr. Harner has been working with the neighbors.*

*Ms. Fernandez confirmed all previous testimony and documents from the previous hearing are incorporated into the record for the re-hearing.*

##### *Presentation*

*Mr. Beebe, being duly sworn, stated there is no change in any of the conceptual drawings, they will fully comply with the first stipulation concerning landscaping, noted Mr. Harner's reservation on the wording of the second item and that the restaurant manager is present in Mr. Harner's absence, if needed. He reported the owner desires to modify the second stipulation to state hours of operation for serving food and drinks to guests would be unrestricted concerning dinner or lunch, and the hours of service will be the regular restaurant hours from 11 a.m. until 11:30 p.m. Mr. Beebe answered questions on the proposed verbiage, confirmed the deck use would be broadened, the "without restriction" pertains to the type of food or dining service allowed, and noted the neighbors do not object. He continued with the third stipulation regarding the acoustic louver shutters stating they would like to add the verbiage "or similar noise mitigation treatment shall be installed on the four openings of the deck as shown on the approved site plan", and stated the noise mitigation features will be permanent and would allow more flexibility in choice of mitigation. Mr. Beebe emphasized the dining capacity of the proposed deck will remain the same as currently exists, which is 24 seats.*

*Discussion followed on the waiting room on the deck, allowing more latitude for cost and aesthetics of the permanent screening device, the entity that approves the final sound and visual mitigation, moving the verbiage on the reason for the mitigation device to the end of the sentence, the current deck being used to serve lunch or dinner, whether number two should be stricken, deleting the words "without restriction", the intent to serve guests, not food, Mr. Harner's previous testimony concerning lunch service on the deck, the deck not being closer to residents than it is now, and the commission not intending to restrict the business use.*

*Mr. Snyder reviewed the new stipulation verbiage.*

*Audience Participation*

*Robert Elsberg, 1585 Tarpon Center Drive, being duly sworn, stated he has had extensive conversations with Mr. Harner and Mr. Beebe concerning the issues, they have no objection to the landscaping, the hours of service on the deck, having permanent non-movable noise mitigation, and the seating capacity on the deck for meals. He commented on the good neighborly relationship he has with Mr. Harner.*

*Rebuttal*

*Mr. Pickett answered questions on the number of dining seats dictating the number of parking places.*

*Matt Green, Restaurant Manager, being duly sworn, stated the bar is occasionally open until 2 a.m. and Mr. Harner agrees to limited the closing hours on the deck to 11:30 p.m.*

*(3:41) Chair Snyder closed the public hearing.*

*Discussion took place on verbiage in the motion and the ramifications should the current restaurant hours change.*

**A motion was made by Mr. Towery, seconded by Mr. Graser, that based on the staff report and the presentation, the Planning Commission, sitting as the local planning agency, finds this request consistent with the Comprehensive Plan, City development standards and with the affirmative Findings of Fact in the record and, therefore, moves to approve Order No. 13-3VZ with the inclusion of numbers two and three and the changes in wording, with number two reading the hours of operation to serve the guests on the deck shall be from 11 a.m. until 11:30 p.m., and a permanent screening device shall be installed in the four openings of the deck as shown on the approved site plans to mitigate the visibility and acoustic concerns. The motion carried by the following vote:**

**Yes:** 6 - Chair Snyder, Ms. Moore, Mr. Williams, Mr. Towery, Mr. Graser and Mr. Murphy

**Excused:** 1 - Shrauger

- 2. ORD. NO.** Text Amendment Petition No. 13-4AM  
**2013-34** VESTED RIGHTS  
Staff: Scott Pickett, Senior Planner

*(3:44) Chair Snyder read a memorandum dated September 3, 2013, stated no written communications have been received regarding this petition; and opened the public hearing.*

*Mr. Pickett stated this is a city initiated text amendment requested by the city attorney to*

*provide a mechanism to address allegations of vested rights, the new ordinance is a consolidation of verbiage from other sections of the code, this ordinance introduces the vested rights determination in the land development code, it is currently addressed in Chapter 94 Concurrency Management, explained there are times when action by city council is necessary to address vested rights, pointed to the examples included in the agenda packet, gave an example of how this could be applied, and reiterated the ordinance is a mechanism for determining vested rights.*

*Discussion took place on the ordinance creating a process not policy, whether there are past examples of vested rights, and decisions by the commission being appealable to council.*

*Ms. Fernandez confirmed this ordinance clarifies a process in the code so people do not have to undergo a circuit court proceeding.*

#### *Audience Participation*

*Jeff Boone, Venice resident, commented on the concept of clean hands that is missing from the proposed ordinance, and suggested the commission proceed cautiously.*

*Discussion ensued that everything in the law is tied to reasonable reliance, the example provided by Mr. Pickett, whether the words of the author are against the author creating a weakness in the code, good faith reliance, the clean hands principle, and shifting the responsibility to the government.*

*Mr. Pickett clarified the burden of proof is on the applicant and that the city currently does not have a mechanism in place to deal with this issue.*

*(4:11) Chair Snyder closed the public hearing.*

**A motion was made by Mr. Murphy and seconded by Mr. Towery, that based on the staff report and the presentation, the Planning Commission, sitting as the local planning agency and land development regulation commission, finds this petition consistent with the Comprehensive Plan and recommends to City Council approval of Text Amendment Petition No. 13-4AM.**

**Yes:** 6 - Chair Snyder, Ms. Moore, Mr. Williams, Mr. Towery, Mr. Graser and Mr. Murphy

**Excused:** 1 - Shrauger

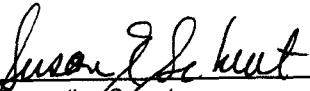
## **V. Project and Petition Update**

*Mr. Clark reported the Venetian Golf and River Club preliminary plat petition and the building height conditional use ordinance were recently approved by city council, and confirmed there will be a meeting on September 17.*

*Mr. McKeon urged Mr. Boone to get the approvals regarding the agreement of the easement for Petition No. 13-1PP in writing.*

## VI. Adjournment

*There being no further business to come before this Commission, the meeting was adjourned at 4:15 p.m.*

  
\_\_\_\_\_  
Recording Secretary

  
\_\_\_\_\_  
Chair

\*\*\*\*\*