



Meeting Minutes
Planning Commission

Tuesday, November 15, 2022

1:30 PM

Council Chambers

[22-26RZ](#)

Bird Bay PUD Amendment for Hawks Run Development (Quasi-Judicial)

Staff: Roger Clark, AICP, Planning and Zoning Director

Agent: Jeffery A. Boone, Esq., Boone Law Firm

Applicant: Hawks Run Development, LLC

Chair Willson announced this is a quasi-judicial hearing, read the memorandum regarding advertisement, and written communications.

Chair Willson spoke regarding the volume of communications, duplicate comments, setting public speaker time limit to three minutes, and maintaining decorum.

Chair Willson opened the public hearing.

City Attorney Fernandez stated that in quasi judicial hearings the Planning Commission's role is to make a decision solely on the evidence, consistency with the Comprehensive Plan and Land Development Regulations (LDRs), and testimony provided. She noted public majority opinion is irrelevant.

City Attorney Fernandez questioned Commission members concerning ex-parte communications and conflicts of interest. Mr. Hale, Ms. Schierberg, Mr. Willson, Dr. Graser, and Mr. Jasper disclosed site visits only. Mr. McKeon disclosed site visit and meeting applicant, Jason Picciano, at an event.

City Attorney Fernandez stated Bird Bay Community Association, represented by Attorney Lincoln is requesting affected person status and explained what granting the status involves.

Attorney Robert Linclon, Agent, being duly sworn, spoke on ownership and operation of the recreation facilities, club house is within zero feet of property, and potential adverse effect on community.

Attorney Jeffrey Boone, Agent, being duly sworn, spoke to the applicant having no objection to affected party status, and requested clarification of Attorney Lincoln's representation of the community association and whether it included all residents or just board directors.

City Attorney Fernandez clarified that the Board of Directors is covered under Mr. Lincoln's representation and residents can still speak.

A motion was made by Mr. McKeon, seconded by Ms. Schierberg, to approve the affected party status for Bird Bay Community Association Board of Directors. The motion carried by the following vote:

Yes: 7 - Dr. Graser, Vice Chair McKeon, Mr. Hale, Chair Willson, Mr. Jasper, Ms. Schierberg and Ms. MacDonald

Attorney Boone requested 30 minutes for rebuttal. City Attorney Fernandez stated it was up to Commission's discretion to adjust allotted times and that any change granted would apply to all parties involved. The Planning Commission granted 30 minutes for rebuttal.

Planning and Zoning Director Clark, being duly sworn, presented general information, noted petition was reviewed under previous code, location map, aerial map, project description, only a proposal to amend master plan and not development, modification requested to reduce set back to 10 feet, history of the property, associated land use applications, original plan, current binding master plan, existing conditions, site photos, future land use map, zoning map, surrounding land uses, planning analysis, comprehensive plan consistency, Bird Bay master plan and Land Development Code (LDC) compliance, findings of fact, concurrency and mobility, and answered Commission questions on density changes, and units per acre calculations.

Attorney Boone asked Director Clark if proposal would violate Strategy LU 1.2.16 Mixed Use Residential (MUR) 6c.

Discussion took place regarding Strategy LU PB 1.1.1, developing open space, negative impact, open space dedication and the requirement.

Attorney Boone and Jim Collins, Agents, being duly sworn, presented petition for amendment to Planned Unit Development (PUD) only, original development plan has changed, one modification of setback to 10 feet along Legacy Trail, proposal for new golf course, Comprehensive Plan policy Strategy LU PB 1.1.1. interpretation, 99 year conservation, development will meet current development standards, no new density, keeping over 50% open space, Comprehensive Plan and LDC consistency, Andover case is not applicable, confusion on development, no putting course planned, and past similar developments and answered Commission questions regarding amount of space between development and Legacy Trail, and potential effect to Legacy Trail atmosphere.

Attorney Lincoln presented his credentials, standards for Planning Commission decision, Andover test, history matter in the PUD, 1977

hearing agreements and plan, 1977 preliminary plan and Master Plan, 1983 deed restrictions to golf course, 1989-92 master plan amendments, applicant's proposed plan, drainage concerns, photos of current views, pond easements, club plan proximity to residential, lack of parking details, inconsistency with Comprehensive Plan strategies, standards for master plan amendments approval under LDC, and answered Commission questions about PUD restrictions, open space promise, development agreement, open space dedication document, 2012 deed, and developable area other than golf course.

Recess was taken from 4:19 p.m. to 4:27 p.m.

Ralph Kirchner, 1122 Bird Bay Way, being duly sworn, spoke against the petition.

Anne McBride, 678 Bird Bay Drive West, being duly sworn, spoke against the petition.

Carl Carlson, 811 Waterside Drive, being duly sworn, spoke against petition.

Wil Brickner, 668 White Pine Tree Road, being duly sworn, spoke against the petition.

Elaine Wheeler Brickner, 668 White Pine Tree Road, being duly sworn, spoke against the petition.

Lora Arnott, 744 Bird Bay Drive West, being duly sworn, spoke against the petition.

Jeffrey Hughes, 104 Cortedel Asolo, being duly sworn, spoke in favor of the petition.

Andrea Ferrar, 634 Bird Bay Drive East, being duly sworn, spoke against the petition.

Ted Minx, 618 Bird Bay Drive South, being duly sworn, spoke in favor of the petition.

Brian Ferrar, 634 Bird Bay Drive East, being duly sworn, spoke against the petition.

Pat Hirt, 864 Bird Bay Way, being duly sworn, spoke against the petition.

Patricia Bull, 880 Bird Bay Way, being duly sworn, spoke against the

petition.

Joan Wisniewski, 610 Bird Bay Drive West, being duly sworn, spoke against the petition.

Rosemary Courtney, 610 Bird Bay Drive West, being duly sworn, spoke against the petition.

Rosemary Courtney on behalf of Charlotte Clinger, 610 Bird Bay Drive West, being duly sworn, spoke against the petition.

Cindy Douthett, 756 White Pine Tree Road, being duly sworn, spoke against the petition.

Penny Declerico, 609 Verroochio Drive, being duly sworn, spoke in favor of the petition.

Rebecca Gorman, 648 Bird Bay Drive West, being duly sworn, spoke against the petition.

John Pullaro, 5551 Arnie Loop, Bradenton, being duly sworn, spoke in favor of the petition.

Edith Browne, 654 Bird Bay Drive West, being duly sworn, spoke against the petition.

Lora Kesten, 744 White Pine Tree Road, being duly sworn, spoke against the petition.

Michael O'Sullivan, 1132 Bird Bay Way, being duly sworn, spoke against the petition.

Joan Iacotio, 1132 Bird Bay Way, being duly sworn, spoke against the petition.

Betsy Dunn, 1168 Bird Bay Way, being duly sworn, spoke against the petition.

Gene Hoffman, 744 White Pine Tree Road, being duly sworn, spoke against the petition.

City Attorney Fernandez clarified that the 99 year dedication process changed a year and half ago to be required on plat.

Attorney Lincoln responded with developers cooperation at neighborhood

meetings, concerns of lack of details, past sales of property, strategic policy LU- PB 1.1.1, and inconsistency with the Comprehensive Plan and LDC.

Attorney Boone and Mr. Collins responded with details of previous negotiations, past membership for golf course, his credentials, consistency with Comprehensive Plan and LDC, standards of the 1992 Master Plan, staying within the density and open space requirement, concerns with drainage, current building heights, distance between current units, reviews of future site and development plan, no putting course planned, open space dedication paperwork, remaining open space, development will not take place at this time, and working with current golf course operations.

Chair Willson closed the public hearing.

Discussion took place regarding the 10 foot setback exception, current setbacks and building heights, what the decision is based on, compliance with Strategy LU-PB 1.1.1, 1992 document open space intention, developable land or golf course, amount of information available, current condition of the course, golf course proposal, history on the property, and categorized as redevelopment.

A motion was made by Ms. MacDonald, seconded by Ms. Schierberg, that based on review of the application materials, the staff report and testimony provided during the public hearing, the Planning Commission, sitting as the local planning agency, finds that this petition is not consistent with the Comprehensive Plan and is not in compliance with the Land Development Code because it is not consistent with LU. 1.1.1. and therefore, recommends to City Council denial of Zoning Map Amendment Petition No. 22-26Z. The motion carried by the following vote:

Yes: 7 - Dr. Graser, Vice Chair McKeon, Mr. Hale, Chair Willson, Mr. Jasper, Ms. Schierberg and Ms. MacDonald