



DRAFT
MEETING MINUTES
CITY OF FORT LAUDERDALE
DEVELOPMENT SERVICES DEPARTMENT
700 NW 19 AVENUE, FORT LAUDERDALE, FL 33311
WEDNESDAY, JULY 19, 2023 – 6:00 P.M.

Board Members	Attendance	Present	Absent
Michael Weymouth, Chair	P	2	0
Brad Cohen, Vice Chair	A	1	1
John Barranco	P	1	1
Mary Fertig	P	2	0
Steve Ganon (arr. 6:05)	P	2	0
Marilyn Mammano	P	2	0
Shari McCartney	P	2	0
Patrick McTigue	P	2	0
Jay Shechtman	A	1	1

Staff

Shari Wallen, Assistant City Attorney
Jim Hetzel, Principal Urban Planner
Michael Ferrera, Urban Design and Planning
Karlanne Devonish, Urban Design and Planning
Nicholas Kalargyros, Urban Design and Planning
Yvonne Redding, Urban Design and Planning
Lorraine Tappen, Urban Design and Planning
Leslie Harmon, Recording Secretary, Prototype, Inc.

Communication to City Commission

None.

I. CALL TO ORDER / PLEDGE OF ALLEGIANCE

~~Chair Weymouth called the meeting to order at 6:03 p.m. and introduced the Board members present.~~

~~The following Item was taken out of order on the Agenda.~~

III. PUBLIC SIGN-IN / SWEARING-IN

~~Any members of the public wishing to speak at tonight's meeting were sworn in at this time.~~

~~The Board members agreed by unanimous consensus to incorporate the Staff Reports for all Items into the record.~~

CASE PLANNER: Michael Ferrera

~~Disclosures were made at this time.~~

~~Mr. Ganon arrived at 6:05 p.m.~~

~~Michael Ferrera, representing Urban Design and Planning, explained that the request before the Board is to rezone 804,467 sq. ft., or 18.46 acres, of land on N. Andrews Avenue from Heavy Commercial/Light Industrial Business (B-3) to Uptown Urban Village Northeast (UUV-NE). The Site Plan related to this property has not yet been submitted.~~

~~Mr. Ganon requested clarification of the property's use. Principal Urban Planner Jim Hetzel replied that the site includes a wetland preserve, which is one of Broward County's environmentally sensitive lands. Because a portion of the area has declined significantly, a mitigation plan has been approved which will allow half of the site to remain a preserve and the other half to be developed.~~

~~Mr. Ganon asked if the preserve will be monitored by the County rather than the City. Mr. Hetzel confirmed this, noting that the preserve is not zoned for open space or preservation. A plat note amendment will be required for the property.~~

~~At this time Chair Weymouth opened the public hearing. As there were no individuals wishing to speak on the Item, the Chair closed the public hearing and brought the discussion back to the Board.~~

~~Mr. Barranco asked why the City is representing the Applicant with regard to this Application. Mr. Ferrera explained that an incentive program for the Uptown area includes City processing of applications.~~

~~**Motion** made by Mr. Barranco, seconded by Ms. Mammano, to approve with conditions of Staff in the report. In a roll call vote, the **motion** passed unanimously (7-0).~~

2. CASE: UDP-DRI23001

REQUEST: ** Amend Spectrum Development of Regional Impact Development (DRI) Order to Allow 15,500 Square-Feet of Senior Citizen Center Use

APPLICANT: North Broward Hospital District

AGENT: Stephanie Toothaker, Esq.

PROJECT NAME: Spectrum DRI Amendment

PROPERTY ADDRESS: 1700 NW 49th Street

ABBREVIATED LEGAL DESCRIPTION: Commerce Park 112-18 B Tract G, Public Records of Broward County

ZONING DISTRICT: Airport Industrial Park District (AIP)

LAND USE: Employment Center

COMMISSION DISTRICT: 1 – John C. Herbst

NEIGHBORHOOD ASSOCIATION: N/A

CASE PLANNER: Lorraine Tappen

3. CASE: UDP-A23006

REQUEST: Site Plan Level III: Senior Citizens Center Use in Airport Industrial Park (AIP) District

APPLICANT: North Broward Hospital District

AGENT: Stephanie Toothaker, Esq.

PROJECT NAME: Broward Health PACE Facility

PROPERTY ADDRESS: 1700 NW 49th Street

ABBREVIATED LEGAL DESCRIPTION: Commerce Park 112-18 B Tract G

ZONING DISTRICT: Airport Industrial Park District

LAND USE: Employment Center

COMMISSION DISTRICT: 1 - John Herbst

NEIGHBORHOOD ASSOCIATION: N/A

CASE PLANNER: Yvonne Redding

Disclosures were made at this time for Items 2 and 3. It was determined that Items 2 and 3 would be presented together and voted upon separately.

Stephanie Toothaker, representing the Applicant, explained that Item 2 is an amendment of the Spectrum Development of Regional Impact (DRI) to accommodate the proposed use, while Item 3 includes the Site Plan and conditional use request.

The Spectrum DRI is located in the Airport Industrial Park (AIP) zoning district. The use of the subject property will be changed from Office to Program of All-Inclusive Care for the Elderly (PACE), which is an adult day care facility. The DRI in this case consists of approximately 60 acres. While some offices will remain on the site, they will be converted from office use to PACE. The subject land use is Employment Center.

Broward Health proposes a partial interior renovation and remodeling of an existing one-story office building to convert 15,361 sq. ft. of existing office space to senior citizen use in order to operate the Broward Health PACE program, which provides all-inclusive care for the elderly. This is a day facility only, as users return to their homes in the evening. There is no significant traffic impact associated with this use. The facility operates under the state's Agency for Health Care Administration (AHCA) and meets the City's definition of a senior citizen center.

Ms. Toothaker advised that the PACE program does not fit squarely into the AIP zoning district; however, a provision in that district states that the Planning and Zoning Board may grant a use that is similar or appropriate for the district. These include permitted conditional or accessory uses which are not specifically listed or substantially similar to those which are listed. The Applicant believes the PACE use is consistent with other uses listed in the AIP zoning district.

Both Applications were presented to the City's Airport Advisory Board (AAB), which recommended approval. Staff has recommended the change in use application from Office to Senior Citizen Center.

The City's Public Works Department has determined the change would have little to no impact on public services. Because no additional cars will be accessing the facility, parking is adequate for the proposed use.

Ms. Toothaker advised that when the Spectrum DRI was originally approved, it was required that any changes to the DRI go through the full Planning and Zoning Board and City Commission processes. Because this statute has changed, the Applicant has proposed "cleanup language" which states any changes to the DRI must be consistent with Florida Statutes. The Applicant also requests a change to the name of the agent.

The Applicant requests conversion of 15,361 sq. ft. of office use to senior citizen center use, reserving the right for the property owner to convert it back if they cease to use the facility as a senior center in the future. They also request deletion of a provision which appeared in the 1984 DRI regarding bus shelters, which were never installed on the site.

Yvonne Redding, representing Urban Design and Planning, noted two corrections to the Applications: the applicable Unified Land Development Regulations (ULDR) section should be corrected to 47-14.11, and approval of the use change will not be effective until the DRI amendment is approved. Assistant City Attorney Shari Wallen advised that the second correction will be clarified in the Resolution approving Case Number UDP-A23006 (Item 3).

Lorraine Tappen, also representing Urban Design and Planning, also noted a correction to Case Number UDP-DRI23001 (Item 2): Exhibit 4 is being updated according to the slide presented to the Board. The subsection should read "The property consists of 60.05 acres...the uses which are approved for and may be constructed on the property are 1,109,960 sq. ft. of office uses, a 261,000 sq. ft. garage, and light manufacturing and high technology research uses. They may be developed in lieu of 125,000 sq. ft. of office facilities, which are located adjacent to W Commercial Boulevard between NW 15th Avenue and NW 17th Way."

Ms. Tappen continued that the area of the property approved for office-related uses may accommodate a hotel and freestanding quality sit-down restaurant. The hotel may consist of 175 rooms in lieu of 89,000 sq. ft. of office space, and the restaurant with a maximum gross floor area of 10,000 sq. ft., in lieu of 36,000 sq. ft. of office space. The subject tract of the property, Tract G, 15,361 sq. ft. of office use may be converted to a senior citizens' center use as defined within ULDR Section 47-18.30, effective at the time of the Site Plan application.

Ms. Tappen concluded that the owner of Tract G reserves the right to convert the senior citizen's center use back to office use in the future, subject to the requirements of the

City's ULDR, Code of Ordinances, and all other requirements listed in the development order.

It was clarified that this language would replace Exhibit 4 in the Application for Item 2.

Ms. Toothaker also stated that the proposed PACE program is funded using state funds, and the interior build-out of the site is already complete; however, it cannot be used until it has received Board approval. City employees, including the City Manager, have arrived at an agreement by which Broward Health may begin using the property immediately while the DRI amendment language is sent to the City Commission as a "cleanup" item following their summer break.

Attorney Wallen advised that she is awaiting a direct response from the City Attorney regarding Items 2 and 3.

Ms. Fertig asked if the Board members could receive the written changes that are being read into the record along with other backup documentation. It was confirmed that this could be done going forward.

Ms. Mammano asked if any changes are being made to the uses and square footages cited by Ms. Tappen. Ms. Tappen replied that the office and research intensities would remain the same.

Mr. Barranco observed that if the Board approves the Items at tonight's meeting, the Application will still need to go through the appropriate process and discussions by the City Commission. Attorney Wallen explained that by virtue of approving the change of use requested in Item UDP-A23006, the other Item, UDP-DRI23001, would still need to go before the City Commission for approval. The request is that the Applicant be able to proceed with using the site even though the DRI has not yet been amended to approve the use.

Ms. Fertig noted that Exhibit 6 requests long-term bicycle parking for the project, and requested clarification of whether or not anyone would be arriving to the site via bicycle. Mr. Hetzel explained that the bicycle rack was added to the Item as employees of the facility may wish to bike to work.

At this time Chair Weymouth opened the public hearing for both Items. As there were no individuals wishing to speak on Items 2 or 3, the Chair closed the public hearing and brought the discussion back to the Board.

Attorney Wallen reported that she had received a communication from the City Attorney indicating the requested change should be effective upon the Ordinance date. Ms. Toothaker stated that this would mean the Applicant would lose their state funding. Mr. Hetzel added that Staff does not have any documentation on the proposed change, which they would have provided to the Board if it were available.

Ms. Toothaker suggested that the Board may be able to approve the Item subject to the Applicant working with the City Attorney's Office between tonight's Planning and Zoning Board meeting and the date on which the Commission will address the Item(s).

Ms. Mammano commented that any arrangements made by the Applicant's team should have no impact on the Board, as they are only asked to approve the proposed changes to the Site Plan and the DRI.

Chair Weymouth requested a motion on Item 2, UDP-DRI23001, at this time.

Motion made by Mr. McTigue, seconded by Ms. Fertig, to approve with Staff conditions, and with the recommendation of Ms. Toothaker that any changes to the DRI be consistent with State Statute, no bus shelter, and no bicycle rack.

Attorney Wallen requested clarification of whether or not the **motion** approved the changes as described by Ms. Tappen for Item 2. She pointed out that the **motion** for UDP-DRI23001 does not address the project's Site Plan.

Ms. Fertig emphasized that when a motion is made for Item 3, UDP-A23006, it should include language stating that any changes to the DRI be consistent with State Statutes, as well as clarification regarding the bus shelter and bike rack.

Ms. Toothaker added that the Applicant had planned to go before the City Commission "with the cleanup of the DRI language" to ensure that the Item is consistent with State Statutes. Attorney Wallen noted that the DRI itself is required to go to the City Commission according to the terms of the development order included in an Ordinance. The DRI is included in Item 2.

Ms. Fertig stated that the Board's **motion** should ask the Commission to ensure that any changes to the DRI are consistent with State Statutes, as well as her previous recommendations regarding the bus shelter and bike rack. Ms. McCartney observed that while she did not object to this language, she was not certain that the issues Ms. Fertig referred to were within the Board's purview.

Attorney Wallen explained that on p.2, Exhibit 4 of the Board's backup materials, several requirements to change the development order are included. These include some citations to a 1987 Statute. The request from the Applicant is to remove all of this language, including the reference to the 1987 Statute, and add the proposed changes and requirements to the DRI. She further clarified that no changes were made to this language, reiterating that it is included in the backup materials.

Ms. McCartney asked if the Board has the authority to approve the requested change. Attorney Wallen stated that the Item requests a recommendation from the Board, but must go to the City Commission to be changed.

Ms. Mammano asked if the bus shelter and bike rack are included in the DRI, the Site Plan, or both. Ms. Toothaker replied that the bus stop is in the DRI but the bike rack is not. Voting to approve Item 2 would change the language related to the bus stop. Ms. Mammano advised that she would address the bike rack under Item 3.

Ms. Tappen stated that the existing development order requires the provision of on-site bicycle facilities to encourage the use of alternate modes of transportation. Staff added the condition of including a bike rack as part of the development order to implement the DRI. The structure is a single rack outside the building and was part of the original DRI.

Ms. Fertig stated that as the bike rack was part of the original DRI and not a new addition, she would remove her objection to it. She added that she would still **second** the **motion** as long as the language requiring changes to the DRI to be consistent with State Statutes and no bus shelter remain.

Ms. Tappen noted that the proposed amendment would strike language related to the bus shelter. She directed the Board members to p.2 of Exhibit 4, Section 5.a.1.b of the Ordinance, noting that the language includes reference to the development of turnout lanes or other amenities to increase ridership and provide transit route and schedule information at convenient locations throughout the project.

Ms. Tappen also clarified that the Section to be struck from the Item includes "Provision of Bus Shelters."

Attorney Wallen stated that the **motion** currently on the floor would recommend approval of the amendment to the Ordinance for the DRI with Staff corrections and removal of language addressing the bus shelter, as well as any other changes read on the record, including compliance with State Statutes.

In a roll call vote, the **motion** passed unanimously (7-0).

Chair Weymouth requested a motion for Item 3, UDP-A23006.

Ms. Mammano requested clarification of the changes to the Site Plan, including whether or not a **motion** should include a reference to removing the bike rack. It was clarified that the Site Plan does not refer to the bike rack or bus stop.

Attorney Wallen advised that a Resolution is required as part of Site Plan Level III approval. She pointed out that the Resolution will be effective on the date when the Ordinance is approved by the City Commission. This is also consistent with the direction she received from the City Attorney's Office.

Ms. Toothaker requested that this language be removed from the Resolution so the Applicant has the opportunity to work with City Staff between tonight and the presentation of the Item to the City Commission.

Mr. Hetzel explained that the issue is that the Board would approve a use that is not permitted by the DRI, which is why the DRI must take effect in order for the Site Plan to be approved. The Board may make the requested recommendation, but there could be legal issues related to its inclusion.

Attorney Wallen added that if the language referring to the effective date is removed, this would mean the Board is recommending approval of a development permit which directly conflicts with an Ordinance passed by the City Commission. She emphasized that she cannot advise the Board to make a recommendation that is in conflict with an existing Ordinance.

Mr. Barranco asked if the Board may make a recommendation to approve the Site Plan with a use that is not directly named by the Ordinance, but is similar to another use or uses under that Ordinance. Attorney Wallen stated that the Board must abide by the City's Code of Ordinances.

Ms. Toothaker stated that if the Applicant must wait until September 2023 for approval of the use, they would withdraw the Application.

Ms. Mammano pointed out that the Applicant's team had had discussions with City Staff on how they might address the issue. She felt the addition of any conflicting language would make the situation more difficult. Ms. Toothaker replied that Staff inserted language which she had not expected, which said the Site Plan approval would not be valid until the DRI is approved. This was not consistent with the understanding the Applicant and their team had before tonight's meeting.

Mr. Hetzel stated that Staff has a duty to address any item that is not permitted, pointing out that the condition was added because otherwise the Board would have been presented with a use not permitted by zoning. The use may not take effect until the DRI has been approved by the City Commission. Staff cannot allow the Applicant to secure a Certificate of Occupancy (CO) for the proposed facility and operate the facility until it is allowed by zoning.

Ms. McCartney asked if the Board might be able to take action with a reference to the arrangement Ms. Toothaker has described. Ms. Toothaker felt this would be helpful, and added that one of the changes requested in the DRI would ensure that applicants do not have to go before the City Commission to change Ordinances, as State Statutes no longer require that action. She suggested that the Board remove the language in question and include the condition that the Applicant work with City Staff to ensure proper compliance.

Attorney Wallen explained that this proposal does not change the issue from a legal perspective: the DRI, which is Ordinance C-84-55, includes language which states all proposed deviations from the requirements of the development order shall be presented to the City Commission after review and recommendation from the Planning and Zoning Board with respect to whether or not any of the proposed deviations constitute a substantial deviation from the 1987 statute. She concluded that because the Ordinance is law, she cannot recommend that the Board take any action that could violate it.

Attorney Wallen continued that if the Item is approved with an effective date of July 19, 2023, the Applicant would have a right to appeal any other issues that are not in accordance with this effective date and the conflict between the Ordinance and the Resolution could be decided in the courts.

Attorney Wallen read a portion of the subject language which states that in accordance with the requirements of Ordinance Number C-84-55, as amended in Section 380-067 of the Florida Statutes, the Resolution shall be in full force and effect upon the effective date of an Ordinance amending the development order for the subject DRI, Ordinance C-84-55, as amended, expressly authorizing a senior citizen center use.

Attorney Wallen further clarified that this Resolution is not part of the Board's backup materials, but would have been received as an email from Staff. Ms. Toothaker asserted that she had also not seen the email with this Resolution. Attorney Wallen advised that the email had not been sent due to a miscommunication and agreed that it should have been sent.

Mr. Barranco asked if the development order could be made revocable. Attorney Wallen replied that the approval may not be revoked: the Board may only say that it is contingent upon DRI approval, as she has recommended. Even if the Item was subject only to City Commission call-up, it would still not take effect until the Ordinance passes two readings. In addition, the Application would go forward subject to 1987 law until the Ordinance is changed.

Motion made by Ms. Fertig, seconded by Ms. Mammano, to adopt the Resolution approving a Site Plan Level III, Case Number UDP-A23006, based on the findings of fact in the Staff Report, and we find the Application meets the standards and requirements of Site Plan Level III approval.

Ms. Fertig clarified that she did not intend her **motion** to be contingent upon City Commission approval of the amendment to the DRI. She also noted that the effective date would be subject to City Commission call-up.

Ms. Toothaker confirmed that the **motion** would not jeopardize the Applicant's grant funding.

In a roll call vote, the **motion** passed unanimously (7-0).

~~Board's desire. She concluded that a motion to deny is more appropriate from a legal standpoint.~~

~~There being no further business to come before the Board at this time, the meeting was adjourned at 7:49 p.m.~~

~~Any written public comments made 48 hours prior to the meeting regarding items discussed during the proceedings have been attached hereto.~~

Chair

Prototype

[Minutes prepared by K. McGuire, Prototype, Inc.]