

SPECIAL MEETING HELD BY THE PLANNING AND ZONING COMMISSION FOR THE TOWN OF OCEAN RIDGE, FLORIDA, TO BE HELD IN THE TOWN HALL ON MONDAY, MAY 20, 2002, AT 8:00 A.M.

The meeting was called to order and roll call was answered by the following:

Commissioner Smith  
Commissioner Lee

Commissioner Goray  
Commissioner Bonfiglio

Chairman Gimmy

III. APPROVAL OF APRIL 15, 2002 MINUTES

Mrs. Smith moved to adopt the minutes of April 15, 2002. Mr. Bonfiglio seconded the motion.

Motion carried – Yea (5).

IV. **CONTINUED** - APPLICATION SUBMITTED BY TURTLE BEACH CONDOMINIUM, 5101 NORTH OCEAN BLVD., OCEAN RIDGE FL 33435, REQUESTING A MODIFICATION OF THE MASTER SITE PLAN FROM THE PROVISIONS OF THE LAND DEVELOPMENT CODE, ARTICLE IX; SITE PLAN REVIEW PROCEDURES, SECTION 26-135(a)(4) SITE PLAN APPROVAL OF MINOR OR MAJOR DEVELOPMENT APPLICATION OR MODIFICATION AND SECTION 26-135(b)(2) MAJOR DEVELOPMENT REVIEW FOR WHAT WAS ORIGINALY KNOWN AS OCEAN MAYNE, SANDCASTLES, COVENTRY PLACE AND NOW TURTLE BEACH TO DELETE PHASE 4, WHICH HAS NOT BEEN BUILT AND WHICH IS NOW A SEPARATE PARCEL OF LAND CURRENTLY OWNED BY REPUBLIC BANK FROM THE TURTLE BEACH CONDOMINIUM SITE PLAN. THE PROPERTY ORIGINALLY APPROVED FOR 27 UNITS WAS APPROVED IN 1979 AND SITE PLAN APPLICATIONS SUBMITTED IN 1981. THE PROPERTY IS LOCATED AT 5101 NORTH OCEAN BLVD. OR GENERALLY DESCRIBED AS PORTIONS OF LOTS 14 AND 15, BLOCK "A" OF THE PALM BEACH SHORES ACRES SUBDIVISION (EXACT LEGAL DESCRIPTION LOCATED AT TOWN HALL).

Town Clerk Hancsak read the application by title.

Town Atty Spillias advised that this meeting was continued because there was a question whether appropriate notice was given to the property owners within 300' and also whether the condominium association had the standing to make such a request. Regarding the notice, Atty Spillias advised that besides the advertisement the code provides that a notice be mailed to the residents within 300' as a courtesy. He added that while the notice to the parcel owner was not sent certified it is obvious that they received notice since they had representation at the meeting. Atty Spillias advised it was his

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opinion that Turtle Beach Condominium Association could apply for this type of modification as the out parcel owners could have also.

He reiterated that it was the staff recommendation to grant approval conditional that the requirements of the Summary Judgement be complied with regarding providing ingress and egress to the property. Another condition he would suggest is that no action be taken deemed to divest any property owner of development rights prior to the action. He stated that this meant that the town was not taking away any rights from either property owner and if there was a dispute it could be adjudicated at another time.

Chairman Gimmy questioned if Wachovia was objecting to this request because it might decrease the density on this parcel. Atty Spillias advised that it was a concern to them, however, this was not a decision for this Commission to make at this meeting. He added that he believed if the parcel owner met all the criteria and conditions as originally approved and subsequently applied for a building permit then the five units per acre is vested. He commented that if the Town did not approve the plan then there could be a potential litigation.

Rod Tennyson, attorney representing Turtle Beach Condominium Assoc., reiterated from the last meeting what has transpired with the property and the court rulings concerning this vacant parcel located within the confines of Turtle Beach. He stated that the reason for this site plan modification request was to separate the parcel so that it conforms with the court ruling and he added that he felt the parcel was not eligible for phase development rights. He concluded by stating that the staff recommended approval of the request with the condition that ingress and egress be provided. He added that this application was not about what can be built on the parcel, although he disagrees with Atty Spillias' opinion that the property has development rights for five units.

Mr. Goray clarified that the only issue now underlying everything was the recreational use to which Atty Tennyson commented that it was actually what can be built on the lot, however, that would be an issue at a later date. Atty Tennyson reminded the Commission that the meeting today was to modify the site plan to match the appellate court ruling.

Rabbi Bret Goldstein, 5109 N. Ocean Blvd. #F, stated that he has been a resident and has served on the condominium board for several years, and hoped that the Commission would support the request.

David Layman, representing Wachovia Bank, stated that his client was entitled to legal and constitutional rights and commented that the density for the property should be five units and added that the court ruling does not address the development rights. He advised that he felt the association was attempting to make the development of the property difficult. He stated that he disagreed that Turtle Beach was the appropriate party to apply for the removal of this parcel and Wachovia did not give permission to do so. He added that he felt the notice requirement was also not met because the radius was taken from around the parcel only. Mrs. Smith stated that if the request was opposite the same notices would have been sent out.

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Mr. Bonfiglio asked Atty Layman if his opposition was based on Section 26-137 and he said it was. Mr. Bonfiglio then stated that he felt the Town had to conform to the District Court of Appeals Summary Judgement and added that the Town should approve nothing more or less. Mr. Layman stated that his client was objecting to the request because he felt it would make development of the property more difficult. Mr. Bonfiglio then asked how Atty Layman felt he was prejudiced and he advised that he felt the Town would be approving an incorrect application. Mr. Bonfiglio then stated that a density issue was not before this Commission. Atty Spillias commented that the entire site plan was approved for 27 units with 5 units proposed for this parcel. He added that he felt the property could be developed with 5 units and the parking area if there were unsubstantial changes. However, the Summary Judgement did not address the Site Plan or land policy issues and if an argument continues after this date then the court would decide what their rights are.

Atty Spillias commented that Turtle Beach Condominium Assoc. is requesting this modification because they would like it on the record the rights of the owners of this parcel. He added that they were concerned if someone came in to the Town Hall to review the Site Plan they might think this parcel was also eligible to use the recreational facilities. Mr. Bonfiglio then suggested getting a recorded copy of the court ruling. Atty Spillias advised that it was possible but he still recommends that the Site Plan reflect the removal of the parcel. Atty Tennyson added that they would like to feel at ease knowing that the records and the Site Plan were consistent with the ruling. Both attorneys agreed that it should not be recorded. Mr. Bonfiglio then asked if recordation attached to the deeds would be acceptable to which Atty Layman advised he would have to confer with his clients.

Mr. Lee stated that he did not feel Turtle Beach should be held back from removing the parcel from their Site Plan.

Mr. Bonfiglio moved moved to recommend approval of the request including any rights as a result of the court ruling. Mr. Goray agreed and stated that the Site Plan as built would become the new Site Plan. There was no second to the motion.

Atty Layman stated that he did not understand what this board was approving to which Mr. Bonfiglio advised that the motion was to approve the Site Plan Modification without prejudice to any rights of Wachovia Bank. Atty Layman stated that he still objected to the application.

Mr. Bonfiglio asked how the density would be affected if this request was denied. Atty Spillias advised that the Site Plan now shows the entire parcel that was entitled to 27 units and this parcel was entitled to five units. He stated that he believed two code sections would allow this parcel to still have five units. These included the provision that Phase Developments are permitted and the code has no time frame requirement for development of the property. He added that although the code addresses an 18 month expiration period it does not particularly address Phase Development and gives rise to the claim that the Site Plan is vested and then this parcel is also vested. Atty Spillias

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commented that the Town would not take a definite position on the land use but arguably there is a Site Plan on record and people coming in to view it could be under the impression that they can use the recreational facilities. He added that he felt the development of the parcel was not a land development issue but actually between the parties.

Mr. Goray moved to approve the application as submitted provided that all provisions of the District Court of Appeals opinions and conditions therein stand and by virtue of granting this Site Plan Modification neither the association rights nor Wachovia Bank or its successors rights with regards to allowable and non-allowable development rights will be divested by virtue of this approval. Mr. Bonfiglio seconded the motion.

Motion carried – Yea (5).

V. ADJOURNMENT

The meeting was adjourned at approximately 9:05 AM.

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Town Clerk

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Chairman Gimmy