

VILLAGE OF PALMETTO BAY, FLORIDA
MINUTES OF THE ZONING HEARING OF MONDAY, DECEMBER 15, 2014
Village Hall Chambers
9705 E. Hibiscus Street, Palmetto Bay, FL

1. **CALL TO ORDER, ROLL CALL, PLEDGE OF ALLEGIANCE:** Mayor Flinn called the meeting to order at 7:15 pm. The following members of the Village Council were present:

Mayor Eugene Flinn
Vice Mayor John DuBois
Councilwoman Karyn Cunningham
Councilwoman Larissa Siegel Lara

The following staff members were present:
Village Manager Ron E. Williams
Village Attorney Dexter Lehtinen
Village Clerk Meighan Alexander
Director of Planning and Zoning Darby Delsalle
Zoning Administrator Travis Kendall

2. **Reading of decorum statement/Swearing in of witnesses:** Mayor Flinn asked that the decorum statement not be read. Attorney Lehtinen swore in those individuals who wished to testify on the matters to be heard this evening.

3. **Approval of Minutes:**

- a. October 20, 2014 Zoning Hearing: Vice Mayor DuBois moved to approve the Minutes. Seconded by Councilwoman Larissa Siegel Lara. All voted in favor. The minutes were approved (4-0.)

4. **Public Hearing Items:**

Mayor Flinn asked the Clerk to read the first item:

ITEM #1: The following item is being considered pursuant to Division 30-30.9 of the Village's Land Development Code:

Applicant: **DD&S Bay, LLC**

File #: VPB-14-005

Folio#'s: 33-5028-000-0220, 33-5028-000-0221, 33-5028-000-0222

Location: 8900 SW 158th Street, and 28 55 40 west 97.50 feet of the east 122.50 feet of the 100 feet north 125 feet of the southeast 1/4 of the southwest 1/4 of the northeast 1/4 of the section less the extension area of the curve in the northeast corner AKA Parcel 2 per WP D-23399 OR 29097-0153, and 28 55 40 west 195 feet of the east 220 feet of the south 80 feet

of the north 205 feet of the southeast 1/4 of the southwest 1/4 of the northeast 1/4 of the section AKA Parcel 3 Per WP D-23399 OR 29097-0153.

Zoned: R-1, Single Family Residential District
Request: Deletion of a covenant proviso of resolution removing a condition of a rezoning approval tying the properties to a specific site plan, thus permitting development to proceed consistent with the existing R-1 zoning requirements.

The Council provided the following disclosures:

Mayor Flinn disclosed that he was present when the application came forward in the past. He stated that he had visited both properties. He advised that he forwarded one email, in support of the application, to the Village Clerk. He asserted that he will remain fair and impartial.

Vice Mayor DuBois advised that he had received the same email forwarded to all Council and had provided it to staff.

Councilwoman Cunningham noted she had also received the same email.

Councilwoman Siegel Lara acknowledged receiving the email that had been referenced by the other Council members.

Mayor Flinn added that he had been present in the audience when the matter was heard earlier this year.

Director Delsalle provided the staff report. He explained that the applicants have advised that they had received approval from the Environmental Quality Control Board (EQCB) for a variance to be excluded from connection to water and sewer. He stated that a representative from Miami-Dade County DERM is present this evening. Director Delsalle noted that the applicant was seeking to construct single family homes on three lots and must keep the total build-out at 9,000 +/- square feet in order to maintain utilization of a septic system; however, no one property may exceed 3,300 square feet (under air conditioning.)

Mayor Flinn confirmed that Mr. Delsalle's report included the results of the EQCB decision, not any Village decision. Director Delsalle confirmed.

Vice Mayor DuBois asked clarification of the 3,300 footprint. Director Delsalle stated that it would be interior measurements under air-condition, not including a garage or open patio.

Vice Mayor DuBois asked how an EQCB decision is enforced, in perpetuity. Director Delsalle explained that the footprint assigned is limited by the Village's zoning. Vice Mayor DuBois stated that the EQCB decision should be bound by covenant in order to

insure compliance. He asked for a copy of the verbiage of the decision issued by EQCB. Director Delsalle stated that staff had not received the Order at this time.

Vice Mayor DuBois asked for legal opinion regarding the enforceability of the decision. Attorney Lehtinen stated that in order to enforce those provisions, the Council should include them into a replacement restricted covenant. He stated that Council should adopt its own restriction as part of the Village's local land use requirement, stating that the covenant would incorporate the same requirements issued by the EQCB.

Mayor Flinn remarked that the goal is to have a simplified proceeding, clearly stating the relief requested. He stated that this request seems to be to not set aside all covenants, but to allow the property owner to move to one story in consideration of the water and sewer issues. He opined that there must be a specific reason to remove a covenant.

Director Delsalle stated that the matter in the past included a site plan as part of the covenant. He remarked that the challenge is to allow development to proceed within the provisions of the site plan and scale the development to the neighborhood.

Vice Mayor DuBois asked if staff is recommending approval or disapproval. Director Delsalle replied that if the objective is to find elements of the covenant to be modified, it may not be possible to modify the covenant at this hearing; rather, the matter may be tabled to consider what items of the covenant should remain.

Vice Mayor DuBois reiterated his request for staff's specific approval or disapproval. Director Delsalle stated that staff would recommend that the covenant be struck in order to allow the Council to regulate the development within the R-1 district. He added that if the purpose is to revise the covenant, then he would recommend tabling the matter to allow staff to meet with the applicant, who may have to meet with neighbors again.

Attorney Lehtinen stated that the resolution to repeal the covenant was not "moved and seconded" at the last hearing; therefore, the Council should consider the application and may adopt any resolution, adding restrictions, amending the covenant, etc. He noted that the Council could include the decision of the EQCB as part of the resolution.

Ms. Teresa Delgado and family members came forward. She advised that the family purchased the property to build homes in order to live in close proximity to one another. She explained that the family received a recommendation from DERM, and she provided copies to all. She and Mr. Neil Delgado, Jr., stated that the total development may not exceed 9,100 square feet; otherwise, the family would have to hook-up to sewer.

Director Delsalle stated that the document provided by the applicant is not the confirmation of the action taken by EQCB; rather, the document is a memorandum from DERM.

Mr. Neil Delgado, Sr., stated that they had received signatures from most of the neighbors to remove the covenant. He stated that they agree to comply with R-1 zoning, which is the more restrictive zoning of Palmetto Bay (RU-1 of the County's standards was previously applied to this property.)

Mr. Carlos Hernandez, Waste Water Property Section Chief of DERM, 8290 SW 173 Street, came forward. He advised that the EQCB issued a ruling last Thursday and it will not be documented until the County Attorney's office reviews and approves the document, which may take three to four weeks. He stated that two matters were included in the ruling: variance from connection of sewer was approved; and, one lot was permitted to be slightly smaller with construction. He stated that Parcel number one has a limitation of 3,300 square feet.

Vice Mayor DuBois noted that the pre-hearing memorandum indicated support of the application; however, he asked for clarification of the one condition. Mr. Hernandez stated that the error with Parcel 1 was with regard to the limitation of square footage was modified.

Vice Mayor DuBois asked if conditions two and three were modified. Mr. Hernandez said they weren't. Vice Mayor DuBois stated that if they weren't modified, then explanation is needed with regard to the development, as condition two defined the cumulative square feet to 9,100 square feet total.

Mr. Hernandez stated that if the first parcel was constructed at less than 3,300 square feet, the other parcels could be built larger; however, they all must meet the total 15,000 square foot lot size and must not exceed 9,100 square feet for all three homes.

Mayor Flinn recalled that from the earlier first hearings, the neighbors wanted larger homes.

Ms. Maria Suarez (applicant) stated that she had spoken to the residents and they have signed a petition for smaller homes.

Vice Mayor DuBois stated that he is simply trying to clearly define what will be included in the new covenant.

Mr. Neil Delgado stated that currently they are permitted to build larger homes. Discussion ensued regarding the restrictions of DERM and the current zoning.

Mayor Flinn asked for a legal opinion regarding whether petitions can be accepted, as they may be considered an out of court statement.

Attorney Lehtinen stated that the rules of evidence do not apply in quasi-judicial matters and the Council may accept and give the petition whatever weight it desires.

Mayor Flinn opened the public hearing. The following individuals addressed the Council: (both in support of the application) Eric Tullberg, 7884 SW 179 Terrace; and Marvin Jerome Johnson, 8950 SW 159 Terrace.

Following brief comments, Mayor Flinn suggested that the covenant remain to state that the construction would not exceed three homes. He asked if the applicant would agree to this. Councilwoman Siegel Lara asked if this same restriction applies to any other parcels of vacant land in the vicinity.

Mr. Delgado stated that the plat is recorded to indicate three lots and to modify this would mean they would be required to seek a new plat approval.

Attorney Lehtinen opined that the Council should consider a covenant that would include the ruling of the EQCB. He added that the applicant is requesting to be allowed to build homes without extending sewer, based upon the conditions that DERM specified. He suggested striking the former covenant and include that Lot 1 shall not exceed 3,033 square feet and all lots (1, 2, and 3) shall not exceed 9,100 square feet total.

Mr. Delgado expressed that the covenant would place restrictions on their application that others do not have.

Discussion ensued.

Councilwoman Siegel Lara remarked that it appears to be a protective covenant, as the covenant would tie the three parcels to the stated regulation. Attorney Lehtinen concurred, the Village should not allow one lot to deprive the other of its building rights.

Vice Mayor DuBois stated that in the prehearing memorandum, issue number two, the 9,100 square feet cumulative was nonsensical. He opined that this is a local zoning issue; this is not a DERM issue with respect to the square footage, and DERM should not have exercised authority over that matter, as it is up to the discretion of the Village of Palmetto Bay. He began to make a motion to approve the application, subject to the DERM conditions. Mayor Flinn and Councilwoman Siegel Lara questioned whether the covenant would be protective or restrictive.

Mayor Flinn asked the Village Attorney to meet with the applicant.

A recess was taken at 8:25 pm. The meeting re-convened at 8:40 pm.

Attorney Lehtinen reported that all have agreed that in order to insure that the three lots are maintained and developed in a fashion that the EQCB contemplated (in order to not force surrounding residents to establish sewer lines), the resolution should be worded as follows: delete the current covenant and establish a new covenant to state that the three lots shall be maintained in their current configuration and no owner shall take any action that shall cause the extension of a sewer line, in order to prevent any other adjoining neighbor or resident in Palmetto bay to be required to hook up to sewer lines.

The Applicants indicated they agreed with the Village Attorney's statement.

Vice Mayor DuBois moved to approve the resolution, adopting the recommendation of the Planning Director, and substituting the covenant as read into the record. Seconded by Councilwoman Cunningham.

Following brief discussion concerning the final order of the EQCB, the resolution was adopted unanimously, via roll call vote, as follows: Vice Mayor DuBois: yes; Councilwoman Cunningham: yes; Councilwoman Siegel Lara: yes; and Mayor Flinn: yes.

ITEM #2: The following item is being considered pursuant to Division 30-80 of the Village's Land Development Code:

Applicant: Isabianca Investments, LLC
Folio numbers: 33-5033-000-0410, 33-5033-000-0770
File #: PLT-14-002
Location: 9335 & 9395 SW 174 Street Palmetto Bay, FL 33157
Zoned: R-1
Request: A request to plat certain lands within the Village of Palmetto Bay as bounded by the Harriel Estates Plat to the north, SW 174 Street to the south, SW 93 Avenue to the east, and SW 94 Avenue to the west, creating Palmetto Bay Estates Plat consisting of 2 blocks and 19 lots.

The Council provided the following disclosures:

Mayor Flinn stated that he recalled the property from a previous zoning hearing in 2007 and 2009. He remarked that he is familiar with the property, and did not communicate with anyone; he will remain impartial.

Vice Mayor DuBois stated that he did not have any disclosure.

Councilwoman Cunningham advised that she had received an email from Mr. Tullberg, which was copied to staff.

Mayor Flinn revised his disclosure to note he had also received Mr. Tullberg's email, but did not have an opportunity to read it.

Councilwoman Siegel Lara stated that she, too, had received Mr. Tullberg's email and had no other communications.

Mr. Travis Kendall, Zoning Administrator, provided staff report. He provided the history of the application, noting that a 2007 of the Council stipulated that 19 lots would be permitted. He noted that the parcel is currently zoned R-1, and the application includes right-of-ways dedicated for continuation of the roadway. He recommended approval; the application is consistent with Village Code.

Mayor Flinn asked if staff has insured that there shall be no negative impacts.

Mr. Kendall advised that the applicant is present and will comply with all requirements.

Mayor Flinn clarified that this matter is not a zoning hearing; rather, this matter is a plat approval.

Attorney Lehtinen concurred, adding that the matter is administrative and requires a hearing; however, substantial competent evidence seems to indicate approval.

Vice Mayor DuBois asked if the plat contains the required easements. Mr. Kendall replied affirmatively, advising that the streets on the east and west have 50 feet right-of-ways that are included in the development plan.

Vice Mayor DuBois asked if those right-of-way measurements are appropriate for the 4.96 acres. Mr. Kendall replied that they were.

The Applicant, Alvaro Adrian, 4960 SW 27 Avenue, stated that he will comply with all plat requirements.

Mayor Flinn asked if the matter was legally sufficient. Attorney Lehtinen replied that it was.

Vice Mayor DuBois asked how many homes would be constructed. Mr. Adrian advised that 19 homes are planned.

Mayor Flinn opened the public hearing. Mr. Eric Tullberg, 7884 SW 179 Terrace, addressed the Council. Mayor Flinn closed the public hearing.

Vice Mayor DuBois asked if sidewalks dedications are in place. Mr. Kendall advised that they were.

Vice Mayor DuBois moved to approve the Resolution as published. Seconded by Councilwoman Siegel Lara. All voted in favor following roll call vote, as follows: Councilwoman Cunningham: yes; Councilwoman Siegel Lara: yes; Vice Mayor DuBois: yes; and Mayor Flinn: yes.

The meeting was adjourned at 9:07 pm.

Prepared and submitted by:

Meighan J. Alexander, CMC
Village Clerk

Approved by the Village Council on this ____ January, 2015.

Mayor Eugene Flinn

PURSUANT TO FLORIDA STATUTES 286.0105, IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE VILLAGE FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW. WHILE THE FLORIDA STATUTES DO NOT REQUIRE TAPE RECORDINGS, TO THE EXTENT THAT TAPE RECORDINGS ARE MADE, THE TAPES MAY BE REQUESTED FROM THE VILLAGE CLERK FOR REVIEW AND/OR COPYING. THE VILLAGE OF PALMETTO BAY CAN NOT GUARANTEE QUALITY OF ANY RECORDING.

VILLAGE OF PALMETTO BAY, FLORIDA
MINUTES OF THE ZONING HEARING OF TUESDAY, JANUARY 20, 2015
Village Hall Chambers
9705 E. Hibiscus Street, Palmetto Bay, FL

1. **CALL TO ORDER, ROLL CALL, PLEDGE OF ALLEGIANCE:** Mayor Flinn called the meeting to order at 7:10 pm. He asked Boy Scout Raymond Deluca of Troop 711 to lead the pledge of allegiance. The following members of the Village Council were present:

Mayor Eugene Flinn
Vice Mayor John DuBois
Councilwoman Karyn Cunningham
Councilman Tim Schaffer
Councilwoman Larissa Siegel Lara

The following staff members were present:
Village Manager Ron E. Williams
Village Attorney Claudio Riedi
Village Clerk Meighan Alexander
Director of Planning and Zoning Darby Delsalle
Zoning Administrator Travis Kendall

2. **Reading of decorum statement/Swearing in of witnesses:** Mayor Flinn noted that the decorum statement is listed on the Agenda. Attorney Riedi swore in those individuals who wished to testify on the matters to be heard this evening.

3. **Approval of Minutes:**

- a. December 15, 2014 Zoning Hearing: Clerk Alexander asked the Council to defer approval, as she wished to meet with the Vice Mayor DuBois concerning a revision. Vice Mayor DuBois moved to table approval of the Minutes. Seconded by Councilman Schaffer. All voted in favor. The motion passed (5-0.)

4. **Public Hearing Items:**

Mayor Flinn asked the Clerk to read the first item:
The following item is being considered pursuant to Division 30-80 of the Village's Land Development Code:

Applicant: Florida Power and Light Company
Folio number: 33-5024-000-0020
File #: PLT-14-003
Location: 6525 SW 152 Street Palmetto Bay, FL 33157

Zoned: E-1 and Interim
Request: Florida Power and Light, is requesting to plat the northwest corner of 6525 SW 152 Street, creating the F.P.L Cutler Plant Substation plat consisting of 583,660 sq. feet (13.4 acres).

Attorney Riedi asked the Council to provide their disclosures.

Mayor Flinn reported that he had previously toured the property and had noticed the posting. He advised that he received an email from Mrs. Gorman and had provided it to the Clerk, stating that he did not have any direct communication with anyone. He stated he will be fair and impartial.

Vice Mayor DuBois advised that he had received the same email and had responded, which he will forward to the Clerk.

Councilwoman Cunningham stated that she had received an email from Mrs. Gorman and had a conversation with Mr. Gary Pastorella regarding a fire station on the site.

Councilman Schaffer reported that he went by the site, did not communicate with anyone, and did not respond to Mrs. Gorman's email, which he had forwarded to staff. He added that he will remain objective.

Councilwoman Siegel Lara advised that she, too, had received Mrs. Gorman's email. She stated that she will remain impartial.

Mr. Kendall provided staff report, noting that the request is to replat a portion of the site on the northwest, which is part of a larger parcel. He provided the background of the property and explained that the plant only currently functions as a substation. He advised that the applicant is seeking plat approval for 13.4 acres in the northwest corner of the 84 acres.

Mayor Flinn asked if the use was changing, as well. Mr. Kendall explained that the applicant is seeking only a boundary around the existing substation. He advised that staff recommends approval.

Attorneys Hugo Arza and Alex Arias, 701 Brickell Avenue, advised that the application had received tentative plat approval by the County and other governmental agencies, including staff approval. He stated that he is prepared to answer any questions the Council may have.

Councilwoman Cunningham asked if there is an opportunity to include a fire station on the site. Attorney Arza stated that he had spoken to the Miami-Dade County Fire Department representative Carlos Heredia and the Fire Department has informed him that they have not indicated an interest in the particular parcel that is the subject of this proceeding; however, the Fire Department would like to be included in discussions concerning the remainder of the property.

Mayor Flinn opened the public hearing. The following individuals came forward and were heard: Mr. Gary Pastorella, 6940 SW 142 Terrace; Attorney Clifford Steel, 6103 Paradise Point; Henry Clifford, 8875 SW 171 Street; Greg Anderson, 6600 Mahi Drive, Coral Gables; Anthony Gorman, 14140 SW 72 Avenue.

The public hearing was closed.

Councilman Schaffer asked if all zoning code requirements would have to be met, if approval was given to the Miami-Dade Fire Department. Manager Williams stated that the County would have to meet all code requirements. Director Delsalle concurred.

Vice Mayor DuBois asked the zoning of the remaining 71 acres. Director Delsalle said the front area is zoned E-1 and the rear is Interim. Director Delsalle further explained that "interim" means, "trending of development".

Vice Mayor DuBois asked if the NPO noise related restrictions would apply. Director Delsalle stated that the property would be bound by noise ordinance. Vice Mayor DuBois reiterated that only non-residential use within residential zoned areas is bound specifically by the NPO regulations, which governs churches and schools.

Mayor Flinn asked how the NPO would apply to a plat approval. Vice Mayor DuBois stated that his purpose was to inform all that there are standards that were implemented by the former Council that will not apply to this property. Manager Williams concurred, noting that this was specifically a plat approval and Vice Mayor DuBois is correct.

Councilman Schaffer stated that the Council is focused on plat approval at this time; and, the Council will not be involved in negotiating a real estate transaction. He stated that the Council is supportive of fire stations and a private citizen has filed a lawsuit to stop the construction of a fire station, not the Village.

Councilwoman Siegel Lara asked if staff met with FPL and the Fire Department with regard to this property. Director Delsalle stated that the Village is not involved in the discussions between FPL and the Fire Department.

Councilwoman Siegel Lara asked if there has been any representation with regard to the future of this property. Director Delsalle stated that there has not.

Mayor Flinn stated that this property should be carefully planned to have a positive impact on the neighborhood in the future. Director Delsalle concurred. Manager Williams stated that staff believes there may be a potential buyer, but the sale has not

been consummated. He added that when the sale is made, he is certain the new property owner would be visiting the Village and discussing the future of this property.

Vice Mayor DuBois stated that he has not been personally informed of any communication or initiative between staff and the owners of the property. He directed staff to provide a report as to exactly what the communication consisted of, as he believes there had been communication concerning the possibility of a marina and donation of that land. He requested a full written disclosure concerning the staff's communication with the owners of the property.

Mayor Flinn stated that this matter concerns plat approval only, and further discussion regarding the future of this property should be discussed at a later date. He welcomed County Commissioner Daniella Levine Cava to the meeting.

Vice Mayor DuBois moved to approve the application, as submitted. Seconded by Councilman Schaffer. All in favor. The motion passed unanimously (5 to 0.)

Following brief comment, Attorney Arza confirmed that the property is under contract, pending negotiation, but has not been sold. He advised that he would ask FPL to inform the Village upon conclusion of the negotiations.

The meeting was adjourned at 7:55 pm.

Prepared and submitted by:

Meighan J. Alexander, CMC
Village Clerk

Approved by the Village Council on this ____ April, 2015.

Mayor Eugene Flinn

PURSUANT TO FLORIDA STATUTES 286.0105, IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE VILLAGE FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW. WHILE THE FLORIDA STATUTES DO NOT REQUIRE TAPE RECORDINGS, TO THE EXTENT THAT TAPE RECORDINGS ARE MADE, THE TAPES MAY BE REQUESTED FROM THE VILLAGE CLERK FOR REVIEW AND/OR COPYING. THE VILLAGE OF PALMETTO BAY CAN NOT GUARANTEE QUALITY OF ANY RECORDING.