MINUTES
PLANNING COMMISSION MEETING
APRIL 19, 2006

The City of Bradenton Planning Commission met on Wednesday, April 19, 2006 at 2:02 p.m. in City Hall Council Chambers.

ATTENDANCE

Planning Commission Members (Shaded area indicates absence, *Indicates non-voting):

Chairman Diane Barcus	Vice-Chair Richard Barnhill	Carlos Escalante	Lucienne Gaufillet
	Allen Yearick	Allen Prewitt	
Alternate Brady Cohenour	Alternate O.M. Griffith	Alternate Dwight Koch	Alternate Joseph Thompson

City Staff:

Development Services	Public Works	Fire	Police
Director Tim Polk	Arlan Cummings	Kenny Langston	
Assistant Director Matt McLachlan			
Dev. Review Mgr. Ruth Seewer			
Review Coordinator Susan Kahl			

PRELIMINARIES

The meeting was called to order by Chairman Barcus at 2:02 p.m.

1) The Chairman stated that with the exception of variance requests, all items being considered at this meeting would be heard by City Council on Wednesday, May 10, 2006 at 8:30 a.m. unless otherwise announced.
2) Pledge of Allegiance at 2:03 p.m.
3) Ms. Gaufillet moved, with a second by Mr. Thompson, to approve the Minutes of March 15, 2006. Motion carried unanimously
4) Ms. Kahl swore in all those wishing to speak before the Commission.

OLD BUSINESS

VA.06.0022 WARD 3 NEIGHBORHOOD 6.01 RS

Request of Joseph Curtan, agent for JRC, LLC, owner, for a Setback Variance to build a new home located at 2423 7th Avenue West (Zoned R-1C).

Ms. Seewer read the request stating that it was old business from the March 15, 2006 meeting. She advised that Mr. Curtan had met with her and Mr. Polk and they did not like his plan and would not support it; therefore, he was working toward getting a new plan which would be more acceptable for the Wares Creek neighborhood. Ms. Seewer advised that Mr. Curtan had written a letter requesting another continuance.

Public Hearing
The Chair opened the Public Hearing. No one appeared to speak in favor or in opposition to the application, and the Chair continued the Public Hearing until the May 17, 2006 Planning Commission meeting.

Ms. Gaufillet moved, with a second by Mr. Yearick, to continue VA.06.0022 until the May 17, 2006 Planning Commission meeting. Motion carried unanimously.

NEW BUSINESS

VA.06.0023 WARD 5 NEIGHBORHOOD 1.03/1.04 RS
Request of Walter W. McKenzie, President, American Housing Corp., agent for John Granger, owner, for Variance of a reduction to the front setback from 25' to 20' for property located at 710 26th Avenue West (Zoned R-2B).

Ms. Seewer read the request.

Jennifer Kuehn, 1120 Granada Street, Clearwater, Florida 33755 representing American Housing Corp., presented the request to the Commission requesting a 20 feet front yard setback rather than 25 foot. She advised that the surveyor had set the front setback wrong at 20 feet rather than 25 feet and rather than having to tear down what was already done, they were requesting that the Commission approve a variance.

Ms. Gaufillet asked at what stage of the vertical construction they were, and Mrs. Kuehn advised that the foundation walls were up and the plumbing was in the slab.

Public Hearing
The Chair opened the Public Hearing. No one appeared to speak in favor or in opposition to the request. There being no one wishing to speak, the Chair closed the Public Hearing.

Public Works
Mr. Cummings stated that Public Works had no objections.

Fire Department
The Chair noted that although the Fire Department was not represented, there were no objections in the Staff Report.

Staff Report
Ms. Seewer stated that the applicant was requesting relief from the required setback of 25 feet to allow construction to remain at 20 feet. She advised that this was not an unreasonable request based on the platted setback of 20 feet, and the fact that the neighborhood was primarily constructed with 20-foot setbacks, especially the south side of the road. Although, she noted, that it may be argued that the hardship was self-imposed, there were provisions within the Code for variances after the fact for reasons such as this. Ms. Seewer stated that the following important steps in the permitting and construction process led to the establishment of the 20-foot setback:

1. Although the changes requested in the front and rear setbacks were redlined by staff on the site plan, the applicant was not otherwise notified, and the permit itself did not identify the requested changes.
2. The builder had the proposed building laid out according to the platted setback.
3. The builder had the proposed building laid out according to the site plan submitted, since the change was not otherwise noted on the permit.
4. The inspection of the footing and plumbing rough-in were both approved, indicating two inspectors overlooked the discrepancy in the setbacks.

Ms. Seewer stated that staff recommended approval based upon the General Standards and Regulations requirements pursuant to Section 202.H of the Land Use and Development Regulations.

Mr. Prewitt moved, with a second by Mr. Cohenour, to approve VA.06.0023 based on staff's recommendation. Motion carried unanimously.

PR.06.0022 WARD 4 NEIGHBORHOOD 7.02A RS

Request of Jim Farr of George F. Young, Inc., agent for James Wood, principal of Thorwald III, LLC, owner, for preliminary approval of a Planned Development Project known as Thorwald located at 208 and 210 22nd Street Court NE and 327 Riverpoint Drive NE (Zoned R1B).

SP.06.0004 WARD 4 NEIGHBORHOOD 7.02A RS

Request of Jim Farr of George F. Young, Inc., agent for James Wood, principal of Thorwald III, LLC, owner, for preliminary approval of a Subdivision Preliminary Application for a project known as Thorwald located at 208 and 210 22nd Street Court NE and 327 Riverpoint Drive NE (Zoned R1B).

Ms. Seewer read the two items together since they pertained to the same property.

Caleb Grimes, Esquire, 1023 Manatee Avenue, West, spoke on behalf of the owners/developers. He presented a new site plan advising that it contained some minor changes as a result of the workshop with the Planning Commission on April 17. He explained for the record that at the workshop they were asked to straighten out the lot lines and to show the ways the Public Works and Fire Department trucks could turn around in the hammerhead. Mr. Grimes stated that the future land use designation was Res-10 which would allow ten units per acre and since the site had almost four acres, actually 38 or 39 units could be built on this site with the Res-10 designation. He advised that currently the zoning was R-1B which was identified as medium density zoning. Mr. Grimes stated that they actually designed the site using its Res-10 zoning with its highest use as a mid-rise height type design which fit nicely and would make an interesting property in the area. He advised that they then looked at it to see if they could make it work as a single family subdivision consistent with the single family homes which were around it. He stated that a wall or fence was planned along the south and west property lines. Ultimately, Mr. Grimes advised, they planned more docks but approval would have to be obtained from other agencies before the plans were presented to the City so docks were not an issue at this meeting. He advised that there were presently three houses in need of repair on the property which would be taken down and modern homes put up. Mr. Grimes stated that the City favored cul-de-sac design and since this property was not conducive to that design, they created a hammerhead turn-around for the garbage trucks and fire trucks to be able to negotiate. He explained that they agreed with Fire Marshal Langston's request to install fire sprinkler systems in the homes. He explained that there was nothing in the Code which required it but they felt it was a good trade-off for not requiring a cul-de-sac.

Mr. Grimes stated that the City Planning staff had proposed stipulation #6 about the design of the plantings in the wetland buffer. He proposed substitute language, which he stated he had reviewed with Ms. Seewer, that the wetland buffer be designed in accordance with the environmental resource permit issued by SWFWMD. He stated the reason was that they were going to have to go through SWFWMD for its approval on the plantings and it made sense to be consistent with that so they would not get caught between agencies.

Mr. Barnhill asked whether Mr. Grimes had had any meetings with the homeowners to the west, and he responded in the negative.

Mr. Barnhill asked whether he had received any input from the neighbors, and Mr. Grimes responded that it had been mostly through the City's Planning Department and he had responded by putting up the wall. He stated that they did have some people who wondered if his clients might be interested in expanding the project to include their home sites. He said that in the design they tried to match it up nicely with home site to home site for compatibility and consistency.

Mr. Barnhill asked whether there was sufficient docking space for all the lots, and Mr. Grimes responded that was what they were going to ask SWFWMD. After that process, if it were permitted, Mr. Grimes stated they would then come back before the Planning Commission and City Council.

Mr. Cohenour expressed concern about what the environmental impacts might be regarding wetlands, surface water run off and flooding to the adjacent properties and the elevation of the buildings.

Mr. Grimes advised that they would not put in fill to build the houses up to elevation rather the houses would be built up like houses on the beach. He advised further that they were required to build the project so that there would be sufficient swales or catch basins to be sure the run off would go into these storm water areas and treated before it was discharged into the riverside. He said the engineers would be required not to add any run off to the neighbors and they would be required to take any run off from the neighbors onto this site and assimilated into the system or route it around the system. He advised that once the system was built, the engineers would be required to get an operating permit through SWFWMD which would require periodic review to make sure the system was working.

Mr. Cohenour stated that with respect to the stipulation concerning the wall/fence around the property he would like it stipulated that it be a solid wall/fence.

Mr. Grimes stated that was their intent so they had no objection to that modification.

Public Hearing

The Chair opened the Public Hearing for anyone wishing to speak in favor. No one appeared. The Chair then opened the Public Hearing for anyone wishing to speak in opposition and the following appeared:

Mike Nuckols, 219 22nd Street NE, Bradenton, FL 34208, advised that he owned two properties, 217 and 219 22nd Street NE, with 235 feet of shared property with the proposed development including where it met the river. He stated that the bulk of the property was a city park, then a church, and then a single story family residence was built plus two other properties. He stated that 13 three-story homes would replace one one-story home plus two homes on the other two lots for a total of 15. Mr. Nuckols expressed apprehension about a three story house built eight foot away from his one story house. He discussed the three story homes towering over the single story

homes and requested that the Commission delay voting for a month to give the neighborhood the opportunity to meet with the developers. Mr. Nuckols said the Commission should consider more serious landscaping other than the ten pine trees and three cabbage palms, such as, something like queen palm trees along his property line so he would not have to look at a three story building. He requested that the wall and landscape buffer be constructed first so that the neighbors would not have to hear the construction noise and see the clearing of the land.

Mr. Barnhill asked how far back Mr. Nuchols' home was from the rear property line, and Mr. Nichols responded that he had a 20 foot rear setback. He stated that the corner of his house was 20 feet from the property line.

Ms. Seewer explained that the proposed house was 15 feet which would give Mr. Nuckols a total of 35 feet.

Ms. Gaufillet advised that cabbage palms were much thicker than queen palms and would give Mr. Nuckols more privacy.

James Choice, 218 22nd Street Court NE, worried about eminent domain.

The Chair assured Mr. Choice that was not an issue and if the developer wanted his property, an offer would have to be made which was acceptable to Mr. Choice.

Mr. Barnhill stated that only governmental bodies have the right of eminent domain.

James Futch, 205 22nd Street Court NE, was concerned about whether the present homeowners' properties would be deed restricted along with the new development, and he was assured that would not be the case. He expressed displeasure at having to look at the wall from his front porch.

Mr. Barnhill and the Chair pointed out the wall on the plat and showed Mr. Futch that his property would not be facing the wall.

Jan Hoey, 333 22nd Street Court NE, stated that he lived directly to the east of the property across the boat basin. He explained that there were manatees in the boat basin which mate in the spring. He discussed the wetland buffer, mangroves and the ecology. Mr. Hoey opined that what was being called a boat basin was actually a natural lagoon with currently eight docks and there had been eight docks on this lagoon for the past 30 or 40 years. Moreover, Mr. Hoey stated that doubling it would destroy the character of the lagoon. He stated he was interested in consistency, and it was not consistent to put three story homes where there were mostly one story homes and turn three lots into 15 lots.

Ms. Gaufillet inquired whether these homes could be replaced as they were if they were destroyed by a natural disaster.

Ms. Seewer responded that if a property was damaged over 50%, it was State mandated that the elevation had to be 8 feet above sea level. She advised that FEMA offered matching grants for anyone wanting to raise the elevation of their home. She noted that there was a property on 22nd Street that was in the approval process for a grant.

Ms. Gaufillet commented that in reality and looking to the future this neighborhood would at some point in time look like the plans being presented so that made the plans completely compatible.

The Chair pointed out that the developers were not present today to request boat docks and not all

15 houses were waterfront, therefore, they would not be eligible for a boat dock.

Stacie Davis, 209 22nd Street NE, presented photographs which showed flooding of the property, which she said, happened every year. Ms. Davis stated that the area became like a lake. She stated that she heard Mr. Grimes say something about this situation being helped but she did not quite understand it. She asked where the water would go if a big wall were built. Ms. Davis said she wanted to make sure she did not get more water on her property.

Linda Heath, 327 22nd Street Court NE, stated that this property had been her mothers, who recently passed away. She commented that it was a crap shoot as to whether a hurricane would cause all these one story homes to be destroyed since her home was built in 1953 and all the homes could be around for quite a period of time. Ms. Heath stated that the FEMA grant which she had been working on for six months was not as great as it sounded because construction costs were going through the roof and the grant money was not enough for the rising costs of new development. Ms. Heath said she may have to keep her house at one story and just pay the flood insurance. She stated that the lagoon was full of silt and there was a very narrow opening for boats. Ms. Heath commented that while it was mentioned that a 35 foot boat was there, it was hard to get a boat in and out because she owned a little 18 foot boat which she was unable to get out at low tide and that was an issue that had to be addressed. Ms. Heath stated that she liked the development improving property values but turning that little pod into three story homes was a concern. She requested that a workshop be held with the neighbors to let them know what was going on. Ms. Heath also remarked that from the beginning of the meeting the audience was unable to see the plans which were being presented.

The Chair reiterated that docks were not being discussed at this time.

Ms. Heath asked whether the mangroves were going to be ripped out.

The Chair assured Ms. Health that the State would not allow those mangroves to be ripped out.

Mr. Futch expressed concern that if the property were built up, homes would get more flooding, and the Chair explained that they were not bringing the land up because the houses would be on stilts.

Mr. Grimes appeared to answer the questions which were posed. He first apologized to Ms. Heath for not having an exhibit which everyone could see. He stated that he would correct that for the City Council meeting.

Mr. Grimes stated that in relation to Mr. Nuckols' remarks, they have been unable to find any record that the property had been a city park. He said he hoped that everyone could see from the design of the plans that Mr. Nuckols' properties were taken into account very carefully. Mr. Grimes commented that because of today's laws, homes had to be built up and they tried to maintain the existing character to the extent of keeping within the law. He opined that single family homes next to two to three story homes were eclectic and created a nice mixture.

Mr. Grimes stated that a construction fence would be put up so as not to interfere with the neighbors.

Mr. Grimes stated that he felt native pines would have been good because he believed in using native trees. He said he would be glad to talk with Mr. Nuckols about some native-type trees.

Mr. Grimes assured Mr. Choice that he did not feel the City of Bradenton would ever use its powers

of eminent domain and, as stated earlier by Ms. Gaufillet, the State Legislature was trying to strengthen Florida laws so that could never be done.

Mr. Grimes addressed Mr. Futch's concerns about deed restrictions advising that the deed restrictions only applied to the 15 lots in this development.

Mr. Grimes addressed Mr. Hoey's concerns stating that they were not asking for boat docks at this time. He said as far as mangroves go, they were not allowed to cut mangroves; however, there were some nuisance species, such as, Brazilian Peppers in there which they would be required by law to take out.

Mr. Grimes stated that Ms. Davis was concerned about the flooding. Mr. Grimes responded that whether the wall was elevated or a drainage system underground, there would have to be an engineering design that would not interfere with drainage from neighboring properties from their historic flows.

Mr. Grimes commented that regarding Ms. Heath's concern, she would be given public notice when they come before the Commission to present their request for docks.

Mr. Grimes summarized that the concerns he heard at this meeting were that homes could be built higher than what were presently on the site. Mr. Grimes felt the developers have gone out of the way to try to come up with something that maintained the character to the best that they could under today's rules and regulations concerning how a house had to be built and elevated. He explained that they have tried to match the lots up and keep the density, lot size and everything else consistent with the neighborhood and they requested approval including the change to stipulation #6.

Responding to Ms. Gaufillet's comments regarding the revised stipulation #6, Mr. Grimes explained that they did not want to get caught in a "whip-saw" between two different governmental agencies. He stated that if they presented a design to the Commission today and it were approved, SWFWMD might come back and want a different kind of plan since the landscape buffer would have to be addressed with the ERP Permit.

Mr. Barnhill asked that the word "pine" be eliminated from the stipulations, and Mr. Grimes concurred.

Responding to the Chair's comments, Mr. Grimes stated he would agree that the stipulations state a "solid" fence or wall.

Mr. Cohenour stated that the issue really was not one of stories but rather one of height, and he inquired whether the maximum height the City would allow was 35 feet.

Ms. Seewer explained that the request was for 35 feet and the City's standard was 25 feet but because of the way the developers were building up without fill and because the project had a lot of give and take on both the developers' and City's parts, the developers were giving a 15 foot setback instead of the required eight foot setback for the additional ten feet which was from the peak of the building.

Public Works

Mr. Cummings stated that he had no objections other than the two stipulated items, #1 and #8, which he read. Mr. Cummings remarked that sometime when the wall was constructed first, it was a deterrent of complaints because everything stayed on the other side without blowing over onto

the neighbors' properties, and also kept the sidewalk superintendents from calling with complaints.

Mr. Grimes responded that they planned to put up a construction fence/wall. He stated that they wanted to wait to put up a final wall until the utilities, etc were in.

Staff Report

Ms. Seewer stated that she had several e-mails with Mr. Nuckols and as a result, the number of trees in the buffer had been increased. She further advised that the stipulation could be changed to state "Trees subject to the approval of Director of Planning and Community Development" and in that way he could be the mediator for what goes in there and hopefully keep everyone happy. She stated that the reason staff put in the stipulation about a fence or wall to be installed prior to commencement of any vertical construction was to protect the neighbors. Ms. Seewer commented that if a road went through the middle of the property, it would make the home closer to the wall and also provide a separation. She explained that staff had the developers move the road five foot back and reduce the setback to the front. Ms. Seewer advised that the City Council had more than once at its meetings stated that there was no way that it would ever use eminent domain powers and have openly refused to do so. Ms. Seewer stated that Ms. Heath said the grant was not working but her point was that Ms. Heath was eligible for a $75,000.00 matching fund FEMA grant because she had repetitive loss property which meant she collected on the insurance more than twice which was the criteria used to allow a grant. Ms. Seewer said several homes have had that problem and have been rebuilt with FEMA grants. She advised that staff worked diligently with the developers and it was perhaps staff's oversight that the developers had not met with the neighbors since that was usually done for multi-family developments not when putting in a single family subdivision in a single family neighborhood. Moreover, Ms. Seewer stated that it was advertised in the newspaper and notices were sent out. Ms. Seewer stated that Mr. Nuckols had known about the plan the day the City received it.

The Chair pointed out that there was a workshop on Monday as well.

Ms. Seewer stated that there were already three homes on the property. She advised that this was a 15 home subdivision so it would actually only be an increase of 12 homes. She said staff convinced the developer to abandon his plans for a condominium of 36 units because it was felt that single family would be more compatible. Ms. Seewer stated that the PDP was required because the area along the lagoon did not have the seawall. Ms. Seewer advised further that if the seawall was all around, then this would have been a normal subdivision and they would not have to have a wall, they would not have to do landscaping, they would not have to do anything, but just come in and start building. Ms. Seewer advised that the traffic impact was minimal since it was for only 12 additional units. She remarked that behind Ms. Davis' house was the lowest point of that land. Ms. Seewer pointed out that with the development the drainage would be better, and the run off would be treated before it ran into the water. She said staff could not find that the property was ever a public park. She remarked that it may have been owned by a church. She said the house on Riverside Drive, NE was constructed in 1981 so for 25 years it was residential property; but regardless, once it was under private ownership, the owners could do what they chose to do with it.

Ms. Seewer stated that based on the Findings of Fact and Analysis of the proposed Atlas Amendment, and pursuant to the General Standards and Regulations requirements of Section 404.A.of the Land Use and Development Regulations, staff recommended approval with the following stipulations, as corrected:

1. The utilities and roadway will be installed according to Public Works specifications and will be privately owned and maintained by an established homeowners association.

2. The proposed private roadway will be moved five feet east in front of Lots 10, 11 and 12, and the front setbacks for Lots 10, 11 and 12 will be reduced to 15 feet.
3. A solid fence or wall, the design subject to approval of the Planning and Community Development Director, will be installed at a height no less than 8 feet along the west and south property line. The fence height will be reduced to four feet within 25 feet of the public right-of-way of 22nd Street Court NE.
4. The fence or wall will be installed prior to commencement of any vertical construction.
5. The landscaped buffer will be comprised of trees no less than 15 feet high, and palm trees with a 10 foot minimum clear trunk. The trees north and south of the roadway buffer will be no less than 20 feet on center. Tree species are subject to the approval of the Planning and Community Development Director.
6. The wetland buffer shall be designed in accordance with the Environmental Resource Permit to be issued by Southwest Water Management District for this project.
7. R-13 residential fire sprinkler systems will be required in all residences due to the design of the hammerhead at the cul-de-sac and the lack of sufficient water flows.
8. Infrastructure upgrades may be required.

Ms. Gaufillet moved, with a second by Mr. Barnhill, to approve PR.06.0022. Motion carried unanimously.

Ms. Gaufillet moved, with a second by Mr. Prewitt, to approve SP.06.0004 with stipulations 1 through 8 as read with the addition of stipulation #9 that a construction fence will be installed prior to land clearing and horizontal construction. Motion carried unanimously.

PR.06.0021 WARD 4 NEIGHBORHOOD 7.03 RS/MM

Request of J. Thomas O'Brien, agent for Tarpon Pointe Properties, LLC, owner, for preliminary approval of a Planned Development Project known as Tarpon Pointe located at 234 6th Street NE.

RV.06.0012 WARD 4 NEIGHBORHOOD 7.03 RS/MM

Request of J. Thomas O'Brien, agent for Tarpon Pointe Properties, LLC, owner, for approval of Vacation or Right-of-Way at 234 6th Street NE.

The Chair advised that these two items have been withdrawn and would be on the May 17 Planning Commission Agenda.

ADJOURNMENT

Mr. Yearick moved, with a second by Mr. Prewitt, to adjourn the meeting at 3:50 p.m. Motion carried unanimously.

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Diane Barcus
Chairman

PURSUANT TO FLORIDA STATUTE 286.0105, IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE BOARD, COUNCIL, AGENCY OR COMMISSION AT THIS MEETING, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE, MAY NEED TO WHICH THE APPEAL IS TO BE BASED.

Note: This is not a verbatim record. A recorded cd is available upon request for a $10.00 *service charge.*