DRAFT MINUTES
MINUTES
SCOTTSDALE PLANNING COMMISSION
KIVA – CITY HALL
3939 N. DRINKWATER BOULEVARD
MARCH 10, 2004

PRESENT: David Gulino, Chairman
Steve Steinberg, Vice Chairman
David Barnett, Commissioner
James Heitel, Commissioner
Eric Hess, Commissioner
Steven Steinke, Commissioner

ABSENT: Jeffery Schwartz, Commissioner

STAFF: Pat Boomsma
Tim Curtis
Randy Grant
Don Hadder
Raun Keagy
Don Meserve
Al Ward
Kira Wauwie

CALL TO ORDER

The regular meeting of the Scottsdale Planning Commission was called to order by Chairman Gulino at 5:00 p.m.

ROLL CALL

A formal roll call confirmed members present as stated above.

MINUTES APPROVAL

February 25, 2004

COMMISSIONER BARNETT MADE A MOTION TO APPROVE THE FEBRUARY 25, 2004 MINUTES AS PRESENTED. SECOND BY COMMISSIONER HEITEL.

THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0).

MR. GRANT explained there was a technical issue with regard to noticing cases 19-ZN-2003 and 20-ZN-2003 and they would have to be continued to a meeting in April.

INITIATION

3-TA-2004 (Code Enforcement Text Amendment) request City of Scottsdale, applicant, request to initiate a text amendment to Chapter 1, Sec. 1.1400 of the Zoning Ordinance to allow for Administrative penalties for violations of the Zoning Ordinance.

MR. KEAGY stated this proposal is intended to allow for expedited resolution of zoning violations through the use of Administrative Citations, relieving the burden from the Court System. Staff recommends this initiation.

COMMISSIONER STEINKE MOVED TO INITIATE 3-TA-2004 TO ALLOW FOR ADMINISTRATIVE PENALTIES FOR VIOLATIONS OF THE ZONING ORDINANCE. SECOND BY COMMISSIONER BARNETT.

THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0).

EXPEDITED AGENDA

12-AB-2003 (DC Ranch Street Abandonment) Request by Biskind, Hunt & Taylor, applicant, DC Ranch LLC, owner, to abandon a 280 +/- foot portion of the right-of-way for Horseshoe Canyon Drive at the east side of the intersection of Thompson Peak Parkway and Horseshoe Canyon Drive.

30-UP-1995#4 (Venue of Scottsdale) request by H.J. Lewkowitz, applicant, Valley of the Sun Entertainment LLC, owner, for a renewal of the conditional use permits for live entertainment on a 1.11 +/- acre parcel located at 7117 E Third Avenue with Central Business District (C-2) zoning.

31-UP-1995#4 (Venue of Scottsdale) request by H.J. Lewkowitz, applicant, Valley of the Sun Entertainment LLC, owner, for renewal of a conditional use

permit for a pool hall on a 1.11 +/- acre parcel located at 7117 E Third Avenue with Central Business District (C-2) zoning.

19-ZN-2003 (Pink Pony Resturant Historic Property Overlay) request by City of Scottsdale, applicant, Gwen Briley, owner, to rezone from Central Business District (C-2) to Central Business District, Historic Property (C-2 HP) for the Pink Pony Restaurant (.2 +/- acre parcel) at 3831 N Scottsdale Road and to place the property on the Scottsdale Historic Register. **CONTINUED TO APRIL**

20-ZN-2003 (Sugar Bowl Resturant Historic Property Overlay) request by City of Scottsdale, applicant, Huntress Trust, Jaclyn Krawczyk, Margery Morton, and Fredrick Huntress, owners, to rezone from Central Business District (C-2) to Central Business District, Historic Property (C-2 HP) for the Sugar Bowl Restaurant (.13 +/- acre parcel) at 3935 & 4005 N Scottsdale Road and to place the property on the Scottsdale Historic Register. **CONTINUED TO APRIL**

COMMISSIONER BARNETT MOVED TO FORWARD CASES 12-AB-2003, 30-UP-1995#4 AND 31-UP-19995#4 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL SUBJECT THAT IT MEETS THE USE PERMIT CRITERIA. SECOND BY COMMISSIONER STEINKE.

THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0).

REGULAR AGENDA

23-ZN-2003 (Corriente by Starpointe) request by STARPOINTE Corriente Condominium LP, applicant, Town King Enterprises Co Ltd, owner, to rezone from Resort/Townhouse Residential District (R-4R) and Open Space District (O-S) to Multi-Family Residential District (R-5) on a 9.28 +/- acre parcel located at 7601 E Indian Bend Road.

MS. WAUWIE presented this case as per the project coordination packet. Staff recommends approval, subject to the attached stipulations.

COMMISSIONER BARNETT stated there is a stipulation under Site Demolition and Development that required the applicant to establish an Escrow Account. He further stated that he has not seen other cases where they have placed a financial stipulation. He inquired if that was typical. Ms. Wauwie replied there have been similar situation on a number of properties. She stated the applicant did okay that type of stipulation.

JOHN BERRY, 4800 N. Scottsdale Road, stated Starpointe is a local company headquarters in Scottsdale. They have a very successful niche in Scottsdale and that niche is very high quality condominiums for young professionals without children and empty nesters. He remarked that in fill projects could be among the

 DRAFT

most difficult projects to do. He further remarked this project is for ownership residential. The buildings will be three stories in height with underground parking. He reviewed the three criteria for in fill projects. He reported there would be a reduction in traffic. The project would allow people to live closer to their jobs and amenities. He further reported they would complete the missing piece of the trails system for the Indian Bend Wash.

He stated it is stipulated that the developer shall pay to the city 25% of the design and construction costs as determined by city staff, for the potential installation of a traffic signal at the intersection of Indian Bend Road and Paradise View Street. In the event that the traffic signal study finds that a traffic signal is not warranted, then the developer shall not be obligated for payment.

He discussed the economic impacts of this project. He commented this project would enhance the neighborhood. He further commented if approved this project would be further away from the neighbors. He noted the site would have 42% open space plus the seven acres. He reported they agree with all of the stipulations and his clients are happy to accept the stipulation regarding the escrow account as part of being good neighbors and corporate citizens. He concluded his clients are proud to have headquarters in Scottsdale.

VICE CHAIRMAN STEINBERG stated this is a beautiful project. He inquired about the construction schedule and the staging of the construction. Mr. Berry stated they want to commence with construction as soon as possible. In terms of the staging of the construction, it is his guess they would use the vacant portions of the property. He remarked one thing that he did not talk about was the City CIP project for 2006 for a bridge over the Indian Bend Wash and they would encourage the city to have that structure as far to the north as possible. He added the construction of that bridge would have implications for their project.

COMMISSIONER STEINKE stated that it looks like an upgrade to the current situation. He inquired if there was any reason to believe in the engineering of the parking, if it will have to brought up to a higher grade and the three-story structure will be higher as a result of that. Mr. Berry replied in the negative.

(CHAIRMAN GULINO OPENED PUBLIC TESTIMONY.)

JACK ORRITT, 7633 E. Indian School Road, stated that he lives south of the site and his concern is regarding traffic. He provided information on the traffic situation in the area. He further stated that he felt more consideration should be given to the traffic exiting the site.

MAJORIE WAKEFIELD, 6905 N. 19th Place, stated that she lives south of this site and her concern is traffic. She further stated that she thought she knew why they were putting in underground parking is because you can build parking in a

 DRAFT

flooded area. She provided information regarding the traffic challenges in the area. She remarked that she is against the bridge. She further remarked that she did not know if the traffic light being discussed would work.

LARRY BECKNER, 6712 N. Rocking Road, stated that he lives to the west of this project. He further stated that he serves on the City's Bond Commission and could provide some information on the Bridge project. He commented with regard to the project that he was approached by the applicant early on in the project. He commended them for their outreach efforts. He further commented that he was in support of this project because it brings ownership as opposed to rental. He discussed the traffic issues in this area. He presented information on the Bond the voters passed to fund the bridge.

LARRY SIFERT, 6917 N. Rocking Road, stated the problem is that they are substituting a hotel for condominiums and the traffic problems would occur in the morning and evening hours when people are going and returning from work. He further stated that it is a dangerous situation and needs to be addressed.

(CHAIRMAN GULINO CLOSED PUBLIC TESTIMONY.)

MR. BERRY stated that he wished they could cure the traffic problems with this project but they can't. He further stated that they have tried to mitigate the challenges of traffic. They did not create these challenges. This area needs to deal with it collectively. He discussed the positive approach that would help address traffic issues. He noted the way the stipulations are crafted it is up to the City to determine whether a traffic light is warranted. He further noted that ownership residential is preferred to the hotel use. He added that from a land use perspective this makes great sense. From a traffic perspective, it will have challenges and they are committed to be a part of the solution.

CHAIRMAN GULINO stated that he use to live in this area and could attest to the fact there is a bottleneck at Indian Bend and Scottsdale Roads. He stated he gets the impression that part of that is because people are avoiding Scottsdale Road and McCormick Ranch Parkway so that has put extra pressures on that intersection. Mr. Kercher stated that he would agree with that assessment that traffic is avoiding the Scottsdale Road construction and making it a bit worse than usual. He further stated another thing he would like to point out, is that there will be improvements made to the intersection of Indian Bend and Hayden that would make that intersection work better.

Chairman Gulino stated this is a great project. He further stated that he would agree there is a traffic problem but felt this project is not the cause. He remarked it sounds like there are some positive things that would happen to correct it. He inquired about the time frame for the capital improvement project. Mr. Kercher

replied the anticipated construction start date is the summer of 2006. The project is funded and currently in the early design phase.

COMMISSIONER HEITEL stated it is a great looking project and will be a successful project. He further stated it seems like they have tried to bridge the traffic issues.

COMMISSIONER HEITEL MOVED TO FORWARD CASE 23-ZN-2003 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. SECOND BY COMMISSIONER BARNETT.

THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0).

11-TA-2000#3 (Text Amendment/ESLO II) request by City of Scottsdale, applicant, to amend Ordinance 455 (Zoning Ordinance) Article VI. Supplementary Districts., Section 6.1010. Environmentally Sensitive Lands Ordinance (ESLO).; Section 6.1022. Exemptions and Exceptions. This area covers approximately 134 square miles of upper desert and mountain areas of Scottsdale and is located north and east of the Central Arizona Project (CAP) Canal.

MR. WARD presented this case as per the project coordination packet. Staff recommends approval, of the attached ESLO Text Amendment, to Section 6.1022 Exceptions and Exemptions.

COMMISSIONER HEITEL stated on the exemptions under the DR Board approvals indicates active not lapsed, he inquired about DR submission after this effective date does that include that in the term active. Mr. Ward stated the current approvals which would be in place by the DR Board as of the effective date April 17, 2004 after that date they would be subject to the current ESL provision unless they fell under exemptions.

COMMISSIONER BARNETT stated they received a letter from Biskind, Hunt and Taylor in regards to suggested revision of the language, they suggest: "Developments that have filed an application for site plan or preliminary plat prior to the effective date of this ordinance." He inquired how is that language different than what they are currently proposing. He inquired if that April 17th date is fixed. Mr. Grant stated the April 17th date is assuming the Council acted on March 16th and it would become effective 30 days later. That is not a fixed date. He further stated in terms of DR Board approvals historically they have applied the zoning changes to anyone who does not have a building permit in hand. The problem that they may run into where they have pending applications they may get a lot of DR applications as a place holder of being able to come in under the ordinance. And those applications could go on for several reviews and an extended period

 DRAFT

of time and that is why they try to be as clear as possible regarding whom is grandfathered and who is not.

Commissioner Barnett stated the text they are looking at does not address their concerns because they are using a more stringent requirement than they are looking for. He further stated that he would imagine some of their concerns would be addressed if they moved the date out to June or July giving them a little latitude. He remarked he would agree with them that they have gone through significant amounts of money and revisions and knowing how hard it is to get on the DRB schedule he would suggest pushing the date back to June or July. Mr. Grant stated that would be one option and they have that ability.

COMMISSIONER HEITEL suggested they could consider the concept that any submittals prior to the April 17th date must be approved within six months to stay grandfathered.

COMMISSIONER STEINKE stated it seems that however they select a date or time or place there would always be people trying to push the envelope to try and get in under that. He further stated that part of the issue is a process issue whether there is a process in place that addresses what happens if you don't make it. Part of this has been addressed by saying you go to the Council and make a presentation and you have to get the finding of a hardship. The process is part of the answer to that. He remarked that he was not sure that they would accomplish a lot by pushing it off for a great length of time but perhaps some length of time. Mr. Grant stated that is a great comment. He remarked the dilemma is how do you balance a way for the ordinance to be effective on enough people that it is a noticeable change to the community.

CHAIRMAN GULINO remarked one thing that does not make sense is regarding the section that states: "Final plat in which building permits have been issued for more than 50% of the lots; or Development Review Board approval, including preliminary plats, that remain active and have not lapsed." He remarked chronologically seems inconsistent. Mr. Grant stated that is an excellent point and that is something they have wrestled with. He discussed the things that would work in this scenario. He further stated there is a need to work on that language.

Chairman Gulino expressed his concern that they have received a lot of information and this is a moving target noting that he was sensitive to the fact that staff received direction from Council that is time sensitive but he felt like they were being rushed. He inquired why are they doing it this way. Ms. Boomsma stated comments from the community keep coming in and the staff does the best job they can to summarize them and present language. The area that is clearly new is the grandfather provision and that was re-noticed for tonight's meeting and this is the first time they are seeing that material and is the subject for

 DRAFT

tonight's meeting. The other issues were discussed at the November Planning Commission the language is different but the concepts were discussed. She reported this is a moving target because there is so much interest in the community. She further reported the City Council does have the authority to make changes at the hearing. What this process is attempting to get as much public involvement before the Council meeting and get language in front of them to chose or reject.

Chairman Gulino stated these ordinance revisions are always confusing because they get to the point where one or two words make a big difference in the way it is interpreted down the road. In a forum like this, they cannot effectively deal with that level of detail and it creates problems. He inquired if the way these ordinance revisions are being handled is the typical process. Ms. Boomsma replied that this process is routine but usually they would not have as extensive input between the two meetings.

COMMISSIONER HEITEL stated where the confusion comes from is that the Commission made different recommendations than what is in the March 3, 2004 draft. He further stated this seems to take on an aura of something that came out of the Planning Commission, but they have only been invited to give off the record comments. He remarked he appreciated that they are going back and getting comments from all of the participants, but felt there should be a clean version of the Planning Commission's recommendations. And recommendations of other interested individuals that did not agree with the Planning Commission might be a cleaner way of dealing with this.

CHAIRMAN GULINO stated on the summary of changes has an issue regarding city prepared maps noting that he did not remember that coming from the Commission. Mr. Grant stated the November draft had that washes would be given priority and would be established in the ordinance in terms of the area most appropriate designation for NAOS. In response, staff used the GIS system to identify maps showing 50 CFS washes as a way to achieve that to show where the high priority areas would be. He added if the Commission desired to take another look at the ordinance staff could bring it back.

(CHAIRMAN GULINO OPENED PUBLIC TESTIMONY.)

HOWARD MYERS, 6631 E. Horned Owl Trail, showed pictures of what they are trying to achieve noting that most people are developing according to the ordinance. He further stated with regard to grandfathering they have to respect the investments that have been made so far. He passed out the graph prepared by staff a few days ago noting that he crossed out the percentages because he felt it was not appropriate to talk about the percentages. They should not treat paint LRV the same as NAOS dedication. He remarked that he thought going through text at this point is probably not worth their time because the text is

 DRAFT

changing so fast they cant' keep up with it. They should look at the concept. What they want to happen and have staff come back with the language they want to approve.

COMMISSIONER HEITEL inquired if it was his thought process that the refined concepts should come back to the Commission one more time for discussion. Mr. Myers noted that timing is key with the Council changing over. He further noted that a lot has changed and he felt they should have some input on that. Commissioner Heitel stated if the Council is interested in seeing this rather quickly then the commissioners' should provide their comments and let the Council make the final decision.

ALBERT GOLDBERG, 8311 E. Via de Ventura #1130, stated he and a few others have purchased slightly less than 40 acre parcel in the subject area. The subdivision plat was approved in August 1999, and was recorded in November 1999, and it was approved with amended development standards. He provided information on the process they have gone through to this point. He further stated the item that most concerns him is the proposed reduction building height because it would limit the type of house that they would be constructed. He added he was strongly of the opinion that this type of situation should be grandfathered in and be permitted to proceed with improvement.

SCOTT KUSY, 7700 E. Gainey Ranch Road, stated that he is the property owner of 360 acres just across the street from Desert Mountain and just south of Bartlett Lake Road and he also represented the Brophy family that owns 80 acres just south of them. He further stated that he would agree this ordinance is detailed, complex, and it has financial repercussions to the development community. He discussed the challenges with understanding this ordinance and applying it to their property. This ordinance is complex as it relates to wildlife corridors. He requested that this matter be continued so that the true stakeholders can be involved. They should have been the stakeholders. They are confused about the rush to get this to this Council.

CHAIRMAN GULINO inquired about the structure of the stakeholders group. Mr. Grant reported the group consisted of two representatives from the development community, two citizens at large, and two members of the EQAB and they met four times.

SHELLY MCTEE, Biskind, Hunt & Taylor, 11210 N. Tatum, Phoenix, AZ, stated she would like to request a continuance of this text amendment. This is not just conceptual or a policy it is an ordinance and a lot of property owners in the City of Scottsdale will be dramatically impacted. The request is based on two matters one procedural and one technical. The procedural matter is that they believe there have been significant changes from what they saw back in November and the most recent draft. She noted that typically when she has worked with text

amendments in the city there have been deadlines for when citizens could respond and then they would move forward with the final version. She stated from a technical standpoint many areas need further clarification so those property owners can completely understand the impacts to their property. She requested this be continued for 60 days and they set deadlines for comments and come back with a final version of the draft. She reviewed her concerns with the grandfathering clause.

J.T. ELBRACHT, 2302 N. Granite Reef, stated that he is an architect and land planner. He further stated that he is not representing anyone that he is here because he has spent the last 14 years dealing with the most intimate details of the ESL. He reported he was part of the original task force that helped write the ordinance. He further reported that he brings expertise to the table. He expressed his concern that they are moving too quickly because of the fact that this is a very complicated ordinance. He remarked that he would strongly recommend they use the grandfathering language that was in the 2001 amendments. He further remarked the he was concerned that there was language referencing maps for NAOS locations. He reported that it is very important to understand the washes with 50 CFS capacity.

LYNNE LAGARDE, 3101 N. Central, Phoenix, AZ, representing Master Planned Communities, and Sonoran Crest, stated there is a statutory requirement for how ordinances are adopted. She further stated that they believe there have been substantial changes made and even tonight, she has been confused with what she has been told about the ordinance. She reported that if they don't follow the statutory requirements the whole ordinance is subject to challenge. She further reported that she has never seen the city not follow the statutory requirements. She noted that she understands the timing concern with Council but they do not take office until June and they have a lot of time to do this right. She reviewed her concerns regarding the grandfathering. She reported that they asked to be part of the stakeholders group after the November meeting.

She stated she would like to speak on behalf of her master plan community clients. She further stated they support the grandfather clause for master plan communities because it is a compromise. She discussed the hillside district grandfathering language. She noted this is a question of fairness that people have reliance and investment expectation. There is not question that master plan communities should be grandfathered.

She stated her other two clients are in a different position one is the property on Scottsdale and Dynamite which has received preliminary plat approval and not final plat approval. The other is Sonoran Crest. She discussed how the process works and the challenges if things change. It is a question of fairness in the application of new rules and when you do it. There needs to be a clear understanding of the new rules. The ESL maps that were adopted were part of

the ordinance and they were not distributed later. There are maps that nobody has seen and they don't know how they will impact them.

She concluded this is an issue of fairness and consistency in the process. The ordinance should not go through without adequate time to review it.

(CHAIRMAN GULINO CLOSED PUBLIC TESTIMONY.)

COMMISSIONER STEINKE inquired what format will work for this Commission to be able to sit down and work through all of the issues. Mr. Grant stated if the Commission wishes to continue this item staff could setup and advertise for a discussion on entire ordinance and have a work study type of discussion.

COMMISSIONER BARNETT stated a lot of the comments have been interpretation type of comments and anytime they regulate something like this that is going down to the nuts and bolts there will always be problems with interpretation. He further stated that he thought what ends up happening is in the process there is a lot of fear because no one knows how it is going to be implemented. He remarked some of the terms are vague. In general, he was comfortable with those vague terms because as they go forward some of the developers will have concerns they have not raised and cannot address in this type of format and they would have to have interpretations on down the line.

He stated the real question is in regards to the grandfathering clause. He further stated this is the staff recommendation in front of them and his question would be after all of the input they have received tonight if staff was still comfortable on this type of interpretation or if they would like to revise it and bring it back to the Planning Commission. Mr. Grant stated that he would be comfortable if they went with one of the previous comments: If you are a final plat you are exempt or get rid of the preliminary plat statement. And say that you are not exempt unless you have the final plat that has 50 % of the lots built and that there is no exemption for a DR Board approval that has not manifested itself in any building.

CHAIRMAN GULINO stated this is considerably different than the existing grandfathering clause. Ms. Boomsma stated one of the issues is that the last set of amendments did not have any grandfathering at all so they a have different levels of grandfathering at work in this ordinance. She discussed the different grandfathering changes that have been made through the different amendments. She also presented information on Arizona law regarding grandfathering. She reported that tonight there have been some glaring issues have been pointed out that they certainly need to go back and look at and people can provide them with lists of things they have found. She added at some point a decision has to be made as to what the concept is and that is what they were hoping they could talk about tonight.

VICE CHAIRMAN STEINBERG stated they were given a 24 page document today with very little time to digest. He further stated this is a very complex and there are a lot of inconsistencies. He reported he would support a continuance to convene a work study session with the stakeholders and open to public so they can gather the comments and make this a more concise document.

COMMISSIONER HEITEL stated that he would like to see this in front of the Council very soon. He further stated things have changed and some of the things have been taken out of context. He remarked the lack of clarity is highlighted in the grandfathering issue and he has never been comfortable with the percentages. He noted in the end they should come up with a matrix that specifically deals with different process and stages in the process that it would be clear to everyone. He further noted they should bring this back so that there is not confusion. He concluded he would support a maximum of a 30 day continuance.

MR. GRANT stated they could set up meetings in that time frame.

COMMISSIONER HEITEL MOVED TO CONTINUE CASE 11-TA-2000#3 TO BE HEARD BY THE PLANNING COMMISSION IN TOTAL WITHIN 30 DAYS WITH A STUDY SESSION TO BE HELD. SECOND BY COMMISSIONER HESS.

THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0).

ADJOURNMENT

With no further business to discuss, the regular meeting of the Scottsdale Planning Commission was adjourned at 7:10 p.m.

Respectfully Submitted,

"For the Record " Court Reporters