CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA
NORTH MYRTLE BEACH CITY HALL
CITY COUNCIL WORKSHOP
Wednesday, August 16, 2023

Minutes

1. ROLL CALL: 1:30 PM

Marilyn Hatley called the workshop to order and asked the Clerk to call the roll.

Marilyn Hatley
JO Baldwin
Bubba Collins
Fred Coyne
Nicole Fontana
Trey Skidmore
Hank Thomas

2. DISCUSSION:

A. Regarding the potential annexation and zoning of a ± 70.78 acre parcel at the intersection of Highway 22 and Highway 31. Mayor Hatley explained this meeting was a workshop for City Council to get information from staff, the Planning Department, and the Public Works Department as well as the Developer about the proposed development that would be heard at the next Council Meeting on August 21, 2023. She further stated that this was not a public hearing so there would not be time for public input but if time permitted, she may allow one or two to speak. Robert "Shep" Guyton, agent for the Developer stated that due to the lively discussion at the Planning Commission Meeting, he felt it was best to address the following issues and read his statement:

> Property which is the subject of the proposed agreements and amendments includes a portion of the original Barefoot Resort & Golf PDD, as well as adjacent property which wasn't originally included in the PDD. Pulte Homes is the current holder of the Declarant rights under the Residential Declaration, which rights include the ability to include additional property under the Declaration. This property has been the subject of several proposals over several years, each of which is gotten less dense, with the fees and public benefits consistently increasing. Current proposal is the result of more than a year of discussions with both City Staff, the Property Owner, the Barefoot Resort Residential Owners Association, Inc., and Pulte Homes. Each of the parties recognizes that the property will not remain undeveloped, and that many of the alternative uses will generate additional impacts to the existing Barefoot community which are more objectionable than single family homes. Current proposed density is 84 single-family homes, with public improvements and contributions to both the City and the Association of more than $20,000 per lot, in addition to the on-site improvement costs. In addition to the fees and contributions, the remaining open space parcels within the PDD are being conveyed to the Association for perpetual management, eliminating the prior controversies over timber management, beavers, and other maintenance issues. Planning Commission split their recommendation by recommending annexation of the property under a PDD zoning designation but recommending against the proposed PDD Amendment. As a developer, we left a little confused on what the intent was. You can't annex without a zoning designation. Mr. Guyton addressed input comments from the July 18, 2023 Planning Commission meeting below:
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> 1. Why were these properties not part of the original PDD? The original entitlement process included the reservation of a potential road corridor for what is now SC Highway 31, the final road corridor did not include this property as originally anticipated.
> 2. Can the property be annexed without assigning a zoning designation? No, if the property is annexed, it must be assigned a zoning designation. If the zoning designation is not acceptable to both the property owner and the City, the annexation and zoning application would be withdrawn.

3. When would the Barefoot Association take control after annexation? If annexed, the property would be subjected to the Residential Declaration simultaneously with the annexation and zoning of the property since control by the Association is a condition to approval of both zoning and the Development Agreement.
4. Letter of Agency is signed by Jerome Saxon, who was an equitable owner as well as Association President, should have been another person to sign and not the President, since he is an equitable owner? The Association joined in the application for annexation and amendment to confirm jurisdiction over the property by the Association, for which Mr. Saxon appropriately signed. As to the equitable ownership argument, at least 2 of the Planning Commissioners are also equitable owners who cast their votes in regard to the proposed annexation and zoning without recusing.
5. Why is the property proposed for annexation and zoning prior to resolution of the on-going drainage litigation within a portion of the PDD? The subject property is not a party to any litigation, and under the codes of both the City of North Myrtle Beach and the State of South Carolina, the post development storm drainage volumes cannot exceed the pre-development storm drainage volumes.
6. A PDD is a plan, everyone in Barefoot has been promised that the PDD was finished, and nothing was going to be added to it. Think about infrastructure and the people who are already there, traffic is going to get worse, especially because of Water Tower Road, Silver Carolina had promised the PDD was set and done. A PDD is, by its nature a flexible zoning district that is negotiated between the property owner(s) and the City. This PDD, as is the case with every PDD within the City, has been amended many times, in fact more than 50 times. One of the benefits of these amendments has been the reduction of the originally approved density by approximately 40%. At the time of approval, Water Tower Road was unimproved and was not available for purposes of calculating the acceptable levels of traffic within the PDD at the time of approval. Since approval, the PDD density and traffic have been decreased, while the available access has increased.
7. There is only one entrance, since 2018, projects with more than 50 homes require 2 entrances. Very good reasons why these requirements were included in the City's Land Development Regulations. This isn't 52 or 55 units, it's 84, a 66% increase beyond the requirement, a second access is required. Land development regulations within the City are applicable to property within the City but are not absolute and are subject to change under at least 2 circumstances; the first being where a variance is granted by staff or a City agency, and the second being where modifications of the Land Development Regulations are included in the provisions negotiated for an approved PDD. There are modifications to the City's Land Development Regulations in every PDD within the City. In this instance, the modification was to increase the width of the access ROW from 5'0" to 100' in lieu of providing a second entrance.
8. Council has made it clear that they expect appropriate amenities in all proposals. Amenities are always constructed along with housing. There is no planning to build or expand amenities. No capital plan to accommodate these 84 households, which is a 12% increase in the single-family population. Will pickleball courts be built? Parking lots? The Clubhouse expanded? The pools and decks expanded? Maybe, maybe not. Where is the capital improvements plan? How much will those improvements cost? It's unknown if the proposed fee per household over time is adequate and no plan to build anything as it is needed to meet the demands as each phase is completed. There is no assurance the funds would be used for amenities and not general budget and non-budget expenses by future HOA boards. A part of the negotiations between the property owner, Pulte Homes and the Association has been whether it's more appropriate to install small on-site amenities for this project or to expand the existing amenities under the control of the Association. Both the PDD and the Development Agreement obligate the property to pay to the Association $1,167,600, to allow for expansion and improvement of the existing amenities. Neither the City nor the developer have control over how the Association elects to use those funds. The Association has elected its leadership in a representative democracy, similar to that of the City, where leaders are elected to make decisions on behalf of the majority. In this instance, those leaders have, or are developing a plan for the funds to be paid, which is not something the City or the developer is equipped or willing to determine on behalf of the Association.
9. If this area is cleared and developed, surface water will now be sent to the waterway. The HOAs have had engineer reports that determined the outfall is eroding and deteriorating but

not shared the information with the developer's engineer. Two communities along the outfall already feel their homes are threatened and have filed lawsuits. The developer needs to address the outfall issue. The City Engineer, HOA's engineer, developer engineer and the Army Corps of Engineers need to resolve this issue as to not endanger those existing communities, make those finding and solutions public and put up a bond for remediation costs if any, part of the Development Agreement. Unless the project engineer has devised a way to make water run uphill, the surface water from this property will continue to go where it has always gone, development does not change the direction of storm water flow. What development does do, under the codes of both the City and the State of South Carolina, is provide that stormwater post development cannot exceed stormwater pre-development, and that the stormwater from the development must be retained and treated on-site, before being released into the downstream watershed. No engineer appeared on behalf of the HOA, and the referenced engineering report was a draft report. In speaking with the engineer who prepared that report, it represents a preliminary report at a cost of less than 10% of the costs proposed for a full report and was specifically excluded from use in any litigation.

10. The typical Park Enhancement Fee of $300 per Residential Unit should not be excluded from this project. To the extent Council believes the Park Enhancement Fee should be assessed for each of these Residential Units, the property owner will agree to that amendment.
11. Setbacks from property line should be eve to eve and not wall to wall, with a minimum separation eve to eve of 10'. Developer agrees to an eve-to-eve separation of 10'.
12. The provision of only a 5' sidewalk on one side of the street does not match anything else in Barefoot. In addition, a transit stop for the Barefoot shuttle and accommodations for bicycles needs to be addressed. If City Council believes the installation of the 100' ROW and the 5' sidewalk isn't adequate, the developer will agree to increase the sidewalk width to 8'. The 100' ROW does allow for the inclusion of a transit stop, which the developer will include as approved by the City's Engineer.
13. Planning Commission should visit the site; it doesn't fit, and the Board doesn't speak for all residents. The Association board is authorized, under the Declaration and By-laws to speak for the residents subject to those documents. To the extent any individual disagrees with the decision of the board, those complaints can be addressed to the Board.
14. The wildfires of 2009 were bad and putting 84 homes with only 1 way in and out and a berm with more flammable material is dangerous. The intersection is going to be a nightmare with accidents. The property undeveloped today, is more subject to fire as a result of the additional fuel that it would be post development. In addition, the proposed development must comply with the "Firewise Community" provisions, and the 100' ROW is specifically designed to ensure the ability for both residents and emergency vehicles to enter and exit the project. The traffic generated from the proposed 84 homes and the proposed intersection do not materially impact the service level of the existing roadway, which was designed for much higher densities throughout the PDD.
15. Who and when were the traffic studies done for this project? What are the traffic backgrounds of the traffic engineer? Is the Manual on Uniform Traffic Control Devices being followed? The traffic counts are as of May 2023, which do not justify a traffic study by SCDOT on either the 100 peak hour trips, or 90 single family homes standard. Both the project engineer and the City engineer have reviewed the proposed improvements.
16. Concerns with distracted drivers and excessive speeds. Posted speed limits and responsible driving are enforcement issues, not design issues. Developers engineer did perform a 24-hour speed study, with a mean average speed, both North and South was 26 MPH, the 85th percentile was 32 MPH, as a result of outliers, one of which was traveling at 61-65 MPH at 3:30 AM.
17. Sink holes on Water Tower Road are deteriorating, if they can't stop the roads from deteriorating, how would they stop the neighborhoods from deteriorating? Water Tower Road is developed in accordance with Horry County standards, these roads would be developed in accordance with the City's more aggressive standards.

Mayor Pro Tempore Baldwin asked that a copy be sent to all Council members. Councilman Skidmore asked if there was a way to add a second entrance. Mr. Guyton stated there was no other offer of property to add a secondary entrance that he was aware of. Councilman Skidmore stated there was a concern on rental terms and asked if that was stated. Mr. Guyton stated only yearly rentals were

allowed. Mayor Pro Tempore Baldwin asked what the square footage of the homes were. Mr. Guyton stated 2,000 square foot overall and not less than 1,600 heated. Mayor Hatley asked if there would be different size homes in the development and Mr. Guyton said the home plans would be the same as previously approved Del Webb plans with the same materials. Mayor Hatley asked how much acreage would go to the association. Mr. Guyton stated that 11.64 acres plus the 5.83 acres of open area. Councilman Thomas asked the minimal lot size. Mr. Guyton stated the standard minimal lots were 60-feet by 120-feet totaling 7,000 square foot lot with a setback of 10-feet minimal with 5-foot side setbacks. Councilman Thomas asked what the front to back setbacks were. Mr. Guyton stated the front is shown as 15-foot on the plan with 10-foot on the rear but discussion at the Planning Commission meeting required a minimum of 24-foot from the garage to the street and was comparable to the neighborhoods close to it. Councilwoman Fontana asked the elevation of the homes. Mr. Guyton stated the tallest height was 35-feet.

Mayor Hatley asked if there were any other neighborhoods in Barefoot with only one entrance. Jim Wood, Director of Planning and Development, stated there were several and that the entire resort was built before the City had that standard in the ordinance. Mayor Hatley asked if this would be consistent with the other neighborhoods in Barefoot and Director Wood stated it would. Councilman Skidmore asked about the buffer between neighborhoods. Mr. Guyton stated that had been a challenge because the area was highly vegetated, and they preferred to supplement that. The buffer would end up a 10-foot barrier. Mayor Hatley asked about Track A and Mr. Guyton replied that Tract A would be undeveloped and controlled by the HOA. Mayor Hatley asked Kevin Blayton, Director of Public Works, about traffic concerns. Director Blayton stated they did some traffic studies on Marsh Glenn Drive that averaged approximately 1,000 cars a day which is substantially lower than the City of that road. Councilman Collins asked what uses the present county zoning would allow. Mr. Guyton explained there were several options that it could be used for, but his belief was that timber operation or mining would be the most likely if this did not come into the City. Mayor Pro Tempore Baldwin asked how the lot sizes compared to the others in the area. Rob Wilfong, agent with Pulte Homes, stated they were the same as Del Webb and did compare. Mayor Pro Tempore Baldwin asked that the Council see plans for all houses and elevations. Mr. Guyton agreed to supply the plans. Councilman Coyne asked what the City was for a road like Marsh Glenn. Director Blayton stated conservatively, 5,000 cars a day. Mayor Hatley stated with the natural and planned berms, the surrounding neighbors would have little or no view of the new homes. Mr. Guyton confirmed. Director Wood added there were 7 neighborhoods in Barefoot with a single access and range between 59 and 100 units. Mayor Hatley asked to hear from a member of the Association.

Mayor Hatley opened the floor for public comment.

Neil Witkin, 3019 Winding River Drive, North Myrtle Beach read a letter from Jerry Saxon, President, Barefoot Resort Residential Owners Association, Inc:

> We would like to begin by thanking the Mayor and members of the City Council in giving us the opportunity to read this statement for the record and if you have any questions, the BRRA Board members in attendance would be pleased to address them. On March 2, 2023, Mayor Hatley met with the BRRA Board and informed the Board that there was an effort to build on the property adjacent to Cedar Creek in Barefoot owned by Keith Hinson. Mr. Hinson had entered into an agreement with Blu Water Investments, whereby Blu Water would act as Developer of the property. The Developer wanted to bring this property into the Barefoot PDD and the BRRA. We discussed this among Board members; and felt that it was necessary to inform the residents of Barefoot to see how they wanted the Board to respond. After a series of meetings with the City and the Developer by March 28th, the Board needed to inform the residents. On March 29th, a meeting was called with the voting members, one from each of the 28 single and multi-family communities and residents of the Cedar Creek neighborhood, which abuts the Blue Water property and would be the community most affected by this development. As Silver Carolina retained the right to approve entrance into the Barefoot PDD, and had given Blu Water that approval, it was now up to the residents to decide how they wanted us to proceed. At this meeting, which was recorded for all

residents to see and hear on our website, the Board presented to the residents and voting members of the communities what Blu Water wanted to build, and what, if anything, did the residents want us to do. We presented several choices, and we discussed possible consequences of each. In the end, voting members reached a consensus and the residents and voting members decided that we should talk to the Developer and see if we could "negotiate" the best outcome and least impact on Barefoot. We then formed a committee made up of residents, and this committee was led by the voting member from the most affected community, Cedar Creek. One member of our Board met with the committee to act as a liaison. The committee created a "wish list" of items for the Board to negotiate. Additionally, other members of the Barefoot community were encouraged to submit items they thought should be on the negotiating table. By April 5th, meetings were set up with the Developer and architect, and attended by our Board and the Cedar Creek resident committee chair to listen and negotiate. In the end, almost all of the "wish list" was agreed to by the Developer, including paying the sum of $1.16 million dollars to the single-family community to help offset the impact the new development would make on the Barefoot amenities for single family homeowners. Together, the Barefoot Board and Blu Water put together a proposal, which was submitted to the City, which would bind Blue Water and Barefoot together so no changes could be made without approval of the other, thus ensuring Barefoot residents of the degree of transparency surrounding this agreement. After the Development Agreement was signed, and announcement went out to all the Barefoot Communities represented by the BRRA describing the results of the negotiations. Even though the agreement reached between the BRRA and Blu Water has been met with mixed reactions from the residents of communities represented by the BRRA, the Board believes it has acted in the best interest of our Barefoot Community, to ensure Barefoot remains one of the premier communities in North Myrtle Beach.

Mayor Hatley stated this covered the steps the HOA had taken. She added there was a concern the fees would not be used for what it was designated for. She stated she understood there was an agreement drawn up stating this money had to be used for amenities within the Barefoot Community. Mr. Whitkin stated a contract was in place stating the money could not be used in any other way, but a plan was not in place yet. Mr. Guyton added that the PDD required the fees to only be used for single-family amenities. Councilman Coyne asked if this would only be used for single-family dwellings and not the condos. Mr. Whitkin stated that was correct. Mayor Pro Tempore Baldwin asked if the Beach Cabana would be excluded, and Mr. Whitkin stated it would be included. Mayor Pro Tempore Baldwin asked if the $1.16 million verbiage was in the PDD Council voted on. Chris Noury, City Attorney, stated page 10 of the Development Agreement referenced the fees and the City would have no responsibility of the deposit, segregation, use or oversight of the Enhancement Fees. Mayor Pro Tempore Baldwin stated he would like to see a copy of the agreement. Councilman Thomas stated he would like to see the average lot size and set back match the adjoining subdivisions. Councilman Coyne asked to see the intersection plans. Mayor Hatley asked Director Wood if he or his staff saw any issues at the TRC meetings. Director Wood stated there were no outstanding concerns from the TRC process. Mayor Hatley asked Director Blayton if his office had reviewed this and if they found any issues. Director Blayton stated they were a part of the TRC process and any issues they had were addressed. Mayor Hatley asked Director Blayton to address the drainage issues that have been brought up. Director Blayton explained the City did not have responsibility for drainage to the waterway, but he saw no issues and the drainage was mainly through wetlands and natural paths. Developers through the HOA's were responsible for maintaining those natural drainage facilities and the City did not have maintenance responsibilities. Mayor Hatley asked if the new development would have to meet the new City standards drainage and water quality. Director Blayton confirmed they did. Councilman Coyne asked if there was a flooding issue. Director Blayton stated he was not aware of any major concerns at this particular area. Councilwoman Fontana asked if this would be a gated community and if there would be a buffer around the pond. Mr. Guyton stated it would not be gated and the pond would be open. Councilman Coyne asked what the traffic would look like if the property were mined.

Alan Simeon, 8 Seabird Court, North Myrtle Beach, stated he would challenge a few issues in the letter from the Board specifically the square footage of the lots. Barefoot minimum lot size was

10,000. They were proposing 7,000. He stated this all started 11 years ago and was denied a year after that. Why now? He read the following statement:

> After the July 18 Planning Commission workshop, a Board Member called our Cedar Creek voting member and stated that Hinson will be mining the property. How did he know that? Scare tactic. Madam Mayor, when my group met with you, you stated that Hinson threatened to mine his property if the City Council denied it and it would take 3-5 years. During the BRRA Board zoom meeting, the Board indicated, specifically Jerry Saxon, that if the development is not approved, Mr. Hinson will mine the property and could take up to 10 years. Is this another scare tactic? At the same zoom meeting, the BRRA Board stated that Mr. Hinson has or has applied for the permits from DHEC to mine the property. How did they know that? A BRRA Board member stated to the Sun News that the project had the consent of 26 HOA's in Barefoot. This is false. There was no vote. There was no survey. There was no consensus. The Board refuses to take a vote of the residents citing that only 500 respondents replied. What does that have to do with today's issues? Are they concerned of the results? Is this the way we do business now? Through threats and strong-arming citizens?

Mr. Simeon stated he was the first house that was going to be run over and thanked the Mayor and Council for allowing him to speak.

John Karpouich, 5100 Stonegate Drive, North Myrtle Beach, stated his concern had always been about traffic safety and stated that he did not see on the drawing how obstructed the Hwy 31 bridge was to the left. He felt that no one had addressed pedestrian safety due to the crosswalk being placed closest to the Hwy 31 overpass. He added that there was no sidewalk and pedestrians would have to cross Marsh Glenn Drive to continue throughout Barefoot. He asked if the traffic study could be made available to the public. Mayor Hatley stated that Mr. Karpouich could get with the City engineers and attain the report.

Mayor Hatley closed public comment and stated they were going to bring this ordinance back to the Council meeting for a vote. Mayor Hatley thanked everyone for coming to the workshop and adjourned the meeting at 2:44 PM.

Respectfully submitted,

Allison K. Galbreath, Clerk to Council

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MARILYN HATLEY, MAYOR

Minutes approved and adopted this 18th day of September 2023