Town of Loxahatchee Groves

Planning and Zoning Board Regular Meeting

Thursday, November 8, 2012 at 7:00 p.m.

Central Palm Beach County Chamber of Commerce
13901 Southern Boulevard, Loxahatchee Groves, FL 33470

MINUTES

1. OPENING

a. Call to Order & Roll Call

Chair Dennis Lipp called the meeting to order at 7:05 p.m. Present were Chair Dennis Lipp, Board Members Keith Harris, and Grace Joyce. Vice Chair Robin Crawford, and Board Members Lawrence Corning, and Veronica Close (Alternate #1) were not present at the meeting. Also present were Town Manager Mark Kutney, Town Planning Consultant Jim Fleischmann, Town Planning Technician Braeden Garrett, and Town Clerk Susan Eichhorn.

Motion: Board Member Joyce moved to approve the agenda. Board Member Harris seconded the motion, which passed 3/0.

2. MINUTES - None

3. OLD BUSINESS - *None*

4. NEW BUSINESS - *None*

5. PLANNING AND ZONING BOARD

Old Business – None

New Business

a. Site Plan Approval: Project # SP 2012-01: Valley Crest

Consideration of proposed Valley Crest Site Plan (SP 2012-01 for 5.0 acre property located at 13710 Okeechobee Blvd., south side of Okeechobee Blvd., approximately 0.25 miles west of "F" Road).

Board Chairman Lipp remarked that this code enforcement issue came before the County before the Town was incorporated. Since that time the Unified Land Development Code (ULDC) was adopted by the Town, prohibiting landscape operations in the district.

Town Planning Consultant Fleischmann reported that property consisted of 5 acres, west of "F" Road. He introduced David Coviello, who was representing the applicant. Mr. Fleischman

continued with the staff report, noting that the proposed use was as a principal use of wholesale nursery and accessory use of landscape maintenance business.

In response to Board Member Joyce regarding language in the County Code relative to principal use, Mr. Fleischmann acknowledged that there was some such language in the County Code, however, that was not one of the sections that was referenced by the Magistrate and that left it up to staff to determine what was the principal use and accessory use. He explained that there was not a nursery on the property right now.

Town Manager Kutney interjected that staff expected that the applicant would make a good faith effort in being sure that the nursery was the principal use of the property. It would be up to the Magistrate if that did not happen.

Board Chairman Lipp commented that our ULDC says that land maintenance and irrigation companies are strictly prohibited by our zoning. Mr. Kutney responded that was all discussed with the code enforcement and the Magistrate at the Special Magistrate hearing.

David Coviello stated that when the client purchased the property in 2006, it was around the same time that the Town incorporated. Shortly thereafter the town passed a moratorium on development. At that point the applicant had the right to go and get approval for the use from the county. The applicant was then cited in 2008 by the town for having an unauthorized use. Based on that, the Special Magistrate agreed that the applicant could travel under the County Code. The applicant could not possibly comply with the violation by getting approval from the town, since the moratorium had been and was in place.

Board Member Joyce questioned if a precedent was being set for this use; if this was approved, this should be considered a legal nonconforming use, because we are creating a use that is in conflict with our Code.

Mr. Fleischman replied that we are essentially going back and setting the record straight as of 2008. Technically it would have had the equivalent of approval starting in 2008.

Board Member Joyce asked if they had met the county requirements for approval; if the applicant was asking us to do today what did not meet the county requirements in 2008. We need to make sure that it would have at least been conforming under the 2008 county requirement.

Mr. Fleischmann responded that the way this was approached by staff was that if we approve the principal use and accessory use that would meet the requirements of the code as referenced in the Special Magistrate's Order.

Board Member Joyce replied that now we are approving something today that was not actually in existence in 2008. Now we have an accessory use to a primary use that actually was not existing in 2008.

David Coviello stated that there was a nursery component and through the years the nursery component was eliminated. He did not think that this sets a precedent, because the applicant

could have gone in and gotten approval, except that there was a moratorium. What the applicant was doing now is recognizing a property right based on the use. The applicant was trying to bring it more in compliance with the current town code.

David Coviello stated that when the applicant were cited by the town in 2008, the direction of the Magistrate was to comply with the site plan approval from the Town based on the County's requirement that the use had to be an accessory use to a wholesale nursery. He said that he thought that the special magistrate was trying to respect property rights and push the applicant toward complying with the current code as to set backs, etc. He stated that if this site plan is approved, it will be primarily a nursery; otherwise the applicant would be in violation of the site plan.

Discussion took place regarding the details of the uses incorporated into the site, such as the dimensions of the yard waste storage area.

David Coviello stated that this has been operating since 2006 and the applicant had no complaints other than the subject of the code violation.

Mr. Fleischmann noted that this application was taken to the Development Review Committee (DRC), where all authorities had an opportunity to offer comments, and Solid Waste said no permit was required, as did the Palm Beach County Health Department. The only comment received was from County Fire Rescue on the height. He referred to page 6 of the staff report, where his summarized the comments from all permitting agencies. He noted that any comments received from permitting agencies were either addressed by the applicant or would have no effect on staff recommendation for approval. He referred to page 12 of the staff report, which contained a detailed analysis of how the characteristics of the site plan match up with the Town's land development regulations. The only exception was at the bottom of page 12 with the 50 ft. setback requirement.

David Coviello commented that the case has lingered so long because of the moratorium and the abeyance of all violations in the town in 2009. The applicant had spent a significant amount of money with the Town as requirements. He explained that the applicant was a business owner that bought the property under the County Code, when the use was permitted. The applicant has been cooperative and tried to do the right thing in working to resolve this in the best possible light. The property lies dormant for most of the day; the employees arrive between 6:15a.m. and 6:45 a.m., leaving only two employees all day, with the other employees returning in the late afternoon. The applicant was trying to do the right thing and would appreciate the consideration of the Planning and Zoning Board.

Mr. Fleischmann stated that staff recommended approval with 8 conditions, and would add 2 additional conditions:

- There had been a request from the Palm Beach County Health Department to have a licensed septic contractor take a look at the septic tank to see if it was adequately sized to meet the needs of the business. A contractor went out and did determine that the septic tank was adequately sized; however, the drain field was not adequately working. The

septic tank drain field should be repaired and certified by a licensed septic tank contractor.

- Business tax receipts shall be obtained for wholesale landscape business and provided to the Town.

With those conditions in the staff report and the additional two conditions, staff recommended approval.

David Coviello stated that the applicant would accept those conditions.

Public Comment:

John Ryan, 3508 "A" Road: Commented that he had some experience with Valley Crest and they were a professional operation that was professionally managed and operated.

Marge Herzog, 966 "A" Road: Commented regarding the property originally being an equestrian property; that since 2006 the purchases conveyed the concept that the property would be a nursery, but it never appeared, the impacts of the grinder, limitations on hours of operation, and concern with traffic..

Board Member Harris questioned the maintenance building, where fuels were stored, and whether permits were necessary for the fuel tanks. Mr. Fleischmann replied that the tank was of a size that did not need a permit.

David Coviello noted this has been operating as is for 6 years with no complaints, other than the code violation.

Board Member Joyce commented that her biggest problem was with the Special Magistrate, and that she felt uncomfortable using some standards from the County and others from the Town; if the Town was trying to make this legal, it should base it on the standards in place when it could have become legal. She suggested that it was necessary to define primary use and accessory use, and that there had to be hours of operation for mulching and chipping as a condition of approval.

Mr. Fleischmann noted that they did a traffic study as part of this application and the traffic count determined that the peak hours for this business were not the normal peak hours. They were actual traffic counts.

Discussion took place regarding the following items:

- In number 4 on page 7 of the staff report, addition of some language that would be connected with the daily activity – "Vegetative waste operations shall consist solely of importing, grinding and on-site use of materials generated by the landscape maintenance operation."
- Language in the staff report that goes back to the background.
- A notation that the moratorium also occurred.

- On page 7, remove mulching and storage and not stockpile their waste material, or perhaps reducing the size of the pile instead

Mr. Fleischmann suggested that regarding the pile, rather than coming back with a condition right now, staff could sit down before the next meeting and see what could be proposed.

Board Member Harris suggested that rather than using it as a relay station, the waste should not be brought into Loxahatchee Groves at all.

John Ryan suggested a method to handle the waste efficiently by taking the waste out in bulk, rather than having each individual hauling trailer take it to the solid waste disposal.

MOTION: Board Member Joyce made a motion to table the consideration of proposed Valley Crest Site Plan (SP 2012-01) to the December 13, 2012, Planning and Zoning Board meeting, in order to address the issues raised by the board tonight. The motion was seconded by Board Member Harris. The motion passed 3/0.

6. LOCAL PLANNING AGENCY

Old Business: None

New Business

a. Administrative rezoning – Yee Property CG (County) to CL (Loxahatchee Groves)

Planning Technician Braeden Garrett reviewed the background and zoning request.

Mr. Kutney commented that the 2010 Town Council decided to do properties such as these types of re-zonings on a case by case basis.

Discussion took place regarding the U-Haul business in the shopping center that was part of the Yee property, and whether there was a business tax receipt; also comment was made regarding the U-Haul trucks being parked inappropriately. Mr. Kutney noted that a complaint must be filed before code enforcement action could take place.

MOTION: Joyce recommended approval of the administrative rezoning of the Yee Property from CG (County zoning) to CL (Loxahatchee Groves zoning) – 1.0028 acre Yee's Corp property located on Southern Boulevard west of "D" Road, and the 5.90 acre property located at 14579 Southern Boulevard. Board Member Keith seconded the motion. The motion passed 3/0.

b. Unified Land Development Code Amendment – Agricultural Sales and Service Uses

Jim Fleischmann presented the staff report regarding adding section 80-60 to the ULDC.

He explained the background, noting that complaints had been received regarding several entities that were illegally selling hay. At a recent Town Council Meeting, one of the owners of a hay business asked for some consideration other than code enforcement action. The town Council had directed staff to come up with a strategy to address the issue. Based on that, staff has prepared a code amendment.

Board Member Joyce asked if there was a list of home occupations defined in the zoning code. Mr. Fleischmann responded that there was not.

Town Manager Kutney noted that the principal use was still a residential unit, and that the hay selling was just an accessary use. When Business Tax Receipts were issues, staff would keep a registry of hay selling type business.

Town Planner Fleischman remarked that the Town Council direction was to give some consideration for this type of business to be located in the Town.

In response to Board Member Joyce, regarding the 8:00 p.m. operating time, Mr. Fleischman replied that these businesses were generally not full time business, and are operated on a part time basis, before and after normal working hours. He noted that the owners of the property had to have a homestead exemption and had to be the owner of the business as well.

Board Member Harris referred to page 2, no. 4, and requested the removal of the word "limited", and the insertion of wording "scope to include only straw, flakes shaving, pellet shavings, hay feed, and grain". It was determined that the wording would be put under "Definitions" on page 6, immediately after the word "solely."

Public Comments were heard from Marge Herzog as to the language being too broad, and going beyond hay only, and being fair to other commercial establishments in the Town. Council Member Jarriel stated that this was going to be an equestrian community eventually, and horse supplies would be needed.

Motion: After discussion, Board Member Keith made a motion to approve the amendment to the ULDC, Section 80-60, as amended tonight. Board Member Joyce seconded the motion. The motion passed 3/0.

7. COMMENTS FROM THE BOARD

None

8. ADJOURNMENT

There being no further business, the Planning & Zoning Board meeting of November 8, 2012, was adjourned at 9:28 p.m.

These minutes were approved by the Board on Thursday, December 13, 2012

Susan Eichhorn, Town Clerk

Dennis Lipp, Chair

SEAL

The next meeting of the Planning and Zoning Board is scheduled for January 10, 2013, at 7:00 p.m.