**PLANNING COMMISSION**

**MINUTES**

**APRIL 11, 2019**

**5:06 P.M.**

The regular meeting of the Okaloosa County Planning Commission was held Thursday, April 11, 2019, 5:06 p.m., 208 North Partin Dr, Niceville Board Room, Niceville, FL. Board members in attendance were Larry Patrick, Phyllis Enzor, Bruce Ravan, John Collins, and Jeremy Stewart.

Eglin Representative Tom Tolbert was not in attendance.

Growth Management Staff in attendance were Elliot Kampert, Growth Management Director, Randy Woodruff, Planning Manager, and Leslie Adams, Administrative Assistant II, recording secretary.

County Attorney Kerry Parson was in attendance.

Speaker recognition forms were submitted by persons wishing to speak as follows:

Agenda Item 1: Brian Hoffman, Esquire., 801 W. Romana St. Suite 4, Pensacola, FL 32502

---Proponent, Attorney for Applicant.

Agenda Item 1: Ben Gordon, 2113 Lewis Turner Blvd. Suite 100, FWB, FL 32547----Opponent, Attorney for Advantage Portable Buildings, Inc, Kevin Malone.

Agenda Item 1: Kevin Malone, 2113 Lewis Turner Blvd., Suite 100, FWB, FL 32547---Opponent

1. **CALL TO ORDER**

Chairman Patrick called the meeting to order at 5:06 PM.

1. **ROLL CALL**

Leslie Adams conducted roll call.

1. **APPROVAL OF MINUTES FOR MARCH 14, 2019**

The Chairman called for a motion to approve the minutes.

***Motion to approve the minutes of March 14, 2019 made by Bruce Ravan, second by Jeremy Stewart --- 5 ayes. Motion passes.***

1. **OPEN TO PUBLIC (FOR ANY ITEMS NOT QAUSI JUDICIAL ON THIS AGENDA)**

None

1. **ANNOUNCEMENTS**

None

1. **ADDITIONS, DELETIONS, OR CHANGES TO THE AGENDA**

None

1. **ACCEPTANCE OF THE AGENDA**

***Motion to accept the agenda as written made by Jeremy Stewart, second by Bruce Ravan--- 5ayes. Motion Passes.***

1. **OATH TAKING**

None

1. **DISCLOSURES**

Leslie Adams read disclosures to the Board. Chairman Patrick, John Collins and Jeremy Stewart advised they spoke with the County Attorney prior to the meeting. All Commissioners advised they did not visit the property in question. All Commissioners advised they were able to make a fair and impartial decision on the agenda items.

1. **OLD BUSINESS**

None

1. **NEW BUSINESS**
2. **Applications for development review**

None

1. **Public Hearings**

**PUBLIC HEARING:** Consideration of a petition submitted by A. Benjamin Gordon on behalf of Advantage Portable Buildings, Inc., and Kevin Malone (cumulatively referred to as the Petitioners) challenging the issuance of a development order for a 5,100 square foot Culver’s restaurant (referred to as Culver’s) proposed on parcels 34-1S-24-0000-0093-0000 and 34-1S-24-0000-0096-0000 located at the intersection of Green Acres Road and Beal Parkway North. These parcels cumulatively occupy 1.52 acres (66,010 square feet). The Petitioners own the adjacent parcel, 34-1S-24-0000-0099-0000, also known as 208 Green Acres Road. The Petitioners’ and Culver’s properties are shown on **Attachment A**. As shown by **Attachment B**, the parcels on which the Culver’s restaurant has been proposed, as well as the Petitioners’ parcel, are designated Commercial on the Comprehensive Plan Future Land Use Map and are within the General Commercial (C-3) zoning district. The Petition for Development Order Hearing was timely filed in accordance with Section 1.11.08 of the Okaloosa County Land Development Code. Copies of the Petition and Memorandum of Error are attached as **Attachment C**.

Attorney Parson addressed the Board advising they would be going over the application for the Culver’s and Section 1.11.08 of the Okaloosa County Land Development Code, and just for a quick procedural rundown of why this meeting was being held, and the matter being presented before them would be to approve or deny the development order application, or they may remand this issue to the Planning Official for further consideration with additional conditions, which is directly from the Land Development Code. Attorney Parsons also address the scope of review for the Board advising they will find a letter in their packet from County Attorney Greg Stewart specifically addressing what their scope of review would cover. Attorney Parsons went on to paraphrase what was in the letter advising they would need to decide whether or not the vehicular circulation indicated by the site plan is safe and does not pose a threat to the health, welfare, and safety of the public, and whether or not any easement that may be in dispute is ultimately determined to be valid. Attorney Parsons advised the section with guidelines for issuing a development order is listed in Section 1.A.0204 of the Land Development Code, which was also included in the agenda packets and that is essentially what the Board would need to make their decisions on for this item. Attorney Parsons also advised the Board they should have all received an e-mail from County Staff approximately 1 hour prior to the meeting advising the Petitioner filed a lawsuit against the applicant to have declared by the Court if there is an easement on the property. Attorney Parsons continued by stating she wanted to make sure it was on record that she reached out to the applicant who advised they did not want to delay this meeting that they wanted to move it forward tonight even with the pending lawsuit. Attorney Parsons advised the Chairman that it may help to have all e-mails the Board received as well as both parties get put into record before moving any further in the meeting as it may help speed things in the meeting up.

Chairman Patrick agreed and inquired exactly which items Attorney Parsons was referring to.

Attorney Parsons called for Mr. Kampert to advise specifically of the e-mails he sent to the Board.

Mr. Kampert advised over the last couple days he has forwarded copies of the original petition, letters he sent to counsel concerning what is the role for the scope of this review, County Attorney’s response, copies of the position papers that both the applicant and the petitioner wrote following the mediation meeting concerning the easement which he then forwarded it to the County Attorney, a letter from Attorney folling up on previous letter written, and just today a copy of the law suit that had just been filed along with the letter from Attorney Gordon that it be sent to the Board as well, and the staff report.

Chairman Patrick inquired if all the letters were considered a part of the record.

Attorney Parsons advised Chairman Patrick that he might want to make sure that neither party had any objections to entering the letters into record.

Attorney Hoffman, Applicant’s Attorney, objected to any documentation beyond the memorandum of error be admitted into record, advising there is a difference with County Staff reading it and making part of record, quoting Section 11.08, that the petitioner’s argument will be limited to the objections raised in the memorandum of error. Attorney Hoffman continued with his reason for not allowing certain letters into record noting they want the record to reflect they object.

Attorney Gordon, Petitioner’s Attorney, addressed the board advising they would like all correspondence entered into record advising his reasoning why.

Attorney Parsons advised the Chairman that she felt he should over rule and enter all correspondence into record explaining why.

Chairman Patrick over ruled and entered the correspondence noted into record.

Discussion ensued.

Mr. Kampert read into record agenda item K. b. Public hearing.

Chairman Patrick called for Attorney Gordon to make his opening statement.

Attorney Gordon addressed the Board advising he had binders in which he would like to enter as an exhibit and passed out to the Board. Attorney Gordon then continued to address the Board stating a brief background of his clients business with portable buildings. Attorney Gordon advised the Board he was asking for them to table this item for 90 days so the courts could address the easement rights of his client, which he feels will resolve this issue. Attorney Gordon continued his discussion of the easement rights of his client and addressed each item in the exhibit binder with the Board. Attorney Gordon wrapped up his statement again asking for this item to be tabled and let the court make their decision.

Chairman Patrick called for Attorney Hoffman to speak.

Attorney Hoffman addressed the Board advising the background of his client and their business. Attorney Hoffman addressed the Petitioner’s request for continuance and that it would delay the future development for his client due to the fact that the court hearing would not be completed within the 90 day time frame they are asking, along with the fact that this petition was filed on January 22, 2019. Attorney Hoffman continued to address the Board concerning the code and if someone files a petition they should have to stick to what is in the memorandum of error as the code states, one for due process, and so both parties know what is to be dealt with. Attorney Hoffman continued addressing the Board with the fact that the County could not determine if there was an easement and they sent to the County Attorney and he concluded that they could not determine if there was an easement and went on to discuss how courts proceed with issues, and the fact that only a Judge can decide if there is and actual easement. Attorney Hoffman advised there are also guidelines that must be followed in Section 1a.02.04 and explained that the only guideline in question is the one in which a proposed development must not create an unreasonable hazard, or nuisance, or constitute a threat to the general public health, safety, and welfare. Attorney Hoffman advised that in the Memorandum of Error it was stated there will be a public safety issue, but it does not explain how. Attorney Hoffman continued by addressing the County Staff’s decision on the proposed development, and the decision that the County could not make the determination there is an easement. Attorney Hoffman continued his defense of the Applicant and the position that if there is a delay on this project it would cost many issues for his client. Attorney Hoffman advised that this Board has one thing to decide and that is if they should issue a development order and if they do not approve they would be going against what staff, and the County Attorney have recommended.

Chairman Patrick called for Attorney Gordon.

Attorney Gordon called his client Kevin Malone.

Mr. Malone addressed the Board giving brief background including the background of the land and his purchasing and use of the land in question, which he states includes the easement. Mr. Malone then continued by stating his concerns of safety regarding the property in question, and asked the Board to give the time for this to be addressed and settled in the Courts.

Chairman Patrick called for any questions.

No questions from staff.

Attorney Gordon asked to call Mr. Malone back up to the podium and have him address his concerns about safety risks on the easement.

Mr. Malone addressed the Board advising of his safety concerns about sharing the one-way drive thru with a retention wall and customers.

Attorney Parsons advised the Chairman that he should inquire if Attorney Hoffman had any questions for Mr. Malone.

Chairman Patrick agreed and asked Attorney Hoffman if he had any questions.

Attorney Hoffman addressed the Board that he was going to ask Mr. Malone a question about Attachment B in the agenda. Attorney Hoffman inquired if Mr. Malone owned the vacant parcel to the left of where his business is currently located. Mr. Malone advised yes he owned the vacant parcel to the left of his business but did not use it for his business.

Discussion ensued.

Attorney Hoffman inquired if Mr. Malone owned the property under a different business.

Mr. Malone advised he owned the property that he leased it for years and then purchased it, and it is a separate piece of property and, he never used it for his business.

Chairman Patrick inquired if there were any further questions for the witness.

No questions.

Chairman Patrick inquired if both attorneys were finished.

Both Attorneys advised they were ready to move forward.

Attorney Parsons advised it should now be open to Public.

Chairman Patrick inquired if anyone from public wanted to speak concerning the item and then advised he was ready to hear closing arguments.

Attorney Gordon addressed the Board with his closing argument stating this item should be decided in the Courts and asked the Board again for time to allow this to be heard and decided in Court.

Chairman Patrick called for Attorney Hoffman.

Attorney Hoffman addressed the Board with his closing argument addressing the fact that this issue will not be resolved in 90 days, and the fact that there is a completely vacant parcel next door to the business in which there would be no safety issue unless the owner, Mr. Malone, decided not to take the safest path. Attorney Hoffman continued with his reasoning of why there was no safety issue and closing arguments that there is no determination of an easement.

Chairman Patrick advised the Board that they need to make a decision to approve or deny the development order, making sure everyone had the sheet in front of them of what they could and couldn’t consider when making the decision.

Attorney Parsons advised it should be in the agenda packet.

Discussion ensued.

Attorney Parsons read into record Section 1A.02.04 General Guidelines LDC for issuing Development Orders and Permits.

Discussion ensued.

Chairman Patrick called for a motion.

Jeremy Stewart made the motion to approve with conditions A) a satisfactory ruling be obtained by a Judge for the easement, in conjunction with the proposed plans or B) a satisfactory ruling between both parties, second by Bruce Ravan.

Attorney Parsons cautioned the Board not to make the motion based on the approval of the Court.

Discussion ensued.

Chairman Patrick advised that he disagreed with the motion and would not support it based on the fact that staff has made its recommendation to approve the development order and he believes they need to make the motion based on what the facts are today.

Discussion ensued.

Chairman Patrick inquired if Commissioner Stewart rescinded his previous motion.

Commissioner Stewart advised he did.

***Motion made by John Collins to approve the development order as proposed, second by Phyllis Enzor---- 5ayes. Motion passes.***

Discussion ensued concerning the next step in this process.

1. **OTHER BUSINESS**

None.

The **MAY 9, 2019** Planning Commission Meeting will be held at 208 North Partin Dr., City of Niceville Board Room, Niceville, FL.

**ADJOURNMENT**

Chairman Patrick adjourned the meeting at 6:46 pm.

Prepared by: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Leslie Adams, Recording Secretary

Date 04/22/19