

CITY OF ST. AUGUSTINE

Special City Commission Meeting  
March 15, 2004

The City Commission met in a formal session Monday, March 15, 2000, at 2:00 p.m. in the Alcazar meeting room at City Hall. The meeting was called to order by Mayor Gardner, and the following were present:

**1. Roll Call:**

George Gardner, Mayor/City Commissioner  
Susan Burk, City Commissioner  
Errol D. Jones, City Commissioner  
Donald A. Crichlow, City Commissioner  
William Lennon, City Commissioner

William B. Harriss, City Manager  
James P. Wilson, City Attorney  
Martha V. (Nell) Porter, City Clerk  
Timothy A. Burchfield, Chief Administrative Officer  
John Regan, Chief Operations Officer  
Mark Litzinger, City Comptroller  
Mark Knight, Director, Planning and Building Department  
William H. Harding, Director, Public Works  
David Shoar, Police Chief  
Karen Rogers, Recording Secretary

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**2. Special Master's Recommendation.**

Mayor Gardner explained the procedure for the meeting.

Dennis K. Bayer, Special Master, 306 South Ocean Shore Boulevard, Flagler Beach, expressed appreciation to be able to assist the City, the developer, and the intervening parties in the matter. He stated that the circumstances had been unique with citizens in favor of a golf course and the environmental community on the same side of the issue. He said the issues concerned the process involved and protecting open space, the environment and natural resources. He pointed out that the developer had 51 stipulated conditions that the City negotiated resulting from the Special Master hearing and some of the conditions were the result of additional negotiations after the conclusion of the hearing.

Mr. Bayer said that the general areas of concern identified during the hearing and by submittals from the parties were as follows:

- Preservation of the wetlands
- Buffers along the wetlands
- Tree protection
- Endangered species of Wood Storks
- Contamination
- Compatibility of the development between proposed commercial uses and existing residential uses on the southern end of the site
- The airport.

Mr. Bayer pointed out that the interveners had been involved and a tentative agreement had been reached between the City and the developer; however, the stipulations entered into by the City were not binding until such time as each of the Commissioners had the opportunity to discuss the issues and stipulations. He stated that the

interveners had played a significant role in the mediation process by helping to define some of the issues. He said that state law was not clear about what the intervener's role should play in the current part of the process. He suggested that the Commission listen to their concerns in order to bring the matter to a final conclusion.

Mr. Bayer said the important issues that had not been resolved concerned the actual uses that would be made and the densities that would exist in the future on the multifamily component of the project. He said that he had been involved with phase one of the application dealing with the single family development and commercial components of the property. He explained that significant restrictions had been placed on the future commercial use of the property prohibiting big box stores (Wal Mart etc.) and in the southern portion gas stations, bars, and package stores etc. were prohibited. He said that there were significant buffers included between the commercial uses and residential with visual screening, limitations of use and reconfiguring the park areas to minimize impact on existing residential neighborhood.

Mr. Bayer stated that the issue of Wood Storks still existed as specific areas had not been identified for their nesting, because the area served more for foraging along some of the old golf course links and the shallow wetlands. He recommended that the Commissioners take into consideration when the Wood Storks were in the area and whether they could be protected during construction.

Mr. Bayer said that the developer had redrawn portions of the site plan to eliminate lots and create park areas etc. to protect significant trees. He said that

some of the areas with historic large trees were not being developed at all, and they had placed additional tree islands in the roadways to protect some of the larger trees. He said that the Audubon and Sierra Clubs had raised the issue as well as the interveners who were represented by counsel. He said there was also a stipulation for no clear cutting; therefore, individual lots would not be cleared until the lot owner applied for a building permit. He said that the developer had increased the size of the lots in the two areas containing the highest number of larger hardwood trees and changed the setbacks to allow more area with less impact on the existing trees. He said that if the developer had no use for the trees to be relocated within the site plan, the City would have the option of utilizing the trees to beautify other areas of the City.

Mr. Bayer continued that the developer had expanded the buffer around the existing tennis village condominium area and required that in park areas the lighting would be designed to minimize light intrusion into the adjacent property, which would also apply to commercial uses. He added that the commercial total square footage had been decreased to 170,000 square feet with no more than 125,000 square feet for commercial. He stated that impact on high quality wetlands had been decreased and the preservation of native upland communities had been increased by 69% with 49.2 acres.

Mr. Bayer said that the issue of wetland buffers would be a subject the Commissioners would hear about regarding whether the county or the City ordinance applied. He said that when the property was annexed a required 25-foot wetland buffer had been discussed as part of the project. He said that on the Intracoastal side the developer had

agreed to an average of a 35-foot buffer with a minimum 25-foot buffer in the area; therefore, the developer had increased the buffer beyond what had been approved by the PZB.

Mr. Bayer stated that it was his understanding that the consent order between the property owners and the DEP indicated that there would be a series of steps taken on contaminated sites to obtain the state and federal agencies approval. He said the original steps included testing to determine the extent of the contamination and recommendation for interim steps for remediation if there was imminent threat of contamination of drinking water supplies or run off into creeks, and there would be longer term remediation proposed. He said that ultimately the remediation plan would be completed to the extent required by the state before development could occur in the identified contaminated areas. He said that although the contamination issue was between the property owners and the state, he recommended that the City maintain a repository where documents regarding the testing results could be stored in City Hall to allow concerned citizens to familiarize themselves with the process.

Mr. Bayer stated that stem wall construction was a condition for development within the flood plain, which minimized the required amount of fill, hence intrusion and impact on flood storage.

Mr. Bayer said the most controversial issue was the golf course. He said the question was whether the developer was legally obligated to maintain the property as a golf course. He said that the City's concerns were addressed in mediation by compensating for the loss of the golf course with other open space by

protecting some of the hammocks and wetlands, and Kurth Island would go completely into conservation. He said that although the compensation was not equal to the golf course it was adequate to the City's representatives involved in the mediation process.

Mayor Gardner stated that the mediation had been prompted by the vote of the City Commission to uphold the appeal opposing the developer. He questioned whether the Commission had specified the grounds for the denial as not having complied with the original PUD.

Mr. Wilson replied that it was something like that.

Commissioner Crichlow said that up to that point they had been discussing a development plan that, in his opinion, did not fit the PUD. He said that he felt the developer had taken a site development plan that had been modified from the original and tried to make it fit the PUD; therefore, he thought that the developer should modify the PUD, and that was how the Commission had voted. He said that the developer had opted to invoke the Special Master proceeding, which was a legitimate alternative to the procedure, at which time a plan was developed that the Commission felt was within the boundaries of the proposed development. He stated that all issues had been addressed, and he looked at the process as being a totally new PUD and in agreement with the development plan. He said that the original plan was out the window and should not be compared to the new plan, and the Commission should evaluate the plan thusly. He stated that many possibilities had been explored regarding the property; however, none of the efforts had been successful; therefore, he attempted to get the best possible

development for the City, and those findings were before the Commission.

Commissioner Crichlow thanked Mr. Bayer for his efforts. He pointed out that the developer had established that an undue burden had been created by the actions of the City Commission, which were ultimately different from the City Staff. He stated that he wanted to bring a couple of the 51 recommendations to the attention of the Commission. He said that the proposed development would contain four units per acre, and the lowest density required by the City was eight units per acre indicating that the development was less dense than it could be. He referred to Fort Mose Garden and said the developer agreed to dedicate approximately eleven acres of open space for public use to buffer the tennis community and the Poinciana Avenue residents from the commercial elements of the development in addition to the 60-foot buffer running parallel to Poinciana Avenue. He said that the total commercial area had been reduced to 170,000 square feet, and 125,000 square feet would be developed commercial. He stated that the commercial strip was limited to 350-foot along US 1 with no big box stores.

Commissioner Crichlow said that the development plan increased the preserved open space to 182 acres or 43.6% of the site and 23.2 acres were designated parks and recreation or 5.5% of the site making the total open space 50% of the site or 200 acres. He stated that 29 residential lots had been eliminated to increase the open space. He said that the revised plan reduced wetland impact to 2.87 acres or a 38% reduction from the plan that had been presented in 2003. He said the revised plan preserved the southern portion of the oak hammock and the lots on the northern portion of the hammock had

been enlarged to preserve more trees, plus other heavily treed areas had been eliminated from development.

Commissioner Crichlow explained that stem wall construction meant that the houses would build up not the sites, eliminating the need to back fill around trees to reach the required 9-foot elevation. He added that Kurth Island would be preserved for public use. He said that the 25-foot ICW buffer had been increased to an average of 35-feet.

Commissioner Crichlow said that contamination was an issue that the City had to rely on the state to investigate, determine and advise which was state and federal law and beyond the authority of local government. He said that the contamination issues existed and they were being addressed, but the City would do whatever necessary to assure the citizens that everything was being done in conformance with state and federal guidelines. He said the City would be provided with all correspondence and documentation involving the project and they would monitor the process throughout the years it would take for completion.

Commissioner Crichlow stated that the Aviation Easement Agreement was in place between the Airport Authority and the developer. He said that the developer would also require that all home buyers sign an acknowledgement of the fact.

Commissioner Crichlow stated that the tennis village neighborhood would be given the tennis courts, which were currently not part of their property. He said they would also be deeded the property east of the condominiums to the marsh lands.

Commissioner Crichlow stated that there would be no docks allowed on the project

and all marshlands east of the mean high water line would be conveyed to the City. He said there would be no cell towers allowed on the property and the developer had agreed to pay school impact fees, which no other property within the City limits currently paid. He concluded that in his opinion the project far exceeded the minimum requirements for a development of that size and scope. He concluded that they were dealing with a new PUD and a new plan, and the PUD was being modified to be consistent with the new plan. He said that considerable concession had been made on the part of the developer for less impact on the site and the adjacent neighborhoods.

Commissioner Burk noted that the stem wall construction that eliminated fill saved the trees as fill would kill them.

Commissioner Crichlow said that was right; and therefore, the floor level of the houses would have to be elevated to meet the 9-foot flood elevations.

Commissioner Burk questioned whether stem wall construction was a disadvantage to the developer.

Commissioner Crichlow replied not necessarily; moreover, stem wall construction would not have to be used in all areas.

Commissioner Burk questioned what the original square footage of the commercial area had been.

Commissioner Crichlow replied that the area had been reduced from 192,000 square feet. He added that the commercial strip of property would be 350-feet east of US 1.

The Commissioners referred to the conceptual master plan map to discuss the Public Park and recreation areas.

Mayor Gardner questioned whether there was anyone that wanted to address the procedure.

Christopher H. Smith, 225 Cannon Court East, Ponte Vedra, stated that during the Special Master hearing all the interveners were provided the opportunity to address their concerns, which had been open and fair. He said the Special Master had held breakout sessions with the City, developer and the interveners. He stated that the flaw was from that point on the interveners had not been a part of the process; therefore, the recommendations had no input from the interveners, for which they were dissatisfied. He added that the process continued not to address a myriad of important legal and developmental issues that should not be put aside.

Mr. Bayer stated for clarification that after the mediation he had spoken with counsel for the interveners regarding his need for an extension to make his recommendations and there had been no objection. He said that he had also notified the different counselors that progress was significant regarding the protection of additional open space etc.

Mayor Gardner opened the public hearing.

The following people indicated their lack of support for the results of the mediation:

- Nancy Frohardt, 325 Ebb Tide Court, Ponte Vedra
- Christopher H. Smith, 225 Cannon Court East, Ponte Vedra
- Dana and Dick Birch, 792 Captain's Drive
- Mary A. Doty, 111 N. Orange Avenue, Orlando
- Robert E. Ulanowicz, 1255 Ponce Island Drive

- Lea Meadows, 4336 Coastal Highway
- Pete Grant, 4336 Coastal Highway
- Thelma Larson-Shearer, 1255 Ponce Island Drive
- Wilton Rooks, 151 Santa Monica Avenue
- Rose Walker, 12 Poinciana Avenue
- Marie Nader, 201 Inlet Drive
- Debarah Andrews, 11 North Roscoe Boulevard
- Thomas Pierce, 6 Milton Street
- Bob Frohardt, 325 Ebb Tide Court, Ponte Vedra Beach
- Chris Ryder, 5461 2<sup>nd</sup> Street
- Rosalie Russo, 348 Charlotte Street
- Carl Kumph, 7830 A1A South

Some comments made by those who spoke during the public hearing were as follows:

- The City would be ravaged by over development
- The infrastructure was inadequate for the development
- The original PUD preserved the historic golf course and allowed for a nine hole expansion
- Please take a stand
- The Ponce property must be integrated into the City's Comprehensive Plan before a City PUD became effective, and any final development plan could be approved according to the rule of law and the need for due process
- The County PUD was the only PUD that had any legal bearing on the proposed development
- The annexation added over 1,000 acres to the City and increased population by 10%
- The destruction of the historic golf course delivered the message that any employee of the City could arbitrarily subvert due process
- The City was responding only to the developers and not to the citizenry
- If the order of the law was upheld final accommodations would be reached that were equitable to all parties
- Future home owners on the marsh would try to dry up the wetlands without getting caught
- Who would monitor to insure that the buffers would be maintained at 35-feet
- By not clear cutting the property the City would have to deal with 745 tree permit applications and the City did not have staff to enforce the tree ordinance
- The City did not have the expertise to determine the real story about the arsenic contamination, but the property would probably have to be capped by two feet of clean fill, which could not extend to the waters edge without killing the vegetation
- All the agencies were saying that different aspects of the arsenic contamination were the responsibility of one of the other agencies
- When construction began there should be concern for the workers regarding the arsenic contamination
- Establish height restriction before allowing the project to move forward
- Eliminating the hotel would not help the City of St. Augustine
- According to the tree ordinance 12,000 trees would be removed not 89
- Some trees had been moved into a major Wood Stork feeding area without permission
- History indicated that the cost of increasing residential units would not be recouped through property taxes
- If the Commission approved the Special Masters recommendation they would be giving the developer permission to ignore the law
- The numbers regarding the open spaces had been manipulated to make them sound good

- Numerous homes in the first block of Poinciana Avenue would be overly exposed to the Commercial development
- What was the need for more commercial area when there were vacant commercial areas all up and down US 1
- The golf course would be 100 years old in 2016; therefore, it should be preserved
- The expanded buffer should be clearly defined to include the vegetative areas containing large trees
- The park and recreation areas should not include a skate park etc. or strong lighting, but should be more natural and compatible with the neighborhood
- The City should have started with a new PUD rather than using the county amended PUD which had been amended once again
- The project was huge and the City should get it right
- There were three major differences in the approved plan and the plan before them—the golf course, loss of open space along the environmentally sensitive waterway and no hotel
- Eliminating the hotel would cost the City in bed tax and approximately 200 jobs
- No one was there in support of the development
- The PUD could not be waived by some letter from City management, especially without PZB review or public comment; all to execute a sale and appease a developers wholesale exploitation of the Ponce Tract
- The developer provided multiple examples of deception and out right violation of City ordinances
- What impact would the project have on our grandchildren and future tourism

Commissioner Lennon questioned how the Ponce project affected residents of Ponte Vedra.

The audience replied by questioning whether the Commissioner represented the developer or the City.

Mr. Smith replied that it was their position that the county Comprehensive Plan and PUD applied to the project, and he was a citizen of the county. He stated that Mr. Knight had assured him that he had a right to take a position regarding the project. He added that the City of St. Augustine received a direct contribution from county taxes. He said that documentation would validate that he was an established aggrieved party, which provided him with standing and the right to comment. He concluded that he had spent a lot of money in the City in restaurants and attractions.

Rose Walker, 12 Poinciana Avenue, distributed a letter from the attorney, Ralph Brooks that recommended rejecting the proposal based on the fact that the current PUD was appropriate until a new one was found. She said that Mr. Brooks had attended the mediation.

Mayor Gardner questioned whether Mr. Brooks was representing anyone in particular.

Ms. Walker replied that he was representing approximately 20 people.

Commissioner Burk asked Commissioner Crichlow whether any of the recommendations were inconsistent with what he believed they should be.

Commissioner Crichlow replied that they were not inconsistent, but he agreed the recommendations might need clarification. <sup>1</sup>

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<sup>1</sup> End of audio tape one

Mr. Smith stated that the interveners and the citizens of the County and City had not created the situation that amounted to an extensive delay to the developer beginning the project. He said that the process, or the right way had been clear from the beginning. He said that the major issues were the preservation of uplands, threatened wetlands, endangered species, contamination and compatibility to the overall development of the City. He said that the City did not have the expertise to deal with the multiple issues; however, if the property was submitted to the Comprehensive Plan process that the City was obligated to initiate in 2004, as it had been five years since the previous review of the Comp Plan. He said that if the developer had followed his counsel's written agreement and representations to the City Commission the issue would currently be over. He begged the Commission to let the rule of law speak.

Mayor Gardner closed the public hearing.

John Bailey, 780 North Ponce de Leon Boulevard, representative for the developer, stated that with the exception of the request for a 50-foot buffer his client had no problem, and he agreed that they should be certain that the buffer along Poinciana Avenue was adequate. He said that they had no problem with the request for restrictions on the park and recreation areas, although he realized if the property was donated to the City it would be a City decision. He expressed realization that the Special Master recommendations could not please everyone; however, his client had focused the changes on the major issues. He stated that he was not surprised that all the hearings regarding the project had been and would be contentious. He said that at some point

the City had to take a stand on the issue, and the current proposals were in the best interest of the City to accept. He said that if other interested parties decided to challenge that decision it would be their right.

Mr. Bailey stated that they had always disagreed with Mr. Smith and his attorneys about the Comp Plan issue. He stated that there was nothing in state law that mandated that the plan be changed before they got the PUD. He said they only needed to demonstrate that they were consistent with the County PUD, which had been demonstrated repeatedly. He said that they also disagreed with Mr. Smith's claim that there had been a lack of due process. He said that there had been at least seven public hearings regarding the project.

Mr. Bailey complimented Mr. Bayer for the way he handled the mediation and noted that he had gone overboard allowing everyone to participate. He noted that they had spent an entire day in remediation, and the process had been contentious. He said that after consideration his client revisited the issues and changes were made to accommodate the residents of Poinciana Avenue. He offered to answer questions.

Commissioner Lennon questioned whether the City could turn the recreation over to the County if the developer donated it to the City.

Mr. Harriss replied not unless the Commission chose to do so. He said that it depended on the use of the park. He said that active recreation was generally turned over to the County, but if the use was passive the City retained control and maintenance.

Mr. Stokes emphasized that he had done his best to address the concerns of the citizenry. He assured the Commission that the development would be something the City would be proud of. Mayor Gardner closed the public hearing.<sup>2</sup>

Mayor Gardner clarified that the Commission had the option to accept, reject or modify the recommendations of the Special Master.

Commissioner Crichlow stated that he had tried to measure the development on its merits, without involving the old PUD. He said that he had done the best that he could to achieve concessions from the developer that would add buffers, tree preservation and enhance environmental and neighborhood buffers. He said that no one got everything they wanted from the mediation, but the end result was a development that was above the standards of developments of that size. He said that he was aware of the quality projects completed by the developer, and he had no reason to believe that the proposed project would not be of the same quality.

Commissioner Jones stated that he had an opportunity to listen to considerable input over the past year, and he had struggled with how to respond to the issues involved, but he was at a point of making a difficult decision.

Commissioner Burk questioned whether the City was on solid ground regarding the matter of the Comp Plan.

Mr. Wilson stated that there was an obvious disagreement with Mr. Smith regarding the Comp Plan; however, in his legal opinion they were on solid ground regarding the matter. He said that the Comp Plan did not have to be amended

as long as it was still in compliance with the County Comp Plan. He said that according to the legislative act the Commission had adopted several years earlier there was a 30-day window of appeal, but the matter had not been appealed; therefore, the matter was at an end. He said that the matter was complex and only a court could provide the ultimate answer.

Commissioner Crichlow questioned the cycle for updating the Comp Plan. He said that it was his understanding that updating took place every seven years.

Mr. Harriss replied that the update, according to law, would be conducted in 2006.

Mayor Gardner questioned whether the procedure for updating the Comp Plan included public hearing, and the response was affirmative.

Commissioner Burk noted that many of the speaker's exhibited concern about saving the Ponce golf course, with the objective of stopping development at all cost, because if they did not, the course could not be saved. Therefore, she suggested that the true motives were not always sincere. She said that she had always been a proponent of protecting the environment; however, golf courses were not environmentally friendly. She pointed out that when the golf course was built a lot of trees, animal habitat and wetlands had been destroyed. She stated that the developer planned to develop roughly 50% of the property he owned and 50% would be dedicated to parks, remaining wetlands, lakes and green open space. She questioned the number of units that would be constructed.

Mr. Stokes replied that there would be 750 units on 416 acres.

<sup>2</sup> A brief recess from 3:49 until 4:06 p.m.

Mr. Harriss clarified that it was below the number of permissible units per acre.

Commissioner Burk expressed concern regarding enforcement of the terms for the recommendations. She agreed that she would love for the property to go back to nature, but she knew that the people in the audience would not want her to decide that their property must return to nature. She said that the City did not own the property, and the Constitution protected people and the land they owned. She said the recommendations had some great concessions, and she approved that docks would not be allowed. She stated that she wanted someone to enforce the terms of the 35-foot buffer. She said that matter had to be monitored, and the developer would have to cooperate with the City, but the City could not step on property owner's land rights. She said the facts were that the property would be developed, and they needed to move forward in a way that best represented the City.

Commissioner Lennon acknowledged Commissioner Crichlow for a job well done. He said a citizen had claimed that the property owner was going to cut down thousands of trees; however, that was not apparent in the plans. He said that some citizens had requested more time, but he could not see how more time would make a difference. He said that the City should have provided maps for all the people present. He said that the City could not interfere with a property owners land or take away a citizen's rights; therefore, if the citizens could not agree, they would have to file a lawsuit. He pointed out that he had been elected to watch out for the people who lived in St. Augustine.

Ms. Burk suggested that the Commission did have the right to curtail the property people developed, and the new site plan demonstrated their efforts. She pointed out the green space, park and recreation areas and Kurth Island, and she said that the developer had given the City property for public use.

Commissioner Lennon agreed, but stated that the City could not take property away from the owner.

Commissioner Burk continued that they had to be reasonable, and she believed the City had mediated a reasonable solution. She complimented Commissioner Crichlow for his role in the mediation.

Commissioner Jones questioned who would build the roads and the water/sewer infrastructure, and he was informed that the developer would handle the infrastructure.

Commissioner Crichlow questioned whether the City had provided due process.

Mr. Wilson replied in his professional opinion yes, and he stated that the City had emphasized due process regarding the project.

Mayor Gardner stated that it was the first time that he had heard it was a new PUD. He said the City had a PUD process that went through the PZB and then to the City Commission. He said that some parties believed the PUD was satisfactory for the community. He stated that he did not want to dwell on the merits of the project; he wanted to direct his comments to the process. He said the Special Master indicated that the owner was justified in relying on a letter he received from City Staff stating that the golf course could be eliminated.

He maintained that the letter was outside of any authorization other than the City Commission; the governing body of the City. He stated that in all of his research of documents regarding the project and including the ordinance approved in 2001, he could not find the developer's right to eliminate the golf course. He said that he appreciated that the letter written by the director of the Planning and Building Department indicating that the golf course could be eliminated had been copied to the City Manager and City Attorney, which further indicated that the planning director had conferred with them about the matter. Therefore, he said that it was not a single staff member that made the decision, and there was some question whether staff had that right under certain circumstances, but in the current case the matter should have been determined by the City Commission. He stated that the PZB and the City Commission at that time believed that the project would be a golf community, which would have meant a sizable amount of open space, historic and environmental resources would have been preserved and density would have been reduced.

Mayor Gardner stated that he was looking at the City Zoning Code, obligations of the duly elected and appointed Commission and boards, and he thought they had been taken on a wild ride for the past three years. He stated that government moved slower than private developers, but that was not a reason to abdicate their responsibilities as government of the community. He said that he would vote against any approval on the project. He stated that he would vote in favor of sending the matter to PZB for proper input from the public and returning the matter to the Commission after that input. He said that to him it was proper procedure, as

there would be more development, and they needed to respect procedures or the same thing would happen in all areas of the community.

Commissioner Burk questioned whether it was a new PUD or an amended PUD.

Mr. Wilson replied that it served as an amendment to the existing PUD. He said that Commissioner Crichlow referred to it as a new PUD, as it was radically different from the original PUD, but technically it was a modification.

Commissioner Burk requested that the developer's attorney address the question.

Mr. Bailey stated that what they currently had was an amended version of the PUD that had been rejected in October 2003, and changes had been made to incorporate the revisions. He said that the last finding in the Special Master's order was that the matter be brought to the Commission for review without resubmitting to the PZB.

Commissioner Burk questioned whether it was an amendment to the initial PUD that existed at the time the developer purchased the property or was it a new PUD.

Mr. Bailey stated that it was not a new PUD under any circumstances.

Commissioner Crichlow stated that he had referred to it as a new PUD, but technically it was an amendment to the old PUD, but for the purpose of discussion it was a different PUD. He said that there had been problems with the language in the PUD, which was why the Commission voted to send the PUD back for modification to be in line with the development plan. He said the mediation with the Special Master was a

different method of accomplishing the end; moreover, it represented due process. He repeated that they were not dealing with a new PUD.

Mr. Bailey stated that the number of units and the amount of commercial was within the parameters established by the original PUD. He added that it was a down sizing of the project.

Commissioner Burk questioned how it compared to the PUD of 2001.

Mr. Bailey replied that commercial had been 192,000 square feet, but the new one restricted the retail portion to 125,000 square feet and the office space to 50,000 square feet. He stated that the number of units had been sub capped at 749, but there would be more units in the multifamily element to create more open space.

Commissioner Burk noted that the current PUD was better than the 2001 PUD, but there was no golf course; however, there was just as much open/green space. She stated that the Commission had the right to modify or amend the PUD.

Commissioner Lennon stated that the Commission had selected Commissioner Crichlow to represent the Commission in the Special Master proceeding, and he had returned with recommendations. He stated that he would go along with those recommendations.

Mayor Gardner questioned why they had public hearings. He said that they kept saying that there had been due process, but he thought that due process meant making the community aware of the action they intended to take, at which time there would be a public hearing for their input based on their knowledge of the subject. He said that he did not care

if it was an amended PUD or not, but it was a drastic change from the original plan. He stated that he did not recall seeing the original plan when the PUD had been presented to the PZB in 2001. He repeated that the matter was not about one developer's plan or the inconvenience to that developer; it was about their community, laws and governing bodies. He emphasized that he would never support negotiated plans that the public had not been included in.

Commissioner Burk stated that the public had been at the mediation, they had been heard again during that meeting, and they had been heard at every meeting regarding the matter.

Mayor Gardner questioned whether the mediation had been public.

Mr. Wilson responded affirmatively and continued that generally mediations were not public, but a Special Master proceeding was a public meeting with public input.

Commissioner Burk interjected that due process meant that everything was made available to the public, and she emphasized that nothing had been kept from the public.

Mr. Wilson added that the current meeting had also been advertised as a public hearing.

Mayor Gardner questioned whether the findings were advertised.

Mr. Wilson stated that the findings were not published in the newspaper, but they were available to the public in City Hall.

Mr. Wilson replied that people went to his office weekly to do public record searches of the files.

Mayor Gardner said that the spearheads of the "Save the Ponce" were present and they had approximately 3,000 signatures on a petition, which represented that amount of the community that was out of the loop.

Mr. Wilson said the recommendation by the Special Master had been mailed to 24 different parties and many had just spoken as interveners.

Mayor Gardner questioned whether Mr. Wilson would like to comment on the exchange of letters between Mr. Bailey and Mr. Knight indicating that the property owner could eliminate the golf course and how it equated with the ordinance passed by the City Commission in 2001.

Mr. Wilson said it was his legal position that Mr. Knight had the authority to mail those kinds of letters as normal part of his position, and he had authority to advise citizens about their property.

Mayor Gardner agreed and said that in the letter from the attorney for the developer they asked for confirmation from the City Attorney's Office regarding the owner/developer's ability to modify the existing golf course and listed five items for verification. He said that four of the five were included in the PUD ordinance approved by the City Commission in June of 2001, but the fifth item was to eliminate the existing 18 hole golf course, and he could not find any allowance for that elimination. He maintained that Mr. Knight's letter was out of order and suggested that the government bodies had been twisted and jerked through the whole thing for three years, and he was trying to point out where the City had gone astray. He repeated that it was not the item that concerned him, he was concerned with the method behind the process and the

people left out of the loop. He said a responsible City Commission could not do that, and he questioned whether allowing the developer to eliminate the golf course had been right or wrong, when considering that the PZB and the Commission had thought there would be a golf course. He said that if the elimination was wrong the City should admit it and move forward from there. He questioned whether the City Attorney had any further comment on the matter, and the response was negative. He said, at the very least, the only recommendation he could make would be to send the matter to the PZB for review and recommendation to the City Commission, and at least give the public an opportunity to observe the plan.

Commissioner Lennon questioned how long the Mayor wanted to allow the public to continue research and involve more people in a golf course. He admitted to being confused, as Commissioner Burk had pointed out that they had been dealing with the matter for fourteen months, and the audience had plenty of time to do their research. He questioned how long the Mayor intended on putting the matter aside and holding up the developer.

Commissioner Burk questioned how long it would take.

Mr. Wilson replied that the procedure could take from two to five months.

Commissioner Burk questioned the range of time.

Mr. Wilson explained the process of going through the PZB, time to appeal, and getting on the City Commission agenda with necessary advertising, and he repeated that the procedure could take two to five months.

Mayor Gardner stated that there was a lawsuit against the City currently.

Mr. Wilson replied that he understood there was a lawsuit filed against the City, but it had not been served. He added that Ponce Associates had filed a motion to dismiss the lawsuit.

Commissioner Jones suggested that they had gone far enough.

**MOTION**

**Commissioner Jones MOVED that the Special Master's report and recommendation be approved. Commissioner Crichlow SECONDED the motion.**

Commissioner Jones included in the motion that clarification of the recommendations would be provided.

Mayor Gardner stated that approving the motion would put the matter to rest and the development would go forward.

Mr. Harriss stated that the developer could move forward only to the point that had been submitted. He added that there were elements that still had to go through the PZB process.

**VOTE ON MOTION**

**AYES: Jones, Crichlow, Lennon**

**NAYES: Burk Gardner**

**MOTION CARRIED 3/2**

Commissioner Jones asked the City Manager to insure that staff would be task masters to be certain the developer adhered to the plan.

Mr. Harriss replied that he would bring forth in the budget a partial resource dedicated solely to the matter.

**7. Adjournment**

There being no further business, the meeting was adjourned at 4:48 p.m. <sup>3</sup>

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MAYOR

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CITY CLERK

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<sup>3</sup> Transcribed by Karen Rogers, Recording Secretary