

**TOWN OF JUPITER
PLANNING AND ZONING COMMISSION MINUTES
SPECIAL MEETING
March 10, 2022**

Vice Chair Schneider called the meeting to order at 7:00 p.m.

ATTENDANCE: Vice Chair Schneider; Comms Frank Fore, MB Hague, Daniel Zuniga, John Weisman (1st Alternate), Malise Sundstrom (2nd Alternate); John Sickler, Planning & Zoning Director; Garret Watson, Principal Planner; Peter Meyer, Senior Planner; William Capko, Acting Town Attorney; Valerie Hampe, Secretary.

MINUTES: Regular Planning and Zoning Commission meeting, January 11, 2022.
Comm. Weisman moved to approve the minutes; seconded by Comm. Fore. The motion carried unanimously by consensus (6-0 vote).

CITIZEN COMMENTS: None.

SWEARING IN: Valerie Hampe, secretary, conducted the swearing in of witnesses for the items on the agenda.

REGULAR AGENDA:

A. **OLD BUSINESS:** None.

B. **NEW BUSINESS:**

1. **Symphony of Jupiter architecture (fka Kuschel Property)** – Request to approve the architectural elevations for 20 homes previously approved in a 20 lot subdivision, on 8.5± acres, located at 6270 and 6262 Roebuck Road.
(PZ# 4741)

Vice Chair Schneider asked the Commission for disclosures of ex-parte communications. Comm. Hague and Comm. Sundstrom said they spoke with staff. Vice Chair Schneider said she had driven by the site. Comms. Fore, Zuniga and Weisman had nothing to disclose.

Don Hearing of Cotleur Hearing spoke on behalf of the applicant and gave a PowerPoint presentation. He discussed the plan for architectural diversity which includes a selection of models and materials.

Garret Watson, principal planner, noted that this is an informational item that will not be going on to Council. Staff will issue an administrative approval letter with any comments and conditions of approval the Commission may have.

Comm. Sundstrom asked if there was an option to diversify landscaping for the units. Mr. Hearing said there is a typical landscape package for each model but they could offer an alternate plan for each model.

Symphony of Jupiter – cont'd

Comm. Hague asked how staff determined that the plan meets the monotony restrictions in Town Code. Mr. Watson said the number of floor plans per lot is the same as Shores Pointe. He noted that there are two different styles, each with three options for materials and they will have to be balanced. There will be a small number of homes and the development will meet the monotony standards used for other neighborhoods.

Comm. Hague asked if something could be done to diversify the homes since the colors offered are all shades of white. Mr. Watson said that would go beyond the scope of staff review, which is only to review the architecture for consistency with the applicant's proposed architectural style. Mr. Hearing said they could look into some additional light colors.

Mr. Sickler said staff could add conditions to the approval letter if that was the consensus of the Commission. The applicant could then respond with proposals of how they might increase the diversity. He said the monotony standards were originally adopted when large scale developments were coming into Town, where a single developer was building a large number of units.

Comm. Zuniga asked about the price range of the homes. Mr. Hearing said all the homes will more than likely be over \$1 million.

Comm. Fore said the homes are beautiful but there isn't much diversity. Mr. Hearing said the applicant would be willing to add an additional model and endeavor not to have more than three of the same model in a row.

Comm. Hague asked if the workforce housing requirement in the approval resolution had been met. Mr. Hearing said that it has been satisfied.

Vice Chair Schneider opened the floor to public comment and there was no response.

Comms. Zuniga and Fore made favorable comments about the project. Comm. Fore had some concerns with monotony. Comm. Hague wanted to discuss the possibility of another model, choices of landscape palettes, and some added diversity of colors and architectural materials.

Comm. Sundstrom was supportive of another landscape choice and maybe another shade of white or a beige.

Comm. Weisman said he was not concerned with monotony due to the small size of the development. He said he would support an alternate landscape palette and a little more paint contrast.

Vice Chair Schneider had some concerns about monotony but liked the suggestions for additional paint colors and another landscape palette.

Comm. Fore noted that due to supply chain issues, it would be easier to complete the development with two models rather than three. He suggested more landscape options to increase diversity.

Symphony of Jupiter – cont'd

Mr. Watson said it was his understanding that the Commission wanted the following added to the approval letter:

- Add another floor plan
- Add at least one paint color
- Create a secondary landscape palette for each model

Comm. Fore moved to approve with the additional comments stated by Mr. Watson; Comm. Hague seconded the motion. The motion carried unanimously by consensus (6-0 vote).

2. Bear's Club

- **Planned Unit Development (PUD) amendment** for the Clubhouse and Cottage Site (Phase 1B) located within a 400.9 ± acre property, south of Frederick Small Road and west of Palmwood Road, known as the Bears Club PUD to add a freestanding Fitness Center Building Site and to request waivers to setbacks, lot coverage, wall height minimum lot area and parking. (PZ# 4760)

Town Council consideration:

May 3, 2022 – 1st reading
May 17, 2022 – 2nd reading

Doug Fitzwater of Lucido and Associates gave a PowerPoint presentation on behalf of the Bear's Club. He discussed the waivers from R1 zoning being requested by the applicant to build three duplex cottages and a fitness center.

Peter Meyer, senior planner, stated that staff recommended approval of the PUD amendment for the waivers and to change approximately 9200 square feet of land designated as residential to recreational for the fitness center. The applicant proposed to provide a public benefit by planting ten live oak trees in the right-of-way along Fredrick Small Road or providing \$15,000 for other benefits. Staff did not support the financial contribution in lieu of planting the trees.

Mr. Meyer noted that a lawsuit has been filed against the Bear's Club. These applications are scheduled for Town Council hearings on May 3rd and May 17th after the scheduled injunction hearing on April 18th. If the injunction is granted, the Town will halt processing of the application.

A letter from Sachs Sax Caplan (attachment) was distributed to the commissioners via email the day of the meeting and was placed on the dais.

Comm. Fore asked about parking for the fitness center. Mr. Sickler said the fitness center is an ancillary use to the club so it doesn't require additional parking. Comm. Fore asked if the Bear's Club residents had been polled regarding the fitness center and cottages. Bob Wesselman, general manager of the club, said that 88% had voted in favor of the fitness center and cottage duplexes.

Bear's Club – cont'd

Comm. Zuniga asked what the effect would be from just waiting until the litigation is resolved. Andrea Nathan from Stearns, Weaver, Miller, said she was an attorney for the Bear's Club founding partners. She said nothing should prevent the application from moving forward at this point. If an injunction is granted; then the process would stop.

Comm. Zuniga again asked what the effect would be of waiting. Ms. Nathan replied that court action can take some time and meanwhile, no legal action is prohibiting this from moving forward. Until that happens, it should continue to move forward.

Comm. Zuniga asked a third time what effect a delay would have on the applicant. Ms. Nathan said it prejudices the Bear's Club. One homeowner would be prohibiting the club and what the homeowners are desiring, from moving forward, with no legal reason. Comm. Zuniga noted that part of the allegations is that there is really no homeowner representation because everyone on the board is hand-picked by the developer.

Comm. Hague said that the applicant was requesting to change Property Owners' Association (POA) land from residential use to recreational use. She asked Counsel if the Town would be okay with that.

William Capko, acting Town attorney, said the applicant has authority for what they are requesting and the Town has received an acknowledgement letter from the applicant. The letter states that the applicant understands that any action they are taking is at their own risk since the project is in litigation.

Comm. Hague asked if the fitness center would be open to all residents. Mr. Wesselman said the lots are owned by the club and the founding partners; not the POA. The fitness center will be for club members only.

Comm. Hague clarified that the staff recommendation for approval is contingent upon Council approval of the public benefits.

Comm. Sundstrom asked the following:

How is parking at the club is handled for events? Mr. Wesselman said guests are limited for golf course use and the club has never had a parking problem.

Would the applicant be amenable to reducing the size of the fitness center to lessen the lot coverage? Mr. Wesselman said they would prefer not to but they could.

Vice Chair Schneider said she was concerned that there is a dispute over who has the right to submit the application and asked why that is not an issue for the Town. Mr. Capko said an objector can file at any time; the issue is how to protect the Town. He said that is why the Town required the applicant to submit an acknowledgement that they are proceeding at their own risk.

Bear’s Club – cont’d

Vice Chair Schneider opened the floor to public comment. Rebecca Zissel, attorney with Sachs Sax Caplan, said the firm represented the plaintiff, Gary Sellers. She said Mr. Sellers challenged the governance of the POA and was particularly concerned with the parking calculation.

Comm. Zuniga asked what percentage of the homeowners are club members and Mr. Wesselman said 86%. Comm. Zuniga said he’s never seen an application come in with multiple lawsuits.

Comm. Fore did not see the urgency for moving forward and Comm. Hague said she was more comfortable remaining neutral.

Comm. Sundstrom said the club is under-parked and she had serious concerns with the proposed lot coverage increases without justification. She said this is a good application except for the scale and the Town needs to stay neutral in the lawsuits.

Comm. Weisman said he visited the site on Monday. He said he suspected that the buildings could be smaller but said the proposed sizes won’t cause problems in that location. He had no problem with moving ahead with the application.

Vice Chair Schneider said she was not sure it was appropriate to move forward in view of the litigation, even if there is no technical reason not to do so. The fundamental question was who has the right to bring the application forward.

Comm. Fore moved to continue the item to the June Planning and Zoning Commission meeting; seconded by Comm. Zuniga. The Commission was polled and the motion carried (5-1 vote).

Weisman – N	Zuniga – Y	Fore – Y
Hague – Y	Sundstrom – Y	Schneider - Y

- **Fitness Center** - Site plan application to construct a freestanding clubhouse fitness center on a 0.21± acre property located south of the Bear’s Club Villas Condominium (Cottages). (PZ# 4934)
Town Council consideration: May 17, 2022
- **Duplex Golf Cottages** - Site plan application to construct three residential duplex buildings with a total of six dwelling units on a 1.06+/- acre property located south of the Bear’s Club Villas Condominium (Cottages). (PZ# 4761)
Town Council consideration: May 17, 2022

Comm. Fore moved to continue the fitness center and duplex golf cottages items to the June Planning and Zoning Commission meeting; seconded by Comm. Zuniga. The Commission was polled and the motion carried (5-1 vote).

Weisman – N	Zuniga – Y	Fore – Y
Hague – Y	Sundstrom – Y	Schneider - Y

ADJOURN:

Vice Chair Schneider adjourned the meeting at 8:43 p.m.

Valerie Hampe, Secretary

ANKUR PATEL, CHAIR

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REBECCA ZISSEL
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March 9, 2022

Via Email

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Director of Planning & Zoning
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RE: Bear's Club Applications, PZ 21-4760, 4761 & 4934

I am writing in reference to the above captioned applications submitted by Bear's Club Founding Partners LLC (the "Applicant" or the "Golf Club"). At the March 10, 2022 meeting, the Planning & Zoning Commission will be considering these applications for a Planned Unit Development Amendment with associated waivers, Fitness Center Site Plan, and Duplex Golf Cottages Site Plan.

We plan to speak at the hearing to provide the perspective regarding the applications of our client, long-time Bear's Club resident Mr. Gary Sellers. Due to the limited time allotted to us to speak, we are also submitting this letter with the full text of our comments. We ask that this be distributed to the members of the Planning & Zoning Commission in advance of the hearing and that it be made part of the record along with our previous letters.

We ask the Planning & Zoning Commission to deny or abate consideration of the Golf Club's applications pending the resolution of the active and directly relevant litigation brought by two Bear's Club homeowners now pending in Florida court in West Palm Beach.

Mr. Sellers and his wife reside at 212 Bear's Club Drive in The Bear's Club community. Their home was built in 2002 and is their homestead property. Mr. Sellers was selected by the Golf Club to serve as the first homeowner president of the Property Owner's Association ("POA") after the so-called "turnover" of the community in March 2016. Two and a half years later, the Golf Club terminated him as President and POA director after he challenged the POA's unlawful governance scheme set forth in the community's governing documents. A few months later, he and his family were expelled from their membership in the Golf Club.

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The so-called "turnover" of The Bear's Club community occurred six years ago and yet, to this very day, the Golf Club continues to control 53% of the voting power of the POA and hand-picks each and every director on the POA Board. Recently, in two separate rulings, the trial judge has determined that the Golf Club is the statutory developer of The Bear's Club community. We urge you to think about this fact: the developer of the condominium project now pending before you is the very same Golf Club entity that unlawfully controls the selection of each of the individual directors on the POA Board of Directors that approved the condominium project on behalf of the POA.

As you may know, Florida homeowner law prohibits developers from controlling homeowner associations or otherwise voting on homeowner matters. At The Bear's Club, though, this unlawful activity is par for the course because the homeowners have never been permitted to vote in an election for its POA directors or on any other matter not specifically endorsed by the Golf Club. The community's governing documents give this unbridled power to the Golf Club into perpetuity. And that is the nut of the issue behind the extensive litigation going on in West Palm Beach.

In order to build its condominium development, the Golf Club required an amendment to the POA's Declaration. Why? Because the Declaration only permitted two single-family homes to be built on the lots in question. Naturally, board members hand-picked by the Golf Club were quick to adopt amending resolutions as well as provide POA authorization for Lucido & Associates to represent the POA before the Town in this matter. A hearing to enjoin the condominium project will take place on April 18 in Florida state court, one month from now, where the trial judge will adjudicate the merits of these critically important public policy issues.

You may hear much from the Golf Club that the homeowner community has voted to approve the amendment to the Declaration, but that was predicated on the POA Board's unlawful resolution. Homeowners can't ratify or mitigate unlawful behavior by the Golf Club and homeowners cannot otherwise legitimize ultra vires action taken by an illegally constituted Board of Directors.

In addition to the above, if you look at the substance of the applications, you will see that the proposed site plans require a number of waivers, including the reduction of several front setbacks to as low as zero feet, increases in lot coverage to 46% and 58% instead of the 35% maximum, a reduction in minimum lot area and a wall in the front yard. Even more concerning is the requested parking waiver, which would allow the Golf Club to provide only 78 parking spaces for the clubhouse and fitness center instead of the 162 spaces required based on square footage. The board members hand-picked by the Golf Club are concerned about what is best for the Golf Club, not necessarily the impact of the reduced parking on the community.

Again, we request that you deny the Golf Club's applications, or alternatively, abate the applications pending resolution of this important litigation.

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Thank you very much for your consideration.

Respectfully submitted,

SACHS SAX CAPLAN

/s/ Rebecca Zissel

Rebecca Zissel

CC: Mr. Peter Meyer, via email
Alfred Malefatto, Esq., via email
William Capko, Esq., via email