

**PLANNING AND ZONING COMMISSION MINUTES  
REGULAR MEETING  
May 14, 2019**

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

**ATTENDANCE:** Chair Ankur Patel; Vice Chair Cheryl Schneider; Comms. David Flinchum, MB Hague, Daniel Zuniga; Jennifer Hofmeister, (2<sup>nd</sup> Alternate); John Sickler, Director of Planning and Zoning; Scott Thatcher, Principal Planner; Thomas Baird, Town Attorney; Valerie Hampe, Secretary.

**MINUTES:** Regular Planning and Zoning Commission meeting, April 8, 2019.

Comm. Hague moved to approve the minutes; seconded by Comm. Schneider. The motion carried unanimously by consensus.

**CITIZEN COMMENTS:** None.

**REGULAR AGENDA:**

A. **OLD BUSINESS:** None.

B. **NEW BUSINESS:**

1. **Sims Creek Preserve** – Applications for a 2.8± acre parcel of land located at the southeast corner of the intersection of Center Street and Thelma Ave, approximately 300 feet northeast of the intersection of Indiantown Road and Center Street to include:

- A. Small Scale Future Land Use Map amendment from Recreation to Conservation; and, (PZ# 3808) ***Acting as the Local Planning Agency***
- B. Zoning Map amendment from Public/Institutional (PI) to Conservation Preservation (CP). (PZ# 3809)

Town Council consideration:

June 18, 2019 – 1<sup>st</sup> rdg  
August 20, 2019 – 2<sup>nd</sup> rdg

Mr. Sickler, director of Planning and Zoning, gave a brief presentation. He observed that the land use has become more of a passive park use than active recreation. A site plan which includes a kayak and canoe launch is tentatively scheduled to be presented to the Commission in July. He concluded by stating that Staff recommended approval.

Comm. Flinchum asked if there is a perimeter fence and Mr. Sickler said he would check.

Comm. Flinchum moved to recommend approval of the Future Land Use Map amendment; seconded by Comm. Zuniga. The Agency was polled and the motion carried unanimously (6-0 vote).

Flinchum – Y

Hague – Y

Hofmeister – Y

Zuniga – Y

Schneider – Y

Patel - Y

**Sims Creek Preserve – cont'd**

Comm. Flinchum moved to recommend approval of the Zoning Map amendment; seconded by Comm. Hague. The Agency was polled and the motion carried unanimously (6-0 vote).

Flinchum – Y	Hague – Y	Hofmeister – Y
Zuniga – Y	Schneider – Y	Patel - Y

2. **Mallory Creek at Abacoa** – Site Plan amendment to remove a portion of land from an open space tract and transfer portions to fourteen existing single family lots and two open space/common use tracts located on the west side of Wymberly Drive between Islamorada Drive and Sunshine Drive within the Mallory Creek neighborhood in Abacoa, on a 145.7± acre property, generally located south of Dakota Drive, west of Central Boulevard. (PZ# 3721)

Town Council consideration:

June 18, 2019

Chair Patel asked for ex-parte communications disclosures. Comm. Flinchum went to the site, looked at the Mallory Creek plat and checked the property appraiser's web site. Comm. Hague said she visited the site, spoke with an Abacoa Property Owners' Assembly board member regarding the presentation to that body; researched Florida Statute 720, and read through Mallory Creek governing articles.

Vice Chair Schneider and Comm. Hofmeister said they visited the site. Chair Patel said he spoke with Staff and researched Google Maps and the Palm Beach County Property Appraiser's web site. Comm. Zuniga had no disclosures.

Mr. Baird conducted the swearing in of witnesses.

George Gentile of 2GHO gave a PowerPoint presentation to describe the existing conditions and explain the request. The applicant proposed to move approximately .4 acres of open space into individual lots. He noted that the Homeowners' Association (HOA) has approved the sale of the property to the 14 individual property owners.

Mr. Gentile noted that there is a natural pathway on the west side of the greenway fence in the area maintained by Northern Palm Beach County Improvement District (Northern). The access points to the greenway will remain.

Scott Thatcher, principal planner, gave the staff presentation. He said that the site plan amendment request was to permit a replat to address issues of fences encroaching into land owned by the Homeowners Association. Seven of the 14 lots have fences that encroach into the open space area.

Mr. Thatcher said Staff recommended two conditions of approval:

- Reduce the amount of open space to be transferred to Lot 110 so that the views from Islamorada Drive won't be affected.
- Provide a replat.

Comm. Hofmeister asked if any Code violations had been issued for the fences installed beyond private property lines. Mr. Thatcher said no.

**Mallory Creek at Abacoa – cont'd**

Vice Chair Schneider asked the following questions:

- ***Did the fence permit applications include lot surveys?*** Mr. Thatcher said yes and explained the scenarios that resulted in the fences being installed incorrectly.
- ***Has Staff checked with the Police Department to see if they have concerns about shutting off the rear access to these homes?*** Mr. Sickler said the Police Department is invited to review meetings but he did not recall them making any comment.
- ***How much greenspace would be lost in Mallory Creek?*** Mr. Sickler said there is no greenspace requirement for Mallory Creek but the open space will be reduced by approximately 17,000 square feet. Mr. Thatcher added that it would be reduced from 9.06% to 8.78%.
- ***Were surveys included when the fence applications were submitted to the architectural review committee?*** Mr. Gentile said he understood that was correct.
- ***What percentage of the HOA membership approved the land transfer?*** Bob Sharra, former president of the Mallory Creek HOA board, said they consulted outside counsel regarding the proper method for approval of the replat, rezoning and property transfer. The legal opinion was that it required a majority vote of the board; not the residents.

Comm. Hague questioned how Staff had arrived at recommending approval and asked if they had looked at Florida Statute 720. Mr. Sickler said no, the application was evaluated according to Town Code.

Comm. Hague said there is an exact duplicate of the situation in Windsor Park and the open space has remained accessible to all residents there. She asked if Staff had looked at that and Mr. Thatcher said yes, Staff visited both sites.

Comm. Hague then asked the following questions:

- ***Are the common areas shared by all members of the HOA?*** Steven Braten, attorney with Rosenbaum PLLC, corporate counsel for Mallory Creek HOA, said the Mallory Creek documents consider open space part of the common areas and that owners have ingress and egress rights to common areas. He added that the HOA is responsible for maintaining the area in question whether it is a common area or privately owned.
- ***Were there violations or encroachments that were not enforced when the developer controlled the HOA board?*** Mr. Sharra said the residents found inconsistencies in the way the developer managed Mallory Creek related to discussions and decisions.
- ***Why didn't the HOA board issue violations rather than make a decision to sell common area?*** Mr. Sharra said legal counsel advised them to rezone, replat and then sell the property off to solve the problem.

Comm. Zuniga asked if the board had ever considered having the homeowners vote on this issue. Mr. Sharra said yes, it was discussed but the legal opinion was that the proper process was a board vote. He added that board meetings were publicly noticed and open to all residents. The board did not receive any public comments not in favor of the transaction.

**Mallory Creek at Abacoa – cont'd**

Comm. Zuniga asked the following:

- ***Is the land in question being used or have an intended use?*** Mr. Gentile said the homes were built on production lots because the developers wanted uniform lots. The resulting excess land was an open area behind the lots.
- ***Have any violations been issued?*** Mr. Baird said no. The Code Enforcement division was prepared to issue violations but the town manager at the time instead wanted to engage in a process to resolve the issue.

Comm. Flinchum referenced the four Fence Construction Certification forms (Attachment) distributed to the Commission which certified that the fences would be installed correctly. He noted that those particular fences were not installed correctly. He asked if the installations were inspected and Mr. Thatcher said no; the Building Department relies on the certification forms. Mr. Sickler added that inspections are focused on life/safety issues such as pool enclosures.

Mr. Gentile said the applicant has a letter from Northern saying they have no objection to the site plan modification. He added that the Abacoa Property Owners Assembly voted in favor of it as well as the Mallory Creek HOA.

Chair Patel asked the following:

- ***Do homeowners need to get HOA approval before applying for a fence permit?*** Mr. Thatcher said the Town does not require it but it is helpful. Mr. Sickler added that the Town points out that the applicant is responsible for obtaining HOA approval. Mr. Gentile said yes; Mallory Creek HOA approval is required.
- ***Are the property lines verified when the HOA considers approval?*** Mr. Gentile said yes.
- ***Who will be responsible to see that the replats for individual permits are done within six months if that is a condition of approval?*** Mr. Sickler said the Engineering Department would have to be consulted.
- ***Has Staff considered adding a condition requiring the intent of the property remain the same or would homeowners be permitted to construct at the new setback lines?*** Mr. Sickler said it would be necessary to add such a condition if that was the Commission's intent.

Chair Patel noted that Condition 2 in Exhibit 1 listed the incorrect landscape architecture firm and opened the floor to public comment.

Patrick Klima, 2687 Sunbury Drive in Windsor Park, questioned the legality of the Mallory Creek board making the decision to transfer land to private owners without approval of the rest of Mallory Creek.

Sam Barksy, 3292 Wymberly Drive, supported the amendment and said no one uses the area in question.

Bob Sharra, 102 Castries Drive, said some of the Mallory Creek residents had expressed concern over creating an unmaintained, unlit corridor between private fences and the preserve fence.

**Mallory Creek at Abacoa – cont'd**

Teresa Hartman, 3240 Wymberly Drive, said the HOA had done a great job keeping residents informed and she and her husband support the proposal.

Helene Rosenthal, 3252 Wymberly Drive, supported the proposal.

Chris Banker, said he and his wife Debbie live at 3246 Wymberly Drive. He said the land is dead open space. It has no practical use or and there are no plans for use of the property. Debbie Banker agreed and said she supported the amendment.

Randy Riccardi, 3268 Wymberly Drive, said no one has used the area in question behind his house in the 12 years he has lived there. He supported the amendment and said the Tuscany lots on the other side of the preserve go right up to the preserve fence.

Louis Morizzo, 3260 Wymberly Drive, supported the amendment and said no one is using the property.

Michael DeBock, 3244 Wymberly Drive, said he has led this effort for a replat since 2013. He explained the chronology of events with regard to the fence permitting on Wymberly Drive.

Glen DeCicco, 3245 Duncombe Drive, said he recently moved to Mallory Creek. He opposed the amendment and said the neighborhood declarations show the property as dedicated to the Mallory Creek HOA and its successors in perpetuity.

Pamela Stone, 3245 Duncombe Drive, said the homeowners who installed their fences beyond their property line should have been fined; not rewarded as this amendment proposes. She said the HOA should not have made this decision without approval of the entire community.

Mr. Gentile said the HOA did send a letter to the community regarding this issue. These property owners are not being rewarded but are paying to obtain the property. He asked the Commission for approval of the site plan amendment and said the HOA documents and process are not the purview of the Commission.

Comm. Flinchum noted that there are seven fences in the area in violation and two owners have agreed to move their fences back to the property line. He said either the homeowner or contractor should be responsible for ensuring that a fence is installed correctly. He was not in favor of selling open space to private homes and said he did not support the amendment.

Comm. Zuniga said the HOA should be able to rely on its legal counsel and the land is not being used so he supported the amendment.

Comm. Hague said there were encroachments so violations should have been issued to nip the problem in the bud. She said approving the amendment would be unfair to the rest of the community. She said this is wrong and she could not support it.

**Mallory Creek at Abacoa – cont’d**

Vice Chair Schneider said everyone should have known where their property line is and installed their fences accordingly. The HOA process is relevant because the applicant has represented that the community supports this. However, there is no evidence to support that statement since the association did not vote on it.

Vice Chair Schneider said she did not agree with the characterization of the land as dead space. She said the same situation exists in Windsor Park and the developer said the area was a walking path which the HOA could choose to pave if they wished. She said it is not a mistake and the land should not be removed from the list of benefits. She did not support the amendment.

Comm. Hofmeister said the HOA meetings and the Commission meeting tonight were noticed to the public. She noted that a number of people spoke in favor of the amendment and only one household opposed it. She said it was her duty to look at this as a replatting request with public input and she supported it.

Chair Patel observed that at least one contractor had notarized statements saying the fence installations were done correctly when clearly they weren't. He said the Town needs to find a way to make sure this type of discrepancy doesn't continue.

Chair Patel agreed that the Town should not be involved in legal matters between the HOA and the residents. He concluded by saying he didn't see any other way to resolve the issue without moving fences and he supported the application.

Vice Chair Schneider said the same contractor installed fences correctly in Windsor Park; so it would not be fair to put the burden on the contractor.

Comm. Zuniga said the HOA has an architectural review committee so there would be some type of review for use of that space. He said his support did not condone the errors and said fines should have been issued.

Comm. Zuniga moved to recommend approval of the application with the correction of changing "Coteleur and Hearing" to "2GHO" in Condition 2 of Exhibit 1. Comm. Hofmeister seconded the motion. The Commission was polled and the motion failed (3-3 vote).

Flinchum – N	Hague – N	Hofmeister – Y
Zuniga – Y	Schneider – N	Patel - Y

Comm. Flinchum moved to recommend denial of the application; seconded by Comm. Hague. The Commission was polled and the motion failed (3-3 vote).

Flinchum – Y	Hague – Y	Hofmeister – N
Zuniga – N	Schneider – Y	Patel – N

The Commission agreed to move the application forward with no recommendation since they were unable to have an affirmative vote.

**MISCELLANEOUS**

Mr. Sicker asked the Commission if there was anything they needed and there was no response.

**ADJOURN:**

Chair Patel adjourned the meeting at 8:48 p.m.

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**Valerie Hampe, Secretary**

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**ANKUR PATEL, CHAIRMAN**