

The Special Meeting of the City Council of the City of Panama City Beach, Florida, relating to the Rehearing of the Planning Board's Approval of the Amended Local Development Order for Calypso Tower III Condo, conducted on February 12, 2015.

ROLL

MAYOR GAYLE F. OBERST

COUNCILORS:
JOHN REICHARD
RICK RUSSELL
JOSIE STRANGE
KEITH CURRY

CITY MANAGER:
MARIO GISBERT
CITY CLERK:
HOLLY J. WHITE
ASSISTANT CITY ATTORNEY:
AMY MYERS

ITEM 1 REHEARING OF THE PLANNING BOARD'S APPROVAL OF THE AMENDED LOCAL DEVELOPMENT ORDER FOR CALYPSO TOWER III CONDOMINIUM, A 250 UNIT CONDOMINIUM AT 15928 FRONT BEACH ROAD.

Mayor Oberst opened the Rehearing at 4:00 P.M. and said the City would be led by the City's Land Use attorney, Mr. David Theriaque. The first step would be the swearing in of the Staff and any adversely affected person and Mr. Dave Evras, Mr. William Frye, and Ms. Toni Traina identified themselves after being sworn.

Regarding the Jennings Disclosures, Councilman Reichard said he had spoken with Mr. Craig Duran, local realtor and Planning Board member, Mr. Gisbert, Mr. Leonard, and Mr. Bill Smith, one of the partners in the development. Mr. Theriaque asked Councilman Reichard if he would be able to base his decision solely on the evidence presented during this Hearing. Councilman Reichard said yes. Councilman Russell said he knew the property's location, had spoken with Mr. Leonard and Mr. Gisbert, and received one email in favor of the request. Mr. Theriaque asked Councilman Russell if he would be able to base his decision solely on the evidence presented during this Hearing. Councilman Russell said yes. Mayor Oberst said she had received about ten emails which would be entered into the record, had spoken with one property owner there who supported the request, and talked with Staff. Mr. Theriaque asked the Mayor if she would be able to base her decision solely on the evidence presented during this Hearing. Mayor Oberst said yes. Councilwoman Strange said she had spoken with Mr. Leonard, Ms. Andrea Chester, several people at Calypso, received ten emails opposing the request and one email which supported the request. Mr. Theriaque asked Councilwoman Strange if she would be able to base her decision solely on the evidence presented during this Hearing. Councilwoman Strange said yes. Councilman Curry said he had spoken with Mr. Leonard, knew the property location, and received the same emails both pro and con, and stated he could base his decision solely on the evidence presented today. Councilman Reichard added that he received the same emails.

Mr. Theriaque said next the Council would make the determination whether there was an adversely affected party who invoked the jurisdiction of the Council for this proceeding. He complimented Ms. Chester for the great job in culling through the numerous emails to determine that there were only three entities who could be considered an adversely affected party; the City Manager, Mr. Evras and individuals with standing who attended the Planning Board meeting and timely filed an appeal. Ms. Chester indicated there were two individuals who met that test, Ms. Mae Meyer who sent an email December 26, 2014 and Ms. Toni Traina per a letter dated December 24th.

Ms. Toni Traina, resident of 1357 Marietta County Club Drive, Kennesaw, GA, and owner of unit 1509, said she would be adversely affected by this new development due to the traffic and environmental impacts. She said by continuing to permit large areas of cement without future responsibility to the environment, there would be more stormwater runoff and brown water.

Councilman Reichard asked where the brown water originated and Ms. Traina said it was upland stormwater, sometimes totally brown and disgusting looking. She said she did not know what was in the water. Councilwoman Strange asked Ms. Traina if she thought Tower III would displace that water so that there would be more runoff. Ms. Traina said that and the traffic impact and her concern about pedestrians crossing Front Beach Road.

Mr. Theriaque said the determination whether Ms. Traina was an adversely affected person did not go to the merits of her claim. Essentially, the test was if Ms. Traina had an interest in this issue greater than the general community at large, and given her proximity to the property, she would meet that test under Florida law. Mr. Sale said Staff believed she was an adversely affected party for jurisdictional purposes.

Ms. Andrea Chester was sworn and testified that she had reviewed all emails. She said Ms. Traina attended the Planning Board meeting and submitted her email in a timely manner. Ms. Meyer also submitted an appeal in a timely manner. No one else met the test for an adversely affected party. She identified an email from Ms. Meyer dated February 9 which stated she wanted to withdraw her appeal and would not attend today's meeting.

Mr. Theriaque recommended that the Council vote on the determination that Ms. Traina met the test for an adversely affected person so that the record was clear. **Councilwoman Strange made the motion to accept Ms. Traina as an adversely affected person. Second was by Councilman Curry.** The Mayor called for comments. There were none. **The motion passed by unanimous roll call vote recorded as follows:**

Councilman Russell	Aye
Councilwoman Strange	Aye
Councilman Curry	Aye
Councilman Reichard	Aye
Mayor Oberst	Aye

Ms. Chester testified that all notice requirements had been met. In response to the questions from Mr. Sale, Ms. Chester stated that she routinely prepared notices for the Hearings and was familiar with the LDC requirements for those notices. In her opinion, the notices for today's Hearing were complete.

Mr. Theriaque identified the contents of the Agenda Packet and introduced them into the record.

Mr. Leonard testified that this was an appeal request for the approved Development Order for Calypso Tower III. The Planning Board heard the request on December 8, 2014, and approved the Order five to zero (5-0). The Planning Board Order was reduced into writing December 15, 2014. The Development Order application sought approval for a 250 unit condominium tower and that tower was approved with two currently constructed towers on February 7, 2003 and the foundation laid. Due to the economic decline, construction on Tower III was halted and the Development Order and Building Permit expired September 24, 2005. On June 27, 2013, the City Council adopted Ordinance 1276 which created a process for amending, extending or renewing Development Orders which met certain criteria. Calypso Tower III met that criteria and October 24, 2013, they filed the required Notice of Intent to apply for an amended Development Order. That Notice of Intent was published in the News Herald on October 30, 2014.

Councilwoman Strange said there had been five properties which were impacted by the economic downfall; four were required to follow the new LDC and she asked why Calypso Tower III was excluded. Mr. Leonard said Ordinance 1276 had a three-tiered approach, and once in the process, the developers had the opportunity to tell the City what length of time they planned to request. The longer the time, the more units, height, and square footage dedicated to units were lost. He said with a two year Development Order extension, no adjustments would be made to the approved height although there would be requirements to make the buildings look better and some performance standards in the LDC to make elements of the building look similar to the new Code, not the old Code. If a developer wanted the three year time frame, there would be a 10% reduction, and a four year time frame would be a 20% reduction in square footage dedicated to units and height. Mr. Leonard said it was up to the owner to select which time frame and submit plans. He said four properties made a two year election and one for four years. Mr. Leonard said the owner originally submitted for a four year term. Then the City received a letter October 22, 2014, indicating they wished to amend the application to a two year term. Councilwoman Strange asked if this request was due to the property being sold and Mr. Leonard confirmed it was new owners. He also said not all of the Development Orders started at the same time and Calypso Tower III was one of the last ones. One issue in their request which caused a delay was some existing owners having issues with parking requirements. Code Enforcement was sent to count the parking spaces and the HOA representative counted the parking spaces which added additional time. Another part of the delay was Staff asking for more information and waiting until

that information was received. Councilwoman Strange asked if the owners delayed the application and Mr. Leonard said no, that all was within the timeframes. She questioned the owners originally having a four year extension with reduced height, and then after some time, coming back asking for a two year with the original height while the application was still being reviewed.

Mr. Sale said Ordinance 1276 essentially grandfathered these properties and expanded the grandfathering timeframes which were in the LDC. It had procedural aspects which applied to this modification and in his opinion, it would be indefensible or difficult to defend if the City had attempted to take the position that Calypso Tower III was "trapped" into a four year extension. The longer the time that the owner wanted to keep their vested rights, the more they had to comply with the new LDC. He said there was nothing in Ordinance 1276 which stated the election could not be changed and the Planning Board found that the modification was allowed in the LDC.

Councilwoman Strange questioned if the other property with a four year extension could come back and ask for a two year extension. Mr. Leonard said no because all of those extensions had already been approved and closed once the Development Orders were issued. Mr. Sale clarified that Calypso Tower III's application was still pending during this time and the owner elected under the Code to change their application.

Ms. Traina said she was concerned about over-development, traffic, and environmental impacts of too many people, too much crowding. The Mayor asked if there were any questions for Mr. Traina and there were none. Mr. Theriaque asked if Ms. Traina had any witnesses to call in support of her case.

Mr. Dan Dennis, owner of unit 2-1704 and resident of Kirkwood, Missouri, explained he had filed an appeal one day late so he would speak as a witness on Ms. Traina's behalf. He mentioned overcrowding, traffic and parking issues, and stormwater management outfall issues. He referenced an engineering report which noted that the construction of Tower III would not increase the stormwater runoff and he felt that report was wrong, explaining his reasons in detail.

He asked that new traffic and parking studies be done along with a new environmental impact study for the stormwater outfall. He said the original studies were done more than a decade ago and the City had changed so much over those ten years in positive ways. He urged the Council to avoid a "condo canyon" and referenced the Thomas Drive situation. He said when he purchased his unit, the permits for Tower III had expired and he thought it was a stable situation. He mentioned overcrowding in the resort and elevator and crosswalk issues. Mr. Sale had no questions for Mr. Dennis.

Councilman Reichard asked Mr. Dennis what steps the Towers I and II Homeowners Association were taking to improve the parking situation. Mr. Dennis said now they did not have many options and it was still a problem. He had not heard of any additional methods.

Councilman Reichard questioned the comments of "condo canyon" because Calypso had the City-owned property to the west, with 1,300' of beach and only a one story bait shop and restaurant. The other side of Calypso was not as crowded as further east on Front Beach Road, such as near the Majestic or that area. Mr. Dennis said he felt some of the congestion was the development of Pier Park itself. He said their beach was not over-crowded but rather fully occupied. The addition of the proposed Tower would add more than 50% more people which would be too many people for the linear footage of their beach space.

Mr. Dave Evras, owner of three units at Calypso, said the Homeowners Association did not control the resort parking. The parking garage was community property and was still controlled by the developers. He said he opposed over-development and mentioned overcrowded beaches but reminded that the beach west of the resort did not belong to Calypso, their beach was only 500'. He also said the 1.5 parking spaces per unit was an out of date figure and more spaces were needed. He had presented an overpopulation study to the Council and created a study for the occupancy for Towers I and II and the proposed Tower III. He said the current maximum occupancy for Towers I and II combined were 1364 people, and Tower III would be 1584 people. Councilman Reichard commented that the units were never filled to capacity. Mr. Evras agreed but said the beach was already full from Towers I and II, and questioned where the beachgoers would go if the numbers were doubled by adding Tower III. He urged the Council to obtain a current impact study, not use something completed 10-15 years prior to Pier Park and the completion of the condos. He said today he had requested a traffic study from FDOT.

Councilwoman Strange asked Mr. Evras when FDOT would have the new study completed. He responded that he just mailed the letter today. She said she thought the parking was the HOA's responsibility and Mr. Evras said no, that the previous developer retained the

community property rights and did not sell that to the new developers. He mentioned the original plans for a nine story parking garage but it would have been required a sprinkler system so that was eliminated and only eight stories were built. Mr. Evras read portions of a News Herald article and his concern of the timing of approval for this issue. He said it took almost a year from the date of the request to the approval of the reversal to a two year extension. He said the other extensions only took three to four months for approval. Mr. Sale said he had no questions. Ms. Traina had no further witnesses.

Mr. Leonard said there were seven (7) items required by the LDC for the Development Order to be approved. Plans were submitted which met those seven items and Ordinance 1276 provided that, if the Development Order met those requirements, it would be approved just like the other five Development Orders.

Councilman Curry asked Mr. Leonard if all of the Development Orders started at the same period when Ordinance 1276 was adopted, and he responded affirmatively. Mr. Leonard said the developers had a certain amount of time to submit the Notice of Intent in order to be part of the process, and then the Development Order extensions started on different dates. Councilman Curry said it was the will of the Council when Ordinance 1276 was adopted that the procedure was extremely long. He said it seemed that this extension followed the same timeline just like the others, with the exception of some shifts in between. Mr. Leonard said that was correct.

Councilwoman Strange asked if there would be a skybridge from this third tower to another tower to help move people to the beach. Mr. Leonard said he did not believe so. She asked if there was adequate parking for this third tower. Mr. Leonard said yes and all of the parking was for the entire project.

Councilman Curry said the parking concerned him and if there would be sufficient handicapped parking spaces. Mr. Leonard said the Building Official had stated there was sufficient handicapped parking. However, the parking could be looked at again if any questions. The Mayor said there was additional parking under Towers I and II as well. Councilman Curry questioned the stormwater problems not being addressed by the current development. Mr. Leonard responded that the Engineering Department indicated the system was already installed for Tower III but not functioning. He said parts had deteriorated and maintenance would need to occur. Councilman Reichard commented about the parking and said even at Edgewater, he had never seen the parking spill out onto the street, with the exception of July 4th. Mr. Theriaque said if there were no further questions for Mr. Leonard, it was now time for public comment and then rebuttal by Ms. Traina.

Mayor Oberst opened the public comments. Mr. Richard Johnson, resident of 107 North Parton Drive, Niceville, said he was counsel for the developer. He asked Mr. Leonard if the applicant met all of the legal requirements in the new LDC. Mr. Leonard responded affirmatively. Mr. Johnson said he was available for any questions by the City Council.

Councilman Reichard asked if the developer planned to correct the stormwater problem that needed maintenance. Mr. Johnson replied that the job was derelict because it sat for many years. However, those problems will be corrected during construction and brought up to code.

Mr. Johnson asked Ms. Traina, Mr. Evras, and Mr. Dennis of their past professions and if they had any professional licenses. They responded with their information.

Public comments were closed at 5:13 P.M. Ms. Traina was invited for closing arguments.

Ms. Traina said she was familiar with Laketown Wharf as she had a contract for a unit in the resort but did not close as the development was not what had been promised at the beginning by the developer. Many others also chose not to close and thus bankruptcy followed. She mentioned the overcrowding in that area and said her resort did not have to become that same type of situation. She urged the Council to think about the future and consider the over-population.

Mr. Sale said he had no closing arguments on behalf of Staff. The Evidentiary Hearing was closed at 5:15 P.M.

Councilwoman Strange asked what would occur if the traffic study indicated there would be too many cars. Councilman Russell asked if a traffic study had been performed originally. Mr. Leonard replied there had been a traffic study and it would be interesting to see FDOT's answer because setting the level of service on the roadway was a local issue, even on a State road. He

said the level of service in the Comprehensive Plan for Front Beach Road was an "F". He explained the Transportation Concurrency Exception Area and the CRA having the funding mechanism for doing the transportation improvements. He elaborated. He said the original development did an impact study on all of the public facilities including traffic. The Mayor asked if there were any further questions and there were none.

Councilwoman Strange made the motion to reverse the Planning Board's decision. Councilman Reichard asked her reasons. Councilwoman Strange said due to the developer originally requested a four year extension and the new developer requested a two year extension. Councilman Reichard said he understood that the LDC allowed for that situation and they were within the law to make that change. Councilwoman Strange said she understood that but she also considered the impact. Councilman Reichard commented about property rights. The Mayor asked for a Second and there was none. **The motion died for lack of a Second.**

Councilman Russell made the motion to affirm the Planning Board's decision. Second was by Councilman Reichard. Councilman Curry said he was concerned about the parking and traffic issues. The Mayor said several of the Council members had asked the City Manager and Mr. Leonard to look at parking requirements. **The motion passed by majority roll call vote recorded as follows:**

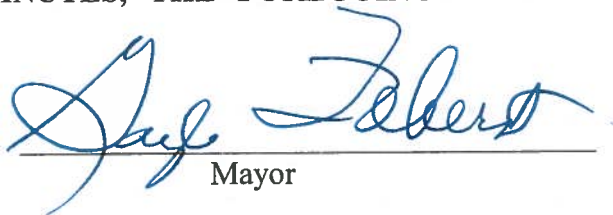
Councilman Russell	Aye
Councilwoman Strange	Nay
Councilman Curry	Aye
Councilman Reichard	Aye
Mayor Oberst	Aye

Mr. Theriaque said he would prepare a draft Order and forward for consideration at the next City Council meeting.


With nothing further, the meeting was adjourned at 5:20 P.M.

READ AND APPROVED this 25th of June, 2015.

IN THE EVENT OF A CONFLICT BETWEEN THE FOREGOING MINUTES AND A VERBATIM TRANSCRIPT OF THESE MINUTES, THE FOREGOING MINUTES SHALL CONTROL.



Mayor

ATTEST:


City Clerk