IN THE SUPREME COURT OF FLORIDA

CASE NO. 80,973

PARK OF COMMERCE ASSOCIATES, etc.,

Petitioner,

v.

CITY OF DELRAY BEACH, a Florida Municipal Corporation, DOAK S. CAMPBELL, III, MAYOR, JAMES WEATHERSPOON, RICHARD DOUGHERTY, MALCOLM BIRD, and MARIE HORENBURGER, City Council Members, and LAND RESOURCES INVESTMENT COMPANY,

Respondents.

_____/

RESPONDENT, CITY OF DELRAY BEACH, FLORIDA, ET AL'S ANSWER BRIEF ON THE MERITS

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Preface

This is respondent, City of Delray Beach, Florida, et al's answer brief on appeal. The Petitioner will be referred to as, "Park of Commerce". The Respondent, Land Resources Investment Company will be referred to as "Land Resources" or "FPL". The Respondent, City of Delray Beach, Florida, et al will be referred to as "the City".

The record is referenced to as [R.___]. The Appendix accompanying the brief is designated as [A.___]. Land Resources exhibits at Trial are referred to as [L.R.Ex.___]. Park of Commerce exhibits at Trial will be referred to as [P.O.C.Ex.___]. The City's exhibits at trial will be referred to as [City Ex.___]. All emphasis in this brief is supplied by the writer.

Statement of the Case

The City supplements the statement of case set forth in Park of Commerce's brief on appeal because Park of Commerce's statement of the case is incomplete.

The case between Park of Commerce and Land Resources (FPL) vs. the City, arose out of the City's denial of a site plan application submitted by FPL. A separate action was filed by FPL against Park of Commerce regarding a "buy back" provision contained within a contract for sale and purchase between Park of Commerce and FPL which was consolidated for trial. The City is not a party to, nor involved in, the contract dispute between Park of Commerce and FPL.

Trial Court

The trial court ruled, based on Boynton Beach v. V.S.H. Realty, Inc., 433 So.2d 452 (Fla. 4th DCA 1984), that site plan review was a legislative activity. On that basis, the trial court dismissed Park of Commerce's and FPL's count for certiorari review and permitted Park of Commerce and FPL to amend, to add claims for declaratory and injunctive relief. An eight-day, non-jury trial was held over a three week period in 1987. The trial was de novo.

The City presented fact witnesses and expert witnesses at the de novo trial. Park of Commerce and FPL also presented fact witnesses and expert witnesses in the de novo trial. Most of the witnesses and experts presented by both parties at the de novo trial were not present or did not speak during the meeting before the City Commission on October 28, 1986 when the City Commission failed to approve the site plan application submitted by FPL. The City at all phases of discovery and at trial objected to all inquiry's which sought the motives and reasons for the denial of the site plan application based on legislative immunity.

At the trial, the City put on evidence to prove that the denial of the site plan application was "fairly debatable". The City put on evidence about adverse traffic impacts on 22nd Avenue/29th Street and the Germantown road bridge; environmental sensitivity of the site; the requirement of the city's Code of Ordinances for a unified development of the 25 acre tract; and the inadequacy of the drainage plan, which

caused non-compliance with the City's ordinance governing site plans. The City also produced at trial its Comprehensive Plan which indicated that 22nd Avenue/29th Street, was a local residential street.

On September 20, 1988, the trial court entered a judgment in favor of the City [A.1-4]. The trial court found that the City's denial of the site plan application was "fairly debatable" based on drainage and adverse traffic impacts. The court found that the drainage plan submitted with the site plan was a "poor manner of draining water from the site, would adversely affect adjacent property, and is an unreasonable conceptual design" [A-3].

The trial court entered four judgments which the Fourth District Court of Appeal consolidated for appeal. The City makes no comment as to the three judgments which arise out of the contract dispute between FPL and Park of Commerce.

Fourth District Court of Appeal

The Fourth District Court of Appeal initially affirmed all four cases in a per curiam decision rendered on November 27, 1991, [A.5-7]. Subsequently, the court in an en banc opinion reversed all four judgments [A.8-15]. Later the court issued a clarification of its en banc opinion which affirmed three judgments citing Boynton Beach, which concerned the contract dispute between Park of Commerce and FPL, and

upheld its previous en banc decision as it pertained to the dismissal of the suit against the City. The Court remanded to the Trial Court. [A.16-17]. The Court then issued a certification to this Court [A.18-19].

The Fourth District Court of Appeal failed to rule on the City's Cross-Appeal regarding the provision contained within the City's Zoning Code for the POC zoning district that required unified development of the entire 25 acre tract. The City contended that the approval of a three acre plat could not and did not estopp the City from enforcing its zoning regulations.

The Fourth District Court certified the following issues to this Court:

I.

WHETHER CITY OF BOYNTON BEACH V. V.S.H. REALTY, INC., 433 SO.2D 452 (FLA. 4TH DCA 1984) AS RELIED UPON IN THIS COURT'S NOVEMBER 18, 1992, EN BANC OPINION ACCURATELY STATES THE LAW CONCERNING APPELLATE REVIEW OF DECISIONS OF LOCAL GOVERNMENTS ON BUILDING PERMITS, SITE PLANS AND OTHER DEVELOPMENT ORDERS

II.

WHETHER THIS COURT'S AFFIRMANCE OF THREE CASES BASED ON CITY OF BOYNTON BEACH V. V.S.H. REALTY, INC., AND THE SIMULTANEOUS REVERSAL OF ONE CASE BASED ON THE OVERRULING OF CITY OF BOYNTON BEACH V. V.S.H. REALTY, INC. CONSTITUTES A CORRECT APPLICATION OF THE EN BANC REVIEW PROCESS.

Statement of Facts

The City supplements the statement of facts set forth within Petitioner's brief because Petitioner has failed to include certain relevant facts and inaccurately recounts other facts.

Property Location

Park of Commerce initially owned 25 acres situated between Congress Avenue on the east and on the south and west by 22nd Avenue/29th Street. Park of commerce sold three acres to FPL in 1986. The street abutting the three acre parcel purchased by FPL, is known as 22nd Avenue/29th Street. 22nd Avenue/29th Street is a local residential street. [See, L.R. Ex.58,P.61; R.654-657; R.1313-1317]. Park of Commerce's reference on Page 13 of its brief to the road classification is inaccurate. The City's Comprehensive Plan listed the roadway as a local residential road. [R.1313-1317].

Zoning History

Park of Commerce as the initial owner of the entire 25 acres originally sought a rezoning from RM-10 to Planned Commerce Center (PCC). [R.490]. The PCC site plans were not formally acted upon by the City. Thus, Petitioners referenced on Page 13 of its brief that the City denied the site plan application which related to PCC zoning is in error. The City did not deny the site plan, the site plan was withdrawn. The request for PCC zoning was denied [R.490].

Park of Commerce subsequently requested a rezoning from RM-10 to Planned Office Institutional Zoning District (POI), which later became the Planned Office Center Zoning District (POC), through an ordinance change.

The zoning and land use change to accommodate the old POI District, re-named the POC district, was granted on April 9, 1985, not on March 19, 1985 as indicated on Page 13 of Park of commerce's brief.

At the time of the POC (old POI) zoning request , Marvin Sanders, a representative of the Park of Commerce indicated that there would be no access onto 22nd Avenue/29th Street. [R.492-497]. The City's request for a unified development plan for the entire 25 acre tract was communicated to Park of Commerce very early on in the process. The site plans submitted by Park of Commerce for PCC zoning, prior to the request for POC zoning, showed that access onto the residential street was unacceptable to the city [See City's Ex.2 and Ex.3]. In fact, to accommodate the City's request to maintain the residential quality of the neighborhood, the second site plan submitted and withdrawn for PCC zoning showed no access onto 22nd Avenue/29th Street [R.488]. Park of Commerce knew that the residential integrity of 22nd Avenue/29th Street was to be maintained prior to its negotiations in the spring of 1986 with FPL regarding FPL's purchase of the three acre tract [R.492-497]. This fact was also apparently known to FPL prior to its closing on the property [R.284-291].

Platting History

The City platted the three acre FPL parcel separately from the entire 25 acre tract on June 24, 1986. The City's sole purpose of approving the three acre boundary plat was to assist Park of Commerce and FPL in expediting the property transfer between the parties. [R.548; POC Ex.22]. The City's approval of the three acre plat was never intended to negate the unified development plan of the entire 25 acre property. The POC district zoning ordinance mandates a unified plan of development. (See L.R.Ex.5A; A.20-25) The trial court stated in its order that the POC district requirements required a unified development of the 25 acre tract and found that Park of Commerce was aware of the requirement for the unified development of the entire tract. [A.2]. Nonetheless, the trial court stated that the approval of the three acre plat negated the POC zoning district ordinance provisions in regard to uniform development.

The POC zoning district regulations permitted separated ownership, but required uniform development (See, L.R.Ex.5A; A.20-25). The POC zoning district ordinance provides that an applicant shall provide agreements, contracts, covenants, deed restrictions, or sureties and any other such documents acceptable to the City Attorney to constitute evidence of unified control of the site. [See L.R.Ex.5A; A.20-25]. Testimony at trial and the POC ordinance itself does not specify that these agreements must be in place at the time a plat is approved. [See, A.20-25;R.811-812]. In

fact, the only testimony at trial on the subject was that the binding agreements would be appropriately submitted at the time of site plan review [R.832-834]. No binding agreements were submitted at the time of site plan review or platting. The City's site plan ordinance, Section 30-22(D)(1) of the Code of Ordinances requires sufficient statements and documents. The failure to submit binding agreements for uniform development of the 25 acre tract at the time of site plan review resulted in a failure to meet the specific requirements of not only the City's zoning code, but also its site plan review ordinance. [See, A.20-25;A.26-32; L.R.Ex.5b;R.1331-133;R.820-843].

The City argued on appeal that the City cannot be legally estopped by approving the three acre boundary plat, from enforcing its zoning regulations. Dade County v. Gayer, 388 So2d 1292 (Fla. 3rd DCA 1980). The resolution of this issue was avoided by the Fourth District. The Court failed to act on the City's cross-appeal. This issue should be addressed by this Court. The issue that needs to be decided by this Court is: May a municipality be estopped from enforcing its zoning code which requires uniform development of a 25 acre tract of land, by approving a three acre boundary plat?

Site Plan Review

The City Commission of the City of Delray Beach, at its meeting of October 28, 1986; denied Site Plan B as submitted by FPL.

The City objected to the admission into evidence of the transcript of the October 28, 1986 meeting of the City Commission because, as to the City's case, the transcript of the proceeding was irrelevant. The City relied on Boynton Beach v. V.S.H. Realty, Inc., supra, which stood for the proposition that site plan review was a legislative activity, thus, the record as to the actual reasons and motives for denial were irrelevant due to legislative immunity. However, the Trial Court admitted the transcript into evidence.

The transcript shows that adverse traffic impacts on 22nd Avenue/29th Street were considered at the October 28, 1986 meeting. [L.R.Ex.1] The transcript also shows that City Commissioner Richard Dougherty, a former engineer, was concerned that the drainage plan failed to ensure that all water would be retained on the site. [See L.R.Ex.1.p.26-32]. Park of Commerce's brief on Page 9 is in error when it says that drainage was never previously mentioned to FPL. Traffic and drainage were discussed at the October 28, 1986 meeting of the City Commission. [L.R.Ex.1].

The City supplemented the transcript/record at the de novo trial by producing extensive evidence and testimony from experts which showed that the denial of the site plan was "fairly debatable" on the basis of traffic impacts on 22nd Avenue/29th Street and the adjacent bridge.

In addition, the City produced evidence at trial that the lack of binding agreements at the time of site plan review was a violation of the POC zoning code regulations and the

City's site plan review ordinance, Section 30-22(D)(1). [R.1331-1333;820-843; 697-699]. Site plan B submitted by FPL failed to meet the requirements of the POC zoning district regulations for uniform development. FPL failed to submit binding agreements at the time of site plan review that would ensure uniform development of the twenty-five acre site as required by POC district regulations. [L.R.Ex.5b]. The site plan failed to meet the requirements of the Code of Ordinances of the City of Delray Beach, Section 30-22(D)(1), governing site plan review, which required the submission of sufficient statements and materials.

Other expert testimony at trial showed that the site plan ordinance, Sections 30-22(D)(2), (3), (5), (10) were not met. [See R.1331-1333;820-843;998;687-897; 697-699].

Summary of Argument

The Trial Court properly reviewed the City's denial of a site plan submitted by FPL for declaratory and injunctive relief in a de novo trial.

The Corn case and the Boynton Beach case are not in conflict. The ordinances were different. The cases are distinguishable. The ordinance in Corn established an administrative process requiring only compliance with narrow technical issues. Conversely, the ordinance reviewed in Boynton Beach gave wide discretion to the legislative body to determine the effects of the particular project on the adjacent property and the City as a whole. The Boynton Beach ordinance contained no language and had no attributes establishing a quasi-judicial hearing process.

Like the ordinance in Boynton Beach, the City of Delray Beach's ordinance governing site plan review clearly establishes a quasi-legislative process. The City's ordinance is not narrowly drawn and does not set forth or contemplate an administrative or ministerial activity. The City's ordinance does not contain any language establishing a quasi-judicial process of review. Nor was a quasi-judicial or administrative process actually followed at the October 28, 1986 City Commission meeting. The City's ordinance establishes a quasi-legislative process.

Site plan review is not the same, nor is it similar to the platting process. There is no uniform system or State Statute governing site plans. Unlike platting which is governed by State Statute establishing a uniform system compliance with technical requirements, site plan review is governed by local ordinance.

It is a violation of the Doctrine Separation of Powers for a Court to label all site plan review as quasi-judicial, or as an administrative/ministerial activity in the face of contrary provisions of governing ordinances. In doing so, the judiciary is not effectuating the intent of the local government legislature body, but is instead creating legislation.

The en banc ruling of September 2, 1992 is contrary to public policy. Municipal Home Rule Power authorizes local governments to establish by ordinance the type of review for site plan approval. The Mutual Home Rule Powers Act gives municipalities broad powers to legislate on a broad number of topics not expressly preempted to the State or County. In addition, the Growth Management Act's purpose is to continue the flexibility of municipalities in formulating land development regulations. The Growth Management Act also fosters citizen input in virtually every step of the process. The court's rulings are not in harmony with the public policies expressed in state law.

Jennings prohibits ex parte communications in quasi-judicial proceedings. If the en banc opinion stands,

applicants and citizens will have limited access to their elected officials. To add insult to injury, those applicants and citizens will bear the cost of conducting quasi-judicial hearings.

A remand for certiorari review would prejudice the City. The City did not hire experts to testify at the October 28, 1986 City Commission meeting, relying on the quasi-legislative procedures set forth in its ordinance and relying on the ruling in Boynton Beach. If the City had known that the proceeding was to be declared quasi-judicial, it would have hired experts to attend the City Commission meeting to support the traffic and drainage issues mentioned at the October 28, 1986 meeting of the City Commission. Clearly, if the experts retained at the de novo trial testified at the City Commission meeting, there would have been "substantial competent" evidence to support the City's decision. If a remand is necessary, it should be to the City Commission so that a quasi- judicial record can be established.

The City, however, asserts no remand is necessary. The City's ordinances contemplate legislative activity. The Trial Court decision rendered after a trial de novo should be affirmed. To do otherwise would violate Municipal Home Rule Powers, the Separation of Powers Doctrine, Public Policy and the Rules of Statutory Construction.

Issues on Review

I.

WHETHER CITY OF BOYNTON BEACH V. V.S.H. REALTY, INC., 433 SO.2D 452 (FLA. 4TH DCA 1984) AS RELIED UPON IN THIS COURT'S NOVEMBER 18, 1992, EN BANC OPINION ACCURATELY STATES THE LAW CONCERNING APPELLATE REVIEW OF DECISIONS OF LOCAL GOVERNMENTS ON BUILDING PERMITS, SITE PLANS AND OTHER DEVELOPMENT ORDERS

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Argument

I

WHETHER CITY OF BOYNTON BEACH V. V.S.H. REALTY, INC., 433 SO.2D 452 (FLA. 4TH DCA 1984) AS RELIED UPON IN THIS COURT'S NOVEMBER 18, 1992, EN BANC OPINION ACCURATELY STATES THE LAW CONCERNING APPELLATE REVIEW OF DECISIONS OF LOCAL GOVERNMENTS ON BUILDING PERMITS, SITE PLANS AND OTHER DEVELOPMENT ORDERS.

The City will address the certified question by focusing on the appropriate appellate review of decisions by local governments pertaining to site plan applications. The City is not a party to the "buy back" contract dispute and thus will not comment on the effect of the Fourth District Court of Appeals rulings as it relates to the contract between FPL and Park of Commerce or attorney's fees arising therefrom.

A. Local Government's Home Rule Powers gives local governments authority to establish by ordinance the type of review for site plan approval.

Local governing bodies have broad home rule powers. Municipalities have all powers not reserved or preempted to the state or the county or by general law, the Florida Constitution, or County Charter. § 166.021, Fla. Stat. (1991). There is no uniform general law or other prohibition or requirement governing or mandating a specific site plan review process. Thus, a municipality, pursuant to its home rule

powers, may by ordinance establish the parameters of its site plan review process.

Whether a site plan approval process is quasi-judicial or quasi-legislative depends on the intent of the local government as reflected in its ordinances setting forth the site plan review process.

A local government acts in either a quasi-legislative, quasi-judicial or quasi-executive capacity. Nelson v. Lindsey, 1050 2d 131 (Fla. 1942). Where a governmental body acts in a quasi-legislative capacity or quasi-executive capacity a challenge to its decision should be by declaratory and/or injunctive relief. Board of County Commissioners v. Casa Development, 332 So.2d 651 (Fla. 2nd DCA 1976). On the other hand, where a governmental body acts in a quasi-judicial capacity appellate review is appropriately by certiorari. DeGroot v. Sheffield, 95 So.2d 912 (Fla. 1957).

The issue then is what are the attributes of the particular decision making process under review? Does the ordinance or statute set forth a quasi-legislative or quasi-judicial process? What was the intent of the local government when it enacted its ordinances governing site plans? What type of activity was contemplated? Did the governing body set forth a quasi-legislative, quasi-judicial, or executive/administrative process? Does the statute or ordinance expressly set forth a particular method of review? The Legislative Intent is the controlling factor in determining

the type of review to be given to development orders affecting land, including site plan review.

To determine the legislative intent, one must look at the attributes of the process established by statute or the governing ordinance. The Supreme Court of Florida has stated, "When the statute provides the appellate procedure, that course should be followed". De Groot, supra 915. In De Groot, this court held that a Civil Service Board was acting in a quasi-judicial capacity because "... it arrived at its decision after a full hearing pursuant to notice based on evidence submitted in accordance with the statute here involved" Id. at 915.

In Bloomfield v. Mayo, 119 So.2d 417 (Fla. 1st DCA 1960), the Court was reviewing a decision by the Commissioner of Agriculture denying the registration of a pesticide product. The Court stated that,

> "It thus appears that before an administrative order may be considered quasi-judicial in character and therefore subject to review by certiorari, the statute authorizing the entry of such an order must also require that the administrative agency give due notice of a hearing to be held on the question to be considered,and provide opportunity to be heard in a proceeding in which the party effected is afforded the basic requirements of due process of law." Id. at 421.

The First District Court of Appeal in Bloomfield carefully reviewed the statute to determine if it required that the registrant or others be given such notice or required a hearing in accordance with due process. The Court found that

the statute provided that the cancelling of an already approved registration, required notice and a due process hearing, but the initial granting of the registration did not require a hearing pursuant to statute and thus the court held that it did not warrant certiorari review. Id. at 422.

The Second District Court of Appeal in Casa Development, supra, was charged with determining whether the action of the Board of County commissioners of Hillsborough County denying a water and sewer franchise was a quasi-legislative or quasi-judicial proceeding. The authority to grant or deny the franchises was established pursuant to a Special Act. The Court looked to the Special Act to determine if there were quasi-judicial criteria. The court stated that the Special Act did not contemplate a quasi-judicial hearing nor was one conducted. "About all that happened was that Appellees' representative made some unsworn statements in support of the application and the County Attorney responded with opinions of his own". Casa Development, supra at 654. The court held that review by certiorari was, thus, not the appropriate remedy. Id at 654.

Looking at the transcript of the site plan proceedings on October 28, 1986 in this case, it is apparent that all that happened was the applicants made unsworn statements and others gave their opinions. There was no formalized hearing process.

The Fourth District Court of Appeal in Connor v. Town of Palm Beach, 398 So.2d 952 (Fla. 4th DCA 1981) established

that the "Board of Trustees for Town of Palm Beach Employees Retirement System's" denial of disability benefits to a law enforcement officer did not constitute a quasi-judicial decision. The court found that "there was no sworn testimony, no witnesses, no examination or cross-examination, no order containing findings and conclusions". Id at 954. Without this indicia of a quasi-judicial proceeding, the Court determined that the denial was properly reviewable by a petition for declaratory relief. Id at 954.

The above stated cases demonstrate that the statute or ordinance must be reviewed to determine if a quasi-legislative or quasi-judicial proceeding is contemplated. If the statute or ordinance is silent, then the process actually used to reach a decision must be reviewed and analyzed to determine if a quasi-judicial hearing occurred. The case law requires a hearing upon notice, and a requirement that the hearing meet basic requirements of due process, "including the right to present evidence and to cross-examine adverse witnesses and [requires that] the judgment should be contingent on the showing made at the hearing". DeGroot, supra at 654.

Local governments have municipal home rule power to establish the type of review for site plans by ordinance. The ordinance sets forth the intent of the legislative body as to its site plan review processes and is determinative as to the type of review.

B. The City's site plan ordinance sets forth a quasi-legislative process.

The City's site plan ordinance is codified in the Code of Ordinances of the City of Delray Beach at Section 30-22. [A26-32]. The City's site plan review ordinance does not contemplate a quasi-judicial process. There is no provision in the City's site plan review ordinance for a quasi-judicial hearing process. There is no requirement for a formalized public hearing, upon notice, with an opportunity to be heard in accordance with the basic requirements of due process. There is no requirement or provision for the provision of the presentation of evidence. There is no requirement for swearing in of witnesses. There is no requirement or procedure governing the issuance of an order by the City Commission. There is no requirement in the site plan ordinance that dictates a decision by the City Commission must be based solely on the evidence before them. There is no requirement that a quasi-judicial type of record be made of the proceedings. Clearly, the City had no intent as expressed in its ordinances, to establish a quasi-judicial site plan review process.

The City's ordinances requires legislative discretion. The procedures sections requires meetings to determine the "feasibility and suitability of the proposed development." [A.26-32]. The individual areas to be considered require broad discretion. For example, criteria (D)(2) requires a determination as to the affect that density

and the proposed use of the property will have on nearby property and the City as a whole. Criteria (D)(3), requires a determination of the public safety of the manner of ingress and egress and access in the case of fire and other public safety matters. Criteria (D)(4), requires an assessment as to the glare, noise and odor affects on adjacent and nearby properties. Criteria (D)(6) concerns the manner of drainage on the property with a emphasis on the affect of the drainage provisions on adjacent and nearby properties and the consequences of such drainage on the overall public drainage capacities. Criteria (D)(7) governing sanitary sewers, requires a legislative assessment with particular emphasis as to the overall relationship to the City's sanitary sewer availability and capacities. Criteria (D)(9) concerns recreation and open spaces. This requirement requires a legislative assessment of the effect of the adequacy of recreation facilities and open spaces and a determination of the appropriate relationship of said spaces to City-wide open spaces and recreation facilities. Further, Criteria (D)(10) governing site development, requires an assessment that the general layout will be compatible and harmonious with nearby properties and the City as a whole as not to cause substantial depreciation of property values. [A. 26-32].

Further, Section 30-22(G)(14) of the City's Code of Ordinances regarding site plan review, requires an evaluation of the site plan and permits the requesting of any further

information necessary to establish compliance with not only the site plan ordinance, but all other ordinances of the City. [A. 26-32].

Clearly, site plan review and the considerations placed before the City Commission in reviewing a site plan is legislative in character as the issues of concern are the public health, safety, and welfare. These public health, safety and welfare matters must be considered and voted upon by the City Commission. In addition, it is clear that the decision of the City must address the impact of development on the community at large, rendering site plan review within the City of Delray Beach, legislative in character and not subject to the certiorari review. (See. Board of County Commissioners v. Circuit Court of Twelfth Judicial Circuit, 533 So.2d 537 (Fla. 2d DCA 1983).

The actual process followed at the October 28, 1986 meeting of the City Commission was not quasi-judicial. The City did not provide a special notice of the hearing. The City did not provide for a record via transcript. (FPL secured one on its own initiative). The City did not issue a board order stating its findings of fact or law, but acted in its legislative capacity and acted upon the application by motion and vote [see L.R. Ex-5b]. The City did not swear-in witnesses. No cross-examination was afforded. There was not one scintilla of an indicia of a quasi-judicial hearing. [See LR.Ex.1].

The City did not afford a quasi-judicial process to the applicants. The intent of the City's ordinance is clearly to establish a quasi-legislative process. Quasi-legislative processes are not subject to certiorari review.

C. The ordinance in Corn is distinguishable and sets forth a technical administrative process.

The trial court in Corn found that "the evidence establishes that the City Council was required to permit the applicant to correct the deficiencies; and when the corrections were made, the ordinances of the City of Lauderdale Lakes would require the City Council to approve the site plans. City of Lauderdale Lakes v. Corn, 427 So.2d 239 (Fla. 4th DCA 1983).

The Appellate Court in Corn likened site plan approvals to plat approvals but did not reveal in its opinion an in depth comparative analysis of the statute governing plat approval with the city of Lauderdale Lakes ordinances governing site plan approval. Nor did the court enunciate any similarities between plats and site plans.

Nonetheless, the court in Corn addressed site plans as if they were comparable to plats. In Corn, the court sited Yokeley's Law of Subdivisions, §52 regarding the platting process for the proposition that:

> ...the authority of a town to deny a landowner the right to develop his property by refusing to approve the plat of such development is, by statute made to

> rest upon specific standards of a statute or implementing ordinances. Thereafter, the approval or disapproval of a plat on the basis of controlling standards becomes an administrative act."

Corn at 243.

The reference to the statute governing platting is instructive. The Statute governs.

Florida Statutes, Chapter 177 governs plats. The statute sets forth requirements of platting which are highly technical. Chapter 177 of the Florida Statutes does not address health, welfare and safety concerns or effects on the community as a whole. The intent expressed in the state statute for platting is for a ministerial/administrative review process.

However, this is not germane to site plans which are not covered by a uniform state statute. Site plans are governed by local ordinances. It is possible that the City of Lauderdale Lakes ordinances governing site plans set forth a very technical process dealing only with narrow technical measurable criteria for example, set-backs, square footage, building height, etc. If so, then the court's opinion in Corn was correct as applied to the City of Lauderdale Lakes. However, if the Corn court failed to look at the City of Lauderdale Lakes ordinances to determine the intent of the city as to whether it was the city's intent to establish an administrative, quasi-judicial vs. quasi-legislative process, then the Corn court's decision should not stand.

The Fourth District Court of Appeal in Boynton Beach vs. V.S.H. Realty, Inc., 445 So.2d 452 (Fla. 4th DCA 1984) reviewed the City of Boynton Beach's site plan ordinance. The

panel, unlike in Corn, went through the proper analysis by actually analyzing the attributes of the Boynton beach site plan review ordinance. The Court, in Boynton Beach, found no indicia of a quasi-judicial process. Id at 454. Further, the Court reviewed the ordinance and found that the factors to be reviewed clearly required "informed legislative discretion...so as to protect the various interests of the public, particularly neighboring residents and property owners." Id at 455.

Unlike plat approvals, there is no one uniform statute governing site plan review. Each municipality exercising its home-rule powers has the authority to not require site plan review and co-extensively, to require site plan review. A municipality may, by ordinance, provide for a quasi-legislative process, quasi-judicial process or an administrative process. The intent of each municipality as expressed in its ordinances and the conduct of the review process dictates the attributes of the review process and ultimately whether the proceeding is determined to be quasi-judicial, quasi-legislative or quasi-administrative or executive.

The Boynton Beach case does not contradict Corn. The Corn case and the Boynton Beach case, (assuming the proper analysis and review of the City of Lauderdale Lakes ordinances were conducted by the court) can be harmonized. City of Lauderdale Lakes ordinance required only technical compliance and therefore set up a ministerial administrative process which could be addressed via a writ of mandamus. The Boynton Beach

case involves a different ordinance. The Boynton Beach ordinance calls for a quasi-legislative decision reviewable by declaratory decree and/or injunctive relief. The City of Delray Beach's ordinance also requires a quasi-legislative review. The cases are not in conflict, they just involve different governing ordinances which require different types of review. The cases can be harmonized.

D. It is a violation of the separation of powers doctrine for the court to legislate the type of review required by labeling all site plan review process as quasi-judicial or administrative.

The Doctrine of Separation of Powers recognizes the importance and essential sovereignty of the three co-equal branches of government. The judiciary interprets the laws and applies the law to the facts before it. In interpreting the laws, the judiciary relies on legislative intent. To discern the legislative intent, the judiciary looks first at the express language of the law. If the law is unclear on its face, it will look at the legislative history, if any. The judiciary also applies rules of statutory construction to determine the intent of the law making body. The judiciary does not legislate, that is the job of the legislature, pursuant to the Separation of Powers Doctrine.

Platting is governed by Florida Statutes Chapter 177, which sets forth a uniform system for the subdivision of land.

Because there is a state statute on platting, the judiciary in reviewing platting processes may look at the statute to determine what was intended by the legislature, and then apply its decision to every platting process throughout the state.

A site plan review process is not set forth in state law. There is no uniform procedure for site plan review throughout the state. Different local governments may require by ordinance that wide latitude and discretion be given to governing bodies in assessing site plans. Conversely, local governments may, by ordinance, set up a limited review on very narrow technical issues. Local governments may also set up a quasi-judicial process requiring proof of compliance with standards with the indicia of a judicial hearing. It is the ordinance passed by the local government's legislative body that sets forth, under its home rule powers, what processes and the amount of discretion the governmental body chooses to exercise. Actions of governmental bodies, however, must not be arbitrary or caprious and must be constitutional. Those are the limits on local governmental power.

If the judiciary renders an opinion that all site plan review processes, irrespective of the intent of the governing body, are administrative, or quasi-legislative, or quasi-judicial, the judiciary violates the Separation of Powers Doctrine. The legislature (or legislative body) has the power to legislate, not the judiciary.

When a local government sets forth a quasi-legislative review, that process must be respected by the

court. The court should not supplant its wisdom for the wisdom of a legislative body. The legislative body has the authority to determine the parameters of its decision-making. The judiciary cannot mandate, or legislate that certain parameters be used. The judiciary can only determine the legislative intent, and ensure that the legislative body's decisions are not arbitrary, caprious or unconstitutional or that the ordinance itself is unconstitutional. That is the limit on judicial power.

The Fourth District Court of Appeal, in its en banc opinion, violated the Separation of Powers Doctrine by failing to analyze the City's ordinance to discern the intent of the City's governmental body as to whether the process contained in the ordinance set forth a quasi-legislative, quasi-judicial or a ministerial/administrative process.[A-9]15]

Not all red race cars are Ferraris. Not all site plan review processes are quasi-judicial or ministerial. Applying one judicial label to all site plans without reviewing the intent of local governing body is a violation of the Separation of Powers Doctrine.

Judge Farmer, specially concurring in the en banc opinion on the case now before the court, was right about one thing and partially right about another. Judge Farmer said that "We cannot achieve justice by merely applying a label and then mashing a judicial lever." [A-14-15]. Judge Farmer was correct in his "label" analysis. Labeling all site plan review processes as quasi-judicial is improper. Judge Farmer was partially right when he said that:

"The kind of consideration given by a trial court and then by us in one of these cases is primarily infected by a functional analysis of what the local governments did, as well as what it said. [A-13]"

Judge Farmer, however, neglected to add that the ordinance setting forth the process must also be reviewed to determine if the decision making process was intended to be quasi-judicial,quasi-legislative or administrative/ministerial. The intent of the legislative body is paramount.

E. En Banc Ruling Violates Public Policy.

The public policy of this state as reflected in Florida Statute, Section 163.3161(2) (1991) is to strengthen the existing role and powers of local governments in establishing controls on development.

If all site plan review processes are deemed quasi-judicial, the flexibility contemplated by the Growth Management Act will be frustrated. (See, Fla. Stat. §163.3194(4)(b), 163.3202(3)(1991). Local governments will be required to set forth processes with all the indicia of quasi-judicial proceedings, and will likely be required to fashion narrow technical ordinances limiting discretion and innovation as set forth as a goal of the comprehensive planning process.

In the quasi-judicial proceeding, the governmental body would have to retain experts in order to make its case on the

record. The City would have to hire traffic experts, drainage experts, environmental experts, among others. The expense of expert testimony will be borne by the City in each site plan case. This expense will be passed on to the taxpayer. Failure to produce experts at the meeting before the City Commission will ultimately mean that the City has failed to put on "substantial competent" evidence of its denial of a site plan application. To avoid this risk, big and small local governments will have no choice but to expend tax money on expert testimony in each site plan review case because it will be unable to "guess" in advance whether a party will appeal.

Implementation of a quasi-judicial process for site plan decisions in light of Jennings v. Dade County, 558 So.2d 1337 (Fla. 3d DCA 1991), would have a chilling effect on the general public's ability to express its opinions to its elected officials contrary to the intent of the Growth Management Act. The flexibility of local governments envisioned by the Growth Management Act will also be frustrated.

F. City Will be Prejudiced if Remanded to Circuit Court.

Petitioner, on Page 30 of its brief on the merits, states that there was no real need for a remand to the Circuit Court to enable the circuit court judge to review the case by certiorari. The Petitioner then speculates that certiorari would have been granted initially if Corn was the only law in the district.

It is the City's position that to remand on the existing record may prejudice the City. The City relied on Boynton Beach, the latest pronouncement of the Fourth District Court of Appeal governing site plan review at the time the site plan was considered by the City Commission. Boynton Beach clearly established that ordinances like the City's in this case contemplated a quasi-legislative process. Because the process was deemed legislative by the City, the City did not feel it was necessary to expend taxpayer monies to hire traffic, drainage and environmental experts at the time of the initial meeting of the City Commission of the City of Delray Beach Beach on October 28, 1986 when the site plan was reviewed. Contrary to Petitioner's statements, the drainage and traffic issues were discussed at the October 28, 1986 meeting of the City Commission, by the City Commission. [L.R.Ex.1]. However, the City did not retain experts for the meeting. If the City had hired the experts for the meeting before the City Commission that it retained for the de novo trial, it is likely that there would have been "substantial competent" evidence to support the denial.

"Substantial competent" evidence is evidence which is relied upon to sustain the ultimate finding and is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." DeGroot at 916. The fairly debatable standard while an objective test, is met when the action is supported by "substantial competent" evidence. Alachua County v. Reddick, 368 So.2d 653 (Fla. 1st DCA 1979).

It is clear from the trial court's opinion the trial court found that adverse traffic impacts on 22nd Avenue/29th Street and the Germantown bridge were "fairly debatable". The trial court also found that the poor manner of drainage shown in the conceptual drainage plan would adversely affect adjacent property. The trial court found the City's denial on the drainage issue was "fairly debatable", and thus supported by "substantial competent" evidence. [A. 3-4]. The proper procedure, if the court rules site plan review is quasi-judicial, would be to remand the case to the City Commission so that it can establish an appropriate record.

II.

WHETHER THIS COURT'S AFFIRMANCE OF THREE CASES BASED ON CITY OF BOYNTON BEACH V. V.S.H. REALTY INC., AND THE SIMULTANEOUS REVERSAL OF ONE CASE BASED ON AN OVERRULING OF CITY OF BOYNTON BOYNTON BEACH V. V.S.H. REALTY, INC. CONSTITUTES A CORRECT APPLICATION OF THEN EN BANC REVIEW PROCESS.

A. City's Cross Appeal-En Banc Process.

The City does not address most of the points raised by Petitioner in its brief on the merits as it relates to this issue, because, as previously stated, the City was not a party to the contract and the "buy-back" provisions emanating from the contract between Park of Commerce and FPL.

The City does want to point out, however, that the Fourth District Court of Appeal has never ruled on its cross appeal. The City's cross appeal asserted that the trial court erred in ruling that the City by approving the three acre boundary plat waived and is estopped from imposing a requirement for a unified development plan for development of the entire twenty-five acre tract. The City's position is that approving the three acre plat did not negate the zoning ordinance requirement for unified development. The City asserted in its cross-appeal that the zoning ordinance which required binding agreements to secure uniform development could be obtained at the time site plan approval. The City asserted in its initial brief that as a matter of law the City cannot be estopped to sanction acts which are prohibited by zoning regulations. Dade County v. Gayer, 388 So.2d 1292 (Fla. 3d DCA 1980).

The City asserted its cross-appeal in its initial brief. The court's initial per curiam affirmance of the City's denial of the site plan application, however, created a situation in which the City did not need to press the Appellate Court for an immediate answer to its question on cross-appeal. The building would not be built. Because the Court in its per curiam decision affirmed the trial court's decision as to the "fairly debatable" actions of the City, the City elected for forego a request for clarification at the time the original per curiam decision was issued.

The en banc rehearing was granted without oral argument. The issue raised by Petitioner in its Motion for a Rehearing En Banc related to the attributes of the site plan approval process and the buy-back issues in the contract between FPL and Park of Commerce. The City did not feel it could re-assert or press for a decision on its cross-appeal en banc. The City, in the en banc process, thought it was inappropriate to re-raise the issues in its cross-appeal, because the issue did not properly concern decisional uniformity. [See Fla.R.Civ.P. 9.331, committee notes]. To that extent, the City would respectfully request clarification on the en banc process.

CONCLUSION

The City's site plan review process is quasi-legislative. The Fourth District Court's enbanc opinion of September 2, 1992 and en banc clarification of November 18, 1992 should be overruled. The Trial Court's judgment should be affirmed.

OFFICE OF THE CITY ATTORNEY
CITY OF DELRAY BEACH, FLORIDA

By: Susan A. Ruby
Susan A. Ruby, Esq.
Assistant City Attorney
200 N.W. 1st Avenue
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(407) 243-7091
Florida Bar No. 0613940

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by first class United States mail to: John Beranek, Esq., Aurell Radey Hinkle Thomas & Beranek, 101 North Monroe Street, Suite 1000, Monroe-Park Tower, Tallahassee, FL 32302; and L. Martin Reeder, Esq., 1900 Phillips Point West, 19th Floor, 77 South Flagler Drive, West Palm Beach, FL 33401-6198, this 6th day of April, 1993.

OFFICE OF THE CITY ATTORNEY
CITY OF DELRAY BEACH, FLORIDA

By: Susan A. Ruby

Susan A. Ruby, Esq.
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INDEX TO APPENDIX

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PALM BEACH COUNTY.

CASE NO. CL 86-11052 AJ

LAND RESOURCES INVESTMENT CO., a Florida corporation, and PARK OF COMMERCE ASSOCIATES, a Florida general partnership,

Plaintiffs,

vs

CITY OF DELRAY BEACH, a Florida municipal corporation, DOAK S. CAMPBELL, III, Mayor, JAMES WEATHERSPOON, RICHARD DOUGHERTY, MALCOLM BIRD, and Marie horenburger, City Council members,

Defendants.

FINAL JUDGMENT FOR DEFENDANTS

This matter came before the court for trial consolidated with Case No. CL 87-586 AJ. L. Martin Reeder, Jr., Esq. appeared on behalf of the plaintiff Land Resources; Brian B. Jolsyn, Esq. appeared on behalf of the plaintiff Park of Commerce Associates; Susan Ruby, Esq. appeared on behalf of the City and City Council members.

Trial was held on February 24, 25 and 26, March 16, 17 and 18, and August 18 and 19, 1988.

The court received testimony of witnesses, live and by deposition, numerous exhibits in evidence, legal memoranda and proposed judgments in support of the parties' positions. Stipulations between the parties are of record.

The court held a de novo review of the City's rejection of a site plan submitted by Land Resources. The plaintiffs claim that the City acted arbitrarily and capriciously in denying the site plan application. The City contends that the site plan was properly rejected because it lacked a unified development plan for the entire twenty-two acre parcel, would have an adverse traffic impact on

adjacent properties, had an inadequate conceptual drainage plan, and adversely affected the environment.

During trial, the court ruled as a matter of law that there is a right to access for ingress and egress from the three-acre parcel to and from S.W. 22nd Avenue/S.W. 29th Street. The court must now determine if the City's denial of Site Plan B was fairly debatable.

The Park of Commerce twenty-five acre tract was intended to be developed as a unified whole. It is undisputed that a representative of Port of Commerce gave assurances to the City that there would be no access from the tract onto S.W. 22nd Avenue/S.W. 29th Street. For reasons unknown, the City Council ignored its planning and zoning board's recommendation and approved a plat of the three-acre parcel without cross-access agreements or an easement over the remaining property. The City also failed to obtain binding agreements requiring unified development of the entire tract. The City has persisted in its position that it had a right to deny access onto S.W. 22nd Avenue/S.W. 29th Street because Land Resources failed to present a unified plan for development of the entire tract. The City Council has apparently misunderstood the legal effect of platting the three-acre parcel. By approving a separate plat without obtaining binding agreements for unified development of the entire tract, or without imposing a condition that access to the three-acre parcel be from some street other than the adjacent S.W. 22nd Avenue/S.W. 29th Street, the City has waived and is estopped from imposing a requirement for a unified plan of development for the entire twenty-five acres upon Land Resources as a condition of site plan approval.

A resolution of the remaining issues in dispute rests largely upon the court's evaluation of the credibility of the witnesses and the weight to be given their testimony. In evaluating the believability of a witness, the court must utilize the criteria

outlined in the standard jury instruction: the demeanor of the witness while testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; the interest, if any, the witness has in the outcome of the case; the means and opportunity the witness had to know the facts about which he or she testified; the ability of the witness to remember the matters about which he or she testified; and the reasonableness of the testimony of the witness, considered in the light of all the evidence in the case and in the light of experience and common sense.

In determining the credibility of expert testimony, the court may accept such opinion testimony, reject it, or give it the weight the court thinks it deserves, considering the knowledge, skill, experience, training and education of the witness, the reasons given by the witness for the opinion expressed, and all the other evidence in the case.

In particular, the court accepts as credible the testimony of Walter Keller, Jr. on the traffic impact of Site Plan B on S.W. 22nd Avenue/S.W. 29th Street and on the Germantown Road bridge. The City's denial of the site plan on the basis of its adverse traffic impact has been proven before the court to be fairly debatable.

It is unquestionable from the evidence that the only reason for the City's rejection of Site Plan B was its access onto S.W. 22nd Avenue/S.W. 29th Street. The court finds, however, that the adequacy of the drainage plan submitted with Site Plan B is fairly debatable. The court accepts as credible the testimony of Ji-Ang Song that that conceptual drainage plan submitted with Site Plan B was a poor manner of draining water from the site, would adversely affect adjacent property, and is an unreasonable conceptual design. There is no basis in the evidence to justify as fairly debatable the City's rejection of Site Plan B due to environmental concerns.

The court finds that the City's rejection of Site Plan B is fairly debatable because of its adverse traffic impact and inadequate drainage plan.

It is hereby ORDERED AND ADJUDGED that the plaintiff's complaint for declaratory and injunctive relief is hereby denied. Judgment is entered in favor of the defendants, and the defendants shall go forth hence without day.

The court reserves jurisdiction to tax costs in favor of the defendants upon motion and hearing, and to enter further orders that may be necessary and appropriate.

DONE AND ORDERED this 20th day of September, 1988 in chambers at West Palm Beach, Palm Bech County, Florida.

Mary E. Lupo

MARY E. LUPO
Circuit Court Judge

copies furnished:
L. Martin Reeder, Jr., 1200 Northbridge Centre I, 515 North Flagler Drive, West Palm Beach, FL 33401-4307
Susan Ruby, 100 N.W. First Avenue, Delray Beach, FL 33444
Brian B. Jsolyn, 515 N. Flagler Drive, Northbridge Centre I, Suite 1900, West Palm Beach, FL 33401

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT JULY TERM 1991

PARK OF COMMERCE ASSOCIATES and LAND RESOURCES INVESTMENT CO.,
Appellants/ Cross Appellees,
v.
CITY OF DELRAY BEACH, a Florida municipal corporation, DOAK S. CAMPBELL, III, Mayor, JAMES WEATHERSPOON, RICHARD DOUGHERTY, MALCOLM BIRD, and MARIE HORENBURGER, City Council Members,
Appellees/ Cross Appellants.

CASE NOS. 88-3192
88-3193
89-1387
89-2654.

Opinion filed November 27, 1991

Consolidated appeal and cross-appeal from the Circuit Court for Palm Beach County; Mary E. Lupo, Judge.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DISPOSED OF.

John Beranek of Aurell, Radey, Hinkle & Thomas, Tallahassee, and Boose, Casey, Ciklin, Lubitz, Martens, McBane & O'Connell, West Palm Beach, for appellant/cross appellee-Park of Commerce Associates.

L. Martin Reeder, Jr. of Steel, Hector, Davis, Burns & Middleton, West Palm Beach, for appellant/cross appellee-Land Resources Investment Co.

Susan A. Ruby, Assistant City Attorney, Delray Beach, for appellees/cross appellants.

PER CURIAM.

We affirm on the authority of City of Boynton Beach v. V.S.H. Realty, Inc., 443 So.2d 452 (Fla. 4th DCA 1984).

GUNTHER J., concurs.
ANSTEAD, J., dissenting with opinion.
STONE, J., concurring specially with opinion.

ANSTEAD, J., dissenting.

I agree with appellants that the standard of review of the municipality's action in the Boynton case is not the proper standard to be applied here. Accordingly, I would reverse with directions that the case be remanded to the trial court with directions that the case be reviewed in accord with this court's opinion in City of Lauderdale Lakes v. Corn, 427 So.2d 239 (Fla. 4th DCA 1983). Having appropriate zoning for the use of the property sought by appellant, the municipality cannot rescind that decision by unreasonably refusing to approve a site plan for the specific building contemplated to be constructed.

STONE, J., concurring specially.

I concur in affirming because I agree that City of Boynton Beach v. V.S.H. Realty, Inc. is indistinguishable. Were it not for Boynton I would agree with the dissent that it was error for the trial court to conduct a trial de novo on the city's rejection of appellants' proposed site plan. It seems to me that, even if a site plan review does not meet the traditional criteria for determining whether a proceeding is "quasi-judicial," site plan review by a commission is at least a "hybrid" incorporating essentially quasi-judicial and administrative acts and should be reviewable by certiorari standards. I do not consider a pure site plan review to be a "legislative" proceeding. Cf. City of Lauderdale Lakes v. Corn.

Clearly, if reviewed by certiorari criteria, the appellant would prevail in this case, as the record reflects that the trial court found for appellee solely on the basis of evidence presented for the first time in the de novo trial. If the trial court had applied certiorari standards, based solely on the record before the city commission, the commission decision would have been quashed. I also note that the equities in Boynton are not present here as the parties are reversed. In this case it is the city, not the petitioner, that is taking advantage of the new evidence at trial.

I would prefer to recede, to the extent necessary, from Boynton and follow the dissent to this end.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT JULY TERM 1992

PARK OF COMMERCE ASSOCIATES, and LAND RESOURCES INVESTMENT CO.,

Appellants/ Cross Appellees,

v.

CITY OF DELRAY BEACH, a Florida municipal corporation, DOAK S. CAMPBELL, III, Mayor, JAMES WEATHERSPOON, RICHARD DOUGHERTY, MALCOLM BIRD, and MARIE HORENBURGER, City Council Members,

Appellees/ Cross Appellants.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DISPOSED OF

CASE NOS. 88-3192
88-3193
89-1387
89-2654.

Opinion filed September 2, 1992

Consolidated appeals and cross appeal from the Circuit Court for Palm Beach County; Mary E. Lupo, Judge.

John Beranek of Aurell, Radey, Hinkle & Thomas, Tallahassee, and Boose, Casey, Ciklin, Lubitz, Martens, McBane & O'Connell, West Palm Beach, for Appellant/Cross Appellee-Park of Commerce Associates.

L. Martin Reeder, Jr. of Steel, Hector, Davis, Burns & Middleton, West Palm Beach, for Appellant/Cross Appellee-Land Resources Investment Co.

Susan A. Ruby, Assistant City Attorney, Delray Beach, for appellees/cross appellants.

EN BANC OPINION ON REHEARING

ANSTEAD, J.

We grant the motion for rehearing en banc and now reverse and remand. We treat this matter en banc in order to resolve the conflict between this court's holdings in City of Boynton Beach v. V.S.H. Realty, Inc., 443 So.2d 452 (Fla. 4th DCA 1984), and City of Lauderdale Lakes v. Corn, 427 So.2d 239 (Fla. 4th DCA 1983).

While it may be possible to reconcile the results reached in those two cases, it is apparent that the language used in the opinions is in conflict and requires resolution. In Corn, we stated that the function of a city commission in reviewing a property owner's proposed site plan for development of the owner's property in accord with the city's zoning laws was not legislative in nature, but rather administrative. Subsequently, in Boynton Beach, we stated that the site plan review function involved an exercise of "informed legislative discretion." We now resolve that conflict by adhering en banc to the views expressed in Corn and receding from any contrary expressions set out in Boynton Beach.

Florida Power and Light (FPL), an electric utility company, bought a parcel of land in the City of Delray Beach from Park of Commerce Associates, for the purpose of building a customer service center, a use compatible with the existing zoning classification. The purchase was conditioned upon city approval of the service center. FPL submitted a site plan to the Planning and Zoning Board. The Board rejected it, provisionally, subject to FPL's making a number of technical changes. FPL made

all the requested changes and submitted the plan to the city council. The council denied the plan for no apparent reason other than neighborhood opposition. Upon review in the circuit court, a de novo trial was conducted. The court concluded that the council had denied the plan solely on the basis of unacceptable access from a particular road. However, the court ruled that this reason for denial was erroneous as a matter of law because there was a legal right of access from that road. Notwithstanding, the court upheld the council's decision on other grounds raised by the city for the first time at the de novo trial.

On appeal to this court it was contended that the trial court should have conducted certiorari review limited to the matters presented during the administrative proceedings, rather than de novo review. This court affirmed the trial court's decision, relying on Boynton Beach. By affirming on the authority of Boynton Beach, this court implicitly found that the site plan approval process was legislative. On rehearing, it is contended that site plan review cannot be legislative in nature because a city cannot unreasonably withhold approval once the legislatively adopted legal requirements have been met. We agree.[1]

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[1] Appellants cite a recent fifth district decision, Colonial Apartments, L.P. v. City of DeLand, 577 So.2d 593 (Fla. 5th DCA), rev. denied, 584 So.2d 997 (Fla. 1991). In that case, the city had approved a site plan conditioned upon compliance with a density different from that provided in the ordinance. In creating the condition, the city had reasoned that the lower density was needed to satisfy the "aesthetic compatibility" purpose stated in the ordinance. The fifth district disagreed and quashed the density condition on the basis that the city

This court took the same position with respect to plat review in City Nat'l Bank of Miami v. City of Coral Springs, 475 So.2d 984 (Fla. 4th DCA 1985). In so doing we quoted with approval from Broward County v. Narco Realty, Inc., 359 So.2d 509, 510 (Fla. 4th DCA 1978), and held:

> "All persons similarly situated should be able to obtain plat approval upon meeting uniform standards. Otherwise, the official approval of a plat application would depend upon the whim or caprice of the public body involved."

475 So.2d at 985. Subsequently, in Corn, this court expressly recognized that the same reasoning applied to site plan proceedings:

> We specifically held in Narco Realty, Inc. that where all of the legal requirements for platting land have been met there is no residual discretion to refuse plat approval and mandamus will lie. The same reasoning applies to approval of site plans. ... No element of discretion remains once the legal requirements have been met.

427 So.2d at 242 (emphasis added).

The administrative procedure for site plan approval is quasi-judicial in nature, and conducted to factually determine if a proposed site plan submitted by the property owner conforms to the specific requirements set out in the administrative regulations governing the erection of improvements on the

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could not arbitrarily impose a condition different than that contained in the ordinance. The court further stated: "[T]he opinions of neighbors by themselves are insufficient to support a denial of a proposed development." Id. at 596. "Owners are entitled to fair play; the lands which may represent their life fortunes should not be subjected to ad hoc legislation." Id. at 598.

property. Property owners are entitled to notice of the conditions they must meet in order to improve their property in accord with the existing zoning and other development regulations of the government. Those conditions should be set out in clearly stated regulations. Compliance with those regulations should be capable of objective determination in an administrative proceeding. While the burden may be on the property owner to demonstrate compliance, no legislative discretion is involved in resolving the issue of compliance.

The standard of review in the trial court depends directly on the nature of the proceeding before the city council, and whether it is quasi-legislative or quasi-judicial. Under the case law, a de novo review is proper for the former, while certiorari review is proper for the latter. Based on the analysis set out above, it was error for the trial court to conduct a de novo review.

Accordingly, we grant rehearing and now reverse the decision of the trial court and remand for further proceedings consistent herewith.

DOWNEY, LETTS, HERSEY, GUNTHER, STONE, WARNER and POLEN, JJ., concur.
FARMER, J., concurs specially with opinion.
GLICKSTEIN, C.J., DELL and GARRETT, JJ., recused.

FARMER, J., specially concurring.

As I was the lawyer for the plaintiff and appellee in City of Lauderdale Lakes v. Corn, 427 So.2d 239 (Fla. 4th DCA 1983), one might infer that the zeal of the advocate has shaped the attitude of the judge. I do not think so, however. I strongly believe that the power of the government to regulate land use within its borders is among the very reasons for the existence of local government in the first place. But I also believe that land ownership is at the core of our constitutional freedoms and thus the power of government must be exercised with a healthy regard for that right.

I agree with Judge Anstead's opinion for the court. I write only to add another thought to his rationale. In my opinion, the kind of consideration given by a trial court and then by us in one of these cases is primarily infected by a functional analysis of what the local government did, as well as what it said. That is to say that the circuit court's mode of consideration should not depend on mere labels used by the parties but instead by an analysis of what they did.

For example, in Corn the landowner sought site plan approval from the city, but what he got was legislative action to avoid giving him the approval that the city's own laws required. Hence, his action against the city might have sounded in certiorari to review the city's administrative action in considering site plan approval; actually it asked for relief by mandamus but also sought a judicial declaration that the city's attempted legislative avoidance of administrative action was

unconstitutional, or otherwise invalid, and an injunction against its enforcement.

It would be unrealistic to say that Corn should have been limited to certiorari review in the circuit court, when the only way to challenge the legislative enactments was by ordinary, original proceedings. And on appeal of the circuit court decision, it would have been unfair to the city to limit review of that decision in this court to the kind of review we give to orders of the circuit court sitting in its appellate capacity to review local governmental decisions. See e.g., Educational Development Center v. Zoning Board, 541 So.2d 106 (Fla. 1989). A functional analysis requires rather that we engage in something of both kinds of review in these circumstances, only one in others.

In the case of a zoning variance, the local government conducts a kind of hearing that includes fact finding, from which it makes a decision applying already established legal principles. When the public entity zones property it combines the application of established legal principles with legislative action. When it conducts site plan or plat review, it merely applies established rules of law to existing and uncontested facts. Each of these governmental functions is different. Each carries its own principles affecting judicial approval or disapproval.

When the circuit court considers the parties positions and, later, this court reviews what that court has done, we cannot achieve justice by merely applying a label and then

mashing a judicial lever. We must study what the parties were asked or set out to do, what they actually did, and how they went about doing it. That is what Judge Anstead has done in his cogent analysis. I therefore thoroughly agree with his conclusions.

11-17-92

ITEM 10

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT JULY TERM 1992

PARK OF COMMERCE ASSOCIATES, and LAND RESOURCES INVESTMENT CO., Appellants/ Cross Appellees, v. CITY OF DELRAY BEACH, a Florida municipal corporation, DOAK S. CAMPBELL, III, Mayor, JAMES WEATHERSPOON, RICHARD DOUGHERTY, MALCOLM BIRD, and MARIE HORENBURGER, City Council Members, Appellees/ Cross Appellants.	CASE NO. 88-3192. 88-3193 89-1387 89-2654. L.T. CASE NO. 86-11052 AJ

Opinion filed November 18, 1992

Consolidated appeals and cross-appeal from the Circuit Court for Palm Beach County; Mary E. Lupo, Judge.

John Beranek of Aurell, Radey, Hinkle & Thomas, Tallahassee, and Boose, Casey, Ciklin, Lubitz, Martens, McBane & O'Connell, West Palm Beach, for Appellant/Cross Appellee-Park of Commerce Associates.

L. Martin Reeder, Jr., of Steel, Hector, Davis, Burns & Middleton, West Palm Beach, for Appellant/Cross Appellee-Land Resources Investment Co.

Susan A. Ruby, Assistant City Attorney, Delray Beach, for appellees/cross appellants.

OPINION ON MOTION FOR REHEARING AND CLARIFICATION

PER CURIAM.

The motion for rehearing is denied. The motion for clarification is granted to the limited extent of acknowledging that this court's original panel opinion affirmed the decisions of the trial court in all four appeals: Case Nos. 88-3192, 88-3193, 89-1387, and 89-2654. The panel opinion has been overruled by the en banc opinion only in Case No. 88-3192. No further motions for rehearing will be considered.

DOWNEY, ANSTEAD, LETTS, HERSEY, GUNTHER, STONE, WARNER, POLEN and FARMER, JJ., concur.
GLICKSTEIN, C.J., DELL and GARRETT, JJ., recused.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, P.O. BOX 3315, WEST PALM BEACH, FL 33402

PARK OF COMMERCE ASSOC., et al.
Appellant-Cross Appellee(s),

vs.

CITY OF DELRAY BEACH, etc., et al.
Appellee-Cross Appellant(s).

CASE NO. 88-03192
89-01387 89-02654 88-03193

L.T. CASE NO 86-11052 AJ
PALM BEACH

January 4, 1993

BY ORDER OF THE COURT:

ORDERED that appellant's motion filed December 2, 1992, for certification is granted, and the following questions are hereby certified to the Supreme Court of Florida:

Whether City of Boynton Beach v. V.S.H. Realty, Inc., 443 So.2d 452 (Fla. 4th DCA 1984) as relied upon in this court's November 18, 1992, en banc opinion, accurately states the law concerning appellate review of decisions of local governments on building permits, site plans and other development orders.

Whether this court's affirmance of three cases based on City of Boynton Beach v. V.S.H. Realty, Inc., and the simultaneous reversal of one case based on an overruling of City of

Boynton Beach v. V.S.H. Realty, Inc.

constitutes a correct application of the en banc review process.

ORDERED that appellant's motion filed December 2, 1992, for withdrawal of mandate is hereby denied.

I hereby certify the foregoing is a true copy of the original court order.

MARILYN BEUTTENMULLER
CLERK.

cc: John R. Beranek
Brian B. Joslyn
L. Martin Reeder, Jr.
Susan A. Ruby

/CH

CITY OF DELRAY BEACH

100 N.W. 1st AVENUE DELRAY BEACH, FLORIDA 33444 305/243-7000

C E R T I F I C A T I O N

I, ELIZABETH ARNAU, City Clerk of the City of Delray Beach, Florida, do hereby certify that the attached is a true and correct copy of Section 30-15.3 "POC Planned Office Center", of the Zoning Ordinance of the City of Delray Beach, Florida, as of the date set forth herein.

IN WITNESS WHEREOF, I have hereunto set my hand and the official seal of the City of Delray Beach, Florida, on this the 8th day of February, 1988.

Elizabeth Arnau
City Clerk
City of Delray Beach

SEAL

Sec. 30-15.3 POC PLANNED OFFICE CENTER

(A) PURPOSE

The POC zoning district is intended to establish areas of primarily office uses in completely enclosed buildings within planned and unified complexes at suitable locations throughout the City. The POC zoning district is not intended for commercial activities in which goods, wares or merchandise are displayed, stored, exchanged or sold. Any outdoor storage is expressly prohibited.

(B) DEFINITION

(1) A POC is land under unified control, planned and constructed as a whole in a single development, or in an approved programmed series of development phases. The unified control of the land may result from ownership or from a binding agreement among the owners of separate parcels (of one (1) acre or more) to develop the property as a single development. The applicant shall present legal documents acceptable to the City Attorney to constitute evidence of the unified control of the entire area within the proposed POC.

(2) A POC shall include a program for full provision, maintenance and operation of such areas, improvements, facilities and services for common use by the occupants of the Planned Office Center, which will not be provided, operated or maintained at public expense. Applicant shall provide agreements, contracts, covenants, deed restrictions and/or sureties acceptable to the City for continuing operation and maintenance of such areas, functions and facilities which will not be provided, operated or maintained at public expense. However, nothing in this definition shall prevent separate ownership of parcels of one (1) acre or more within a POC development during the application or development process or after development.

(3) Applicant shall bind their successors in title to any commitments made under this section.

(C) PERMITTED USES

All developments shall be subject to Sec. 30-22 Site and Development Plan Approval.

(1) Art galleries and other cultural institutions
(2) Banks and financial institutions, excluding drive-in facilities
(3) Brokerage establishments, including watercraft, aviation and motor vehicles, without on-premises storage of items which are brokered, except that securities brokers may store securities brokered by them on the premises
(4) Business offices
(5) Computer services, excluding on-site repair
(6) Family day care, subject to Sec. 30-1(39)
(7) Medical and dental laboratories
(8) Multiple family projects and their attendant recreational facilities, subject to Site and Development Plan Approval. These projects shall comply with the district regulations for the RL zoning district.
(9) Museums
(10) Photographic studios
(11) Professional offices
(12) Single family residence
(13) Travel agencies

(D) CONDITIONAL USES

As prescribed in Section 30-21 and after the review of the application and plans appurtenant thereto, and hearing thereon, the Planning and Zoning Board finds as a fact that the proposed use or uses are consistent with good zoning practice, not contrary to the Master Plan, and not detrimental to the promotion of public appearance, comfort, convenience, general welfare, good order, health, morals, prosperity and safety of the City, the following uses may be recommended to the City Council as Conditional Uses:

(1) Child care and adult day care, subject to Sec. 30-17(M)
(2) Churches or places of worship and their attendant educational, recreational and columbarium facilities
(3) Drive-in facilities for banks and financial institutions
(4) Educational institutions
(5) Governmental offices and post offices
(6) Health spas and fitness clinics
(7) Residential all-suite lodging (Residential Inns), subject to Special Regulation 3 contained in subsection (N) herein
(8) Social and philanthropic institutions

(E) LOT DIMENSIONS AND SITE AREA

Except where a site plan had been approved under POI or SAD zoning or an application for zoning approval under the POI zoning category, then in effect, was filed with the City prior to June 1, 1985, the following requirements shall be applicable. The minimum size parcel for development of land zoned POC shall be three (3) acres. The minimum lot size within a POC District shall not be less than one (1) acre. It is the intent of this section that a parcel zoned POC be under unified control and be not less than three (3) acres in size, that said parcel be planned and constructed as a whole, or that it be planned as a whole and constructed in approved phases, each phase consisting of not less than one (1) lot, and each lot consisting of not less than one (1) acre. However, after Planning and Zoning review, the City Council may approve the separate development of a parcel which is less than three (3) acres, but more than one (1) acre. The City Council may grant the approval where it finds that: the development plan is consistent with the intent of this zoning district, there exists good cause for not aggregating the parcel with other properties to meet the three (3) acre requirement, and the development and use of the property is appropriate to the use of neighboring properties.

(F) BUILDING SETBACKS

Except where a site plan had been approved under POI or SAD zoning, or an application for zoning and site plan approval under the POI zoning category, then in effect, was filed with the City prior to June 1, 1985, the following requirements shall be applicable:

(1)	Front	50 ft.
(2)	Side (Interior)	10 ft.
(3)	Side (Street)	30 ft.
(4)	Rear	10 ft.

Provided, however, that when such property directly abuts a residential zoning district, such setback shall be at least twenty-five (25) feet.

All required setback areas shall be landscaped, except for access streets and sidewalks needed to provide entry to external traffic.

(G) GROUND FLOOR BUILDING AREA

No requirements

(H) TOTAL FLOOR AREA

No requirements

(I) BUILDING HEIGHT

No building or structure shall be constructed to a height exceeding four (4) floors or forty-five (45) feet.

(J) PARKING AND LOADING REGULATIONS

See Sec. 30-18 and Sec. 30-19

(K) WALLS AND FENCES

Whenever a POC plot directly abuts a residential district without any division or separator between them such as a street, alley or other public open space, a wall, fence and/or landscape berm shall be constructed as recommended by the Planning and Zoning Board. The Community Appearance Board shall conduct the final review of the appearance of the wall, fence and/or landscape berm in accordance with Articles IX and X of Chapter 9, City Code of Ordinances, and the following special requirements:

(1) Solid walls shall have a decorative surface on both sides.

(2) No wall shall be constructed with precast concrete louvers.

(3) No signs or other advertising material shall be placed on the wall, with the exception of the street address.

(4) No walls or fences shall be built in utility easements, except when crossing a utility easement at approximately a right angle.

(L) LANDSCAPING AND OPEN SPACE

At least twenty-five percent (25%) of the total site shall be in non-vehicular open space and shall be landscaped.

(M) SIGNS

See Article VIII, Chapter 9, City Code of Ordinances

(N) SPECIAL REGULATIONS

(1) It is the purpose of this zoning district to provide for uses that are permanent rather than transitory in nature, that are conducted within a completely enclosed building, with the exception of off-street parking and signs.

(2) Artificial lighting used to illuminate the parking area shall be sharp cutoff luminaire design directed away from adjacent properties, with a pole height not exceeding twelve (12) feet.

(3) Residential all-suite lodging uses may be approved as a conditional use in the POC District subject to the following provisions, limitations and restrictions:

(a) must be located with frontage on or access from at least one arterial or collector street as delineated on the City's Traffic Circulation Element;

(b) must be located in proximity to office, industrial and business uses;

(c) shall be used as a transitional or buffer area between residential uses and office uses;

(d) minimum floor area per suite - 500 square feet;

(e) maximum number of suites - 200 suites or units;

(f) maximum density per acre - 20 units per acre;

(g) must be residential in design;

(h) cannot contain a restaurant, cafe, bar, lounge or nightclub;

(i) recreational facilities may be allowed (swimming pool, whirlpool, jacuzzi, steam room, unlighted tennis courts);

(j) height limitation of two (2) stories;

(k) site plan with elevations and floor plan must be submitted with an application for conditional use approval;

(l) traffic impact analysis may be required to be submitted with an application for conditional use approval;

(m) market study may be required at the discretion of the Planning Director or Planning and Zoning Board;

(n) meeting room with a maximum floor area of 2,000 square feet may be provided;

(o) meeting catering and complimentary room service may be provided.

CITY OF DELRAY BEACH

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C E R T I F I C A T I O N

I, ELIZABETH ARNAU, City Clerk of the City of Delray Beach, Florida, do hereby certify that the attached is a true and correct copy of Section 30-22 "Site and Development Plan Approval", of the Zoning Ordinance of the City of Delray Beach, Florida, together with a true and correct copy of Ordinance No. 73-87 amending Section 30-22, as adopted by the City Commission of the City of Delray Beach, Florida, subsequent to the date of the last codification of the Zoning Ordinance.

IN WITNESS WHEREOF, I have hereunto set my hand and the official seal of the City of Delray Beach, Florida, on this the 8th day of February, 1988.

Elizabeth Arnau
City Clerk
City of Delray Beach

SEAL

25.

Sec. 30-22 SITE AND DEVELOPMENT PLAN APPROVAL

(A) SCOPE

Where zoning district regulations indicate that a permitted use or conditional use requires site and development plan approval, the procedures, requirements and standards set out in this section shall apply. Should a use requiring site and development plan approval also be classified as a conditional use, the two approval procedures shall be processed simultaneously.

(B) PURPOSE

Certain types of development, as indicated in the schedule of zoning district regulations, require careful attention to the placement of structures on the site and to the location of facilities serving the site. Specialized consideration of the requirements and standards set out herein will alleviate, eliminate, reduce or minimize any potential adverse effects such developments may have on neighboring properties and the City as a whole.

The requirements of this section and its application to those developments requiring site and development plan approval are declared to be necessary in the interest of public appearance, comfort, convenience, general welfare, good order, health, morals, prosperity and safety of the present and future residents of the City.

(C) PROCEDURES

Any person, firm or corporation owning property within the City of Delray Beach desiring site and development plan approval shall proceed in the following manner:

(1) The developer is encouraged to meet with the Planning Director, City Engineer, Chief Building Official, Public Works Director, Public Utilities Director, Fire Department and such personnel as necessary to determine the feasibility and suitability of the proposed development.

(2) An application shall be submitted to the Planning Director, on forms prescribed by the Director. Designation of a person other than the owner to sign the application shall be in writing and attached to the application. Each application shall be accompanied by the application fee.

(3) As may be appropriate to a particular requirement, the Planning Director shall refer the application and plans, or portions thereof, to the following City officers, departments or committees for their review: Chief Building Official, City Attorney, City Clerk, City Engineer, Community Appearance Board, Fire Department, Planning and Zoning Board, Police Department, Public Utilities Director, Public Works Director, or any other officer, department or committee which may have responsibility for review of some aspect of the application and plans.

(4) After all comments have been received, the Planning Director shall refer the application and plans to the Planning and Zoning Board for review. After their review, the Planning and Zoning Board, subject to the standards of subsection (D) below, may recommend approval, approval with changes and/or conditions, or denial of the application and plans. A written report and recommendation of the Board's findings shall be forwarded to the City Council.

(5) Upon receipt of any report and recommendation, the City Council, at a regular meeting, shall review the application and plans and, subject to the standards of subsection (D) below, may approve, approve with changes and/or conditions, or deny the application and plans.

(6) Upon receiving approval from the City Council, the applicant may proceed to furnish the necessary information to the Building Department for obtaining building permits. The Building Department shall not issue a building permit unless such permit conforms in every respect to the application and plans as approved by the City Council.

(D) STANDARDS FOR EVALUATING SITE AND DEVELOPMENT PLAN APPLICATIONS

In considering an application for site and development plan approval, the Planning and Zoning Board and the City Council shall be guided by the following standards and shall show in its records that each was considered where applicable.

(1) Sufficiency of Statements and Graphic Materials. Determination as to the sufficiency of statements contained in the application and the graphic materials required in subsection (G) below.

(2) Density and/or Proposed Use of the Subject Property. Determination as to what effect the density and/or proposed use of the subject property will have on adjacent and nearby properties and the City as a whole.

(3) Ingress and Egress. Determination of the public safety for the ingress and egress to the subject property and the proposed structures therein, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.

(4) Off-Street Parking and Loading Areas. Determination of the suitability and location of off-street parking and loading areas to thoroughfares and internal traffic patterns within the proposed development, with particular reference to automotive and pedestrian safety, traffic flow and control, access in case of fire or catastrophe, and the economic, glare, noise and odor effects on adjacent and nearby properties.

(5) Screens and Buffers. Determination of the sufficiency of screens and buffers to preserve internal and external harmony and compatibility with uses inside and outside the proposed development.

(6) Drainage. Determination of the manner of drainage on the property, with particular reference to the effect of provisions for drainage on adjacent and nearby properties and the consequences of such drainage on overall public drainage capacities.

(7) Sanitary Sewers. Determination of the adequacy of provision for sanitary sewers, with particular reference to the overall relationship to the City's sanitary sewer availability and capacities.

(8) Utilities. Determination of the adequacy of utilities, with particular reference to hook-in location and availability and capacity for the projected uses.

(9) Recreation and Open Spaces. Determination of the adequacy of recreation facilities and open spaces, with particular attention to the size, location and development of the areas and their effect on the privacy of adjacent and nearby properties and uses within the proposed development, and the relationship to City-wide open spaces and recreation facilities.

(10) Site Development. Determination of the suitability of the site plan, with particular attention to assuring that the appearance and general layout of the development will be compatible and harmonious with adjacent and nearby properties and the City as a whole so as not to cause substantial depreciation of property values.

(E) SITE AND DEVELOPMENT PLAN APPROVAL - TIME LIMITATION

(1) When the City Council approves a site and development plan, it shall establish a time limit within which a site and development plan may be developed. In the event that the site and development plan is not developed within said time limitation, it shall expire unless improvements representing twenty-five percent (25%) of the total cost of all improvements to be used in developing a site and development plan have been constructed on the property.

(2) The City Council may extend a site and development plan approval in accordance with the standards set forth herein. If the City Council does grant approval for an extension of a site and development plan, the City Council shall also set a time period for such extension, and in the event that development has not progressed to the extent specified in subsection (E)(1) above at the expiration of the time period, then the extension shall be deemed to have expired. However, an applicant may apply for more than one extension of a site and development plan.

(a) An application for an extension of a site and development plan shall be submitted to the Planning Director, on forms prescribed by the Director, not less than forty-five (45) days prior to its expiration. The Planning Director, upon receipt of a properly completed application, shall forward the same to the Planning and Zoning Board who shall make a recommendation to the City Council to either approve or not approve the extension request. If the recommendation of the Planning and Zoning Board is for approval, it shall also recommend a time period for the extension.

(b) When a development has involved both site and development plan approval and conditional use approval, an application for an extension of site and development plan approval shall also be deemed to be an application for an extension of conditional use approval.

(c) In evaluating applications for extensions, the City Council and Planning and Zoning Board shall use the following standards:

(1) Where There Are Substantial Physical Improvements On The Land. The diligence and good faith of the developer or developers in their efforts to actually commence and complete construction of the project for which original approval was granted, it being the intention of this section that the applicant demonstrate first, a genuine desire to actually physically develop the land. Development approval for any extension is granted by the City only to enable an applicant to complete development and construction of a project as opposed to permitting a land speculator to retain an approval to more readily sell the land. Second, that the developer or developers have in good faith commenced and are continuing construction of the project, but have not met the standards in (E)(1) above. In determining good faith, some factors to be considered are: the extent to which construction has commenced, when this construction has occurred (construction which is commenced immediately preceding expiration generally indicating a lack of good faith), and the extent to which there has been a bona fide continuous effort to develop but because of circumstances beyond the control of the developer, it was not possible to meet the standards in subsection (E)(1) above.

(2) When The Land Has Not Been Substantially Physically Improved Or The Applicant Has Not Met The Standards In (1) Above. The application shall be evaluated in accordance with the criteria set forth in Section 30-22(D) which relates to an original application for site and development plan approval. If an application is to be analyzed under this subsection, the Planning Director may require the submission of such additional and current information as he may deem appropriate to evaluate the application. The additional and current information requested shall be of the same type as is required under Section 30-22 for an original site and development plan application.

(3) When A Site Development Plan Expires And No Extension Has Been Approved. Any building permits outstanding with reference to such site and development plan shall also expire, unless as to a particular permit, construction has commenced as defined in the Standard Building Code.

(F) MODIFICATION OF APPROVED SITE AND DEVELOPMENT PLAN

No change or modification shall be made to an approved Site and Development Plan unless application therefore has been made, and the modification approved.

Application for approval shall be made to the Planning and Zoning Board through the Planning Director. The Planning and Zoning Board shall review the request and determine whether the proposed modification is a major or minor change in the Site and Development Plan. In evaluating the proposal, the Planning and Zoning Board shall apply the standards set forth in Section 30-22(D). If the approved Site and Development Plan would be significantly changed in terms of these standards, then the proposal shall be deemed major and be required to go through the process for an original Site and Development Plan application. If the Planning and Zoning Board determines that the proposal would not significantly change the approved Site and Development Plan in terms of the same standards, then the Planning and Zoning Board shall have jurisdiction as the final decision-making body to either approve, approve with conditions, or deny the requested modification.

The applicant affected by a decision of the Planning and Zoning Board regarding minor modifications to site plans may appeal said decision to the City Council; provided that said appeal is in writing submitted to, and received by, the City Manager or his designee within ten (10) days of the final decision of the Planning and Zoning Board.

(G) CONTENTS OF THE SITE AND DEVELOPMENT PLAN APPLICATION

Application for site and development plan approval shall contain the following, where applicable:

(1) General application form.

(2) Statement of the applicant's interest in the property to be developed, including a copy of the last recorded Warranty Deed and a certificate from an attorney-at-law or a title insurance company certifying who the current fee simple title holders of record of the subject property are, and the nature and extent of their interest therein, and

   (a) If joint and several ownership, a written consent to the development proposal by all owners of record, or
   (b) If a contract purchase, a copy of the purchase contract and written consent of the seller/owner, or
   (c) If an authorized agent, a copy of the agency agreement or written consent of the principal/owner, or
   (d) If a lessee, a copy of the lease agreement and written consent of the owner, or
   (e) If a corporation or other business entity, the name of the officer or person responsible for the application and written proof that said representative has the delegated authority to represent the corporation or other business entity, or in lieu thereof, written proof that he is in fact an officer of the corporation.

(3) Legal survey, prepared by a surveyor registered in the State of Florida, showing an accurate legal description of the subject property and the total acreage computed to the nearest one-tenth (1/10th) of an acre.

(4) Area location map, showing the existing fire stations, land use, recreation areas, schools, shopping and commercial centers, streets and roads, street intersections, street rights-of-way, utilities (gas, power, sewer, water, etc.), zoning, and any other principal buildings or physical features in and adjoining the subject property. These features shall be indicated for a distance of five hundred (500) feet from the outside boundaries of the subject property.

(5) Site plan, drawn to an appropriate scale showing the following:

(a) Name of the project.
(b) Name, address and telephone number of the applicant and planner.
(c) North arrow, date and scale.
(d) Legal description.
(e) Location of existing streets, easements, and other reservations of land.
(f) Location of major wooded areas and existing or proposed water bodies.
(g) Location of all proposed buildings and structures, indicating their setback distances from the property lines and roadways.
(h) Intended use of all buildings and structures.
(i) Existing and proposed means of vehicular ingress and egress to the subject property. Indicate traffic flow and show how vehicular traffic will be separated from pedestrian and other types of traffic.
(j) Location of off-street parking and loading areas, showing the number of spaces and the dimensions of parking aisles and driveways.
(k) Location and area dimensions of the proposed open space system, including recreational uses and facilities.
(l) Location of all utility lines, including gas, power, water and sewer.
(m) Location of all buffers, fences, screens and walls, showing height and type of materials used.
(n) Location of all signs, indicating height, lighting and type of materials used.
(o) Location of outdoor lighting, showing direction, height and type.
(p) Location of solid waste containers, refuse and materials used and screening.
(q) Spot elevations.
(r) Site development data, including:

(1) Zoning District_____
(2) Area of Subject Property_____Sq.ft._____Acre
(3) Type of Development_____
(4) Parking Spaces Required_____
(5) Parking Spaces Provided_____
(6) Ground Floor Building Area___Sq.ft.___% of Sit
(7) Total Floor Area_____Sq.ft._____% of Site
(8) Landscape Area_____Sq.ft._____% of Site
(9) Parking and Street Area_____Sq.ft.____% of Sit
(10) Building Heights_____ft._____Storie

If the proposed project is a residential development, the following additional data shall be shown:

(11) Number of Dwelling Units_____

(12) Gross Density_____

(13) Number and Type of Dwelling Units:

(a) Efficiency_____
(b) One Bedroom_____
(c) Two Bedroom_____
(d) Three Bedroom_____
(e) Four Bedroom_____

(14) Floor Area of Each Type of Dwelling Unit:

(a) Efficiency_____Sq.ft.
(b) One Bedroom_____Sq.ft.
(c) Two Bedroom_____Sq.ft.
(d) Three Bedroom_____Sq.ft.
(e) Four Bedroom_____Sq.ft.

(15) Indicate the Total Area of the Following:

(a) Principal Buildings___Sq.ft.___% of Site
(b) Accessory Buildings___Sq.ft.___% of Site
(c) Recreation Areas_____Sq.ft.____% of Site
(d) Water Bodies_____Sq.ft._____% of Site
(e) Golf Courses_____Sq.ft._____% of Site

(6) Landscape plan, drawn in conformance with the requirements and criteria of the Community Appearance Board and the Landscape Ordinance.

(7) Floor plans, showing typical plans for the various types of structures, drawn to scale and dimensioned.

(8) Elevations of typical buildings, drawn to scale and dimensioned.

(9) Storm drainage and sanitary sewage plans.

(10) Topography map, showing existing and proposed contours, with intervals of two (2) feet or less, extending fifty (50) feet beyond the subject property.

(11) Written confirmation of the provisions of all necessary facilities and systems for storm drainage, water supply, sewage treatment, solid waste disposal, fire protection, recreational and park areas, school sites, and other public improvements as may be required by the development.

(12) A traffic impact analysis of projected trip generation for the development.

(13) Where the applicant wishes to develop the project in incremental phases, a site plan indicating the proposed ultimate development shall be presented for review of the entire parcel. Proposed development phases shall be numbered in sequence and shall indicate the density for each phase. In no case shall the density for a particular phase exceed the density allowed for the zoning district in which the parcel is located.

(14) Any other information necessary to establish compliance with this and other ordinances.