

Palmetto City Council  
Minutes  
April 7, 2003

Elected Officials Present:

Larry Bustle, Mayor  
Shirley Bryant, Vice Mayor  
Tamara Cornwell, Council Member  
Charlie Grace, Council Member  
Brian Williams, Council Member

Elected Officials Absent:

Mary Lancaster, Council Member

Staff and others present:

Attorney Alan Prather  
J. E. Free, Jr., City Clerk  
Captain Clyde Hedrick  
Mike Hickey, Public Works Director  
Diane Ponder, Administrative Assistant

Mayor Bustle called the meeting to order at 7:00 p.m.

Rev. Mike Lowery, Palmetto First Baptist Church, gave the invocation followed by the Pledge of Allegiance to the United States Flag.

1. APPROVAL OF AGENDA

MOTION: Mr. Williams moved, Ms. Bryant seconded and motion carried 4-0 to approve the April 7, 2003 agenda with the removal of item #4.

3. 2nd READING AND PUBLIC HEARING - ORDINANCE NO. 03-773

Ordinance No. 03-773 was read by title.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALMETTO, FLORIDA, PROVIDING FOR THE AMENDMENT OF CHAPTER 28, ARTICLE V, SECTION 28-131 AND SECTION 28-132 BY REPEALING THOSE PROVISIONS IN THEIR ENTIRETY AND SUBSTITUTING THEREFORE A NEW ARTICLE V REGULATING SKATES, SKATEBOARDS, SCOOTERS, COASTERS, BICYCLES AND SIMILAR DEVICES AND CREATING THE APPROPRIATE SECTIONS THEREUNDER; PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR THE PREVENTION OF PERSONAL INJURIES AND PROPERTY DAMAGE AT PUBLIC BUILDINGS BY PROHIBITING THE USE OF SKATES, SKATEBOARDS, SCOOTERS, COASTERS, BICYCLES AND SIMILAR DEVICES ON CITY-OWNED OR LEASED PROPERTY, EXCEPT IN DESIGNATED AREAS; PROVIDING FOR THE PROHIBITION OF BICYCLE RIDING, SKATEBOARDING, AND SKATING IN CITY-OPERATED PARKING FACILITIES; PROVIDING FOR REGULATION OF BICYCLE PARKING; PROVIDING FOR REGULATION OF SPEED; PROVIDING FOR PENALTIES; PROVIDING FOR NOTICE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

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Mayor Bustle opened the public hearing. Mayor Bustle closed the public hearing after no public comment.

MOTION: Ms. Cornwell moved, Ms. Bryant seconded and motion carried 4-0 to adopt Ordinance No. 03-773.

#### 4. APPROVAL OF MAYOR'S APPOINTMENTS

Discussing the Mayor's appointment of Ms. Cornwell as the City's representative to the Manatee River Fair Associations' Board of Directors, Attorney Prather reiterated that an elected officials' fiduciary responsibility is to the City and supercedes any association in a private organization.

MOTION: Ms. Bryant moved, Mr. Williams seconded and motion carried 4-0 to approve the Mayor's appointment of Tamara Cornwell as the City's representative to the Manatee River Fair Association.

MOTION: Ms. Bryant moved, Mr. Grace seconded and motion carried 4-0 to approve the Mayor's appointment of Delbert Reeder to the Historic Preservation Board.

#### 5. AWARD OF BID FOR POLICE DEPARTMENT PAINTING SERVICES

Mr. Free informed the Council the two lowest bidders were deemed unresponsive bids, thus staff's recommendation to award the bid to Taylor Services.

MOTION: Ms. Bryant moved, Ms. Cornwell seconded and motion carried 4-0 to authorize the Mayor to execute the Acceptance of Proposal and award the bid for the Police Department painting services to Taylor Services, not to exceed \$8,900.

#### 6. RESOLUTION NO. 03-05

A RESOLUTION AMENDING RESOLUTION NO. 02-15, WHICH RESOLUTION ADOPTED THE BUDGET FOR FISCAL YEAR 2002-2003, AND PROVIDING FOR AN EFFECTIVE DATE.

A Resolution to amend the CRA Budget, evidenced by Exhibits attached to the Resolution.

MOTION: Ms. Bryant moved, Ms. Cornwell seconded and motion carried 4-0 to adopt Resolution No. 03-04.

#### 7. RESOLUTION NO. 03-04

A RESOLUTION AMENDING RESOLUTION NO. 02-15, WHICH RESOLUTION ADOPTED THE BUDGET FOR FISCAL YEAR 2002-2003, AND PROVIDING FOR AN EFFECTIVE DATE.

A Resolution to authorize the Tropic Isles waterline replacement project, Change Order #1 payment.

MOTION: Ms. Cornwell moved, Ms. Bryant seconded and motion carried 4-0 to adopt Resolution No. 03-05.

8. RIVIERA DUNES HOMEOWNERS' PETITION TO RENAME INTERNAL STREETS

Mr. Leo Hill requested the item be continued to April 21, 2003, as the uniform petition Council requested was not accomplished in a timely manner.

9. AGRICULTURAL MUSEUM'S UTILITY & ELECTRIC PAYMENT RENEGOTIATION

Board Members Mac Carraway and Russ Kitching spoke on the Agricultural Museum's successful first year of operation and how it preserved the history of agriculture, not only in Palmetto but the county as a whole. Board Member Byron Smith stated the museum is requesting the same participation the City granted last year; the electric and water bills for 12 months, not to exceed \$4,000. The item was continued to April 14, 2003, to allow staff to confirm funding and return a recommendation to Council.

10. TERRA CEIA GOLF & TENNIS CLUB a/k/a PALMS OF TERRA CEIA, et.al. - DENSITY ISSUE/BUILDING NO. 2

Mayor Bustle discussed the point paper on the Terra Ceia parcel unit count, a copy of which is attached hereto and made a part of these minutes. Referring to one dilemma wherein the City may face litigation from Zirkelbach resulting from his having to redesign his planned develop to reduce density, Alan Zirkelbach stated neither he, nor his firm, would enter into a lawsuit against the City. Mayor Bustle requested the involved parties work together to resolve the unit issue, because if litigation resulted, each party would be funding both sides.

Attorney Prather advised Council he received correspondence from Stephen Thomson dated April 3, 2003, proposing the City initiate a plan to increase the unit count to 843, a copy of which is attached hereto and made a part of these minutes. Attorney Prather stated the applicant would not pay for the review but would have to be involved. He also stated such a process could be simultaneous with the Mayor's first alternative.

Stephen Thomson, representing the owners of Tract 2, distributed an affidavit executed by Michael T. Redd, Team Plan, Inc., the private planner hired by FRU CON who prepared the plans attached to the Resolution discussed at the prior City Council meeting, a copy of which is attached hereto and made a part of these minutes.

Mr. Thomson proposed two separate resolutions. The first resolution would acknowledge and correct a scrivener's error, as it was never intended to remove any units or remove the unit from the PUD. Mr. Thomson referred to the resolutions cited in the affidavit executed by Mr. Redd. The second resolution is for the City to amend the Master Development Plan, increasing the density to 843 units. Mr. Thomson maintained the units should never have been reduced and the Tract was never part of any amendment removing Tract 2. Mr. Thomson stated if the density was increased to 843, thereby increasing Tract 2 density to 93, the developer would not enter into any litigation with the City.

Attorney Prather stated he is not prepared to present resolution declaring an error or the additional 43 units. Attorney Prather further discussed the fact Team Plan, Inc. drafted at least one of the documents that reflect the 50 units. Mr. Thomson stated it was always anticipated FRU CON would purchase the unit and he suspected the planner was instructed to put the 50 units on the plans, but, the property was never purchased by FRU CON and his clients were never involved in any rezoning or site plan approvals. Mr. Schmitt stated all applications are required to be signed or a representation authorized by all owners; he has found no applications from different owners. Mr.

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Schmitt further stated Mr. Thomson's request was reasonable and recommended allowing the process to occur.

Mr. Williams inquired if Mr. Zirkelbach could come back to Council for additional density if the City granted the additional units based on a scrivener's error. Mr. Schmitt advised Mr. Zirkelbach has the right to request a change to the Comprehensive Plan designation and rezone. He further stated he does not know a scrivener's error was made in 1991 or 1996 and would rather process this item as an amendment to the Master Development Plan.

MOTION: Ms. Cornwell moved, and Ms. Bryant seconded to instruct City staff to initiate the appropriate action regarding Terra Ceia Golf & Tennis Club for amendment to the Master Plan to increase density by 43 units.

Attorney Prather stated that with the motion the City became the formal applicant and would follow the same process as any other applicant. Ms. Cornwell stated the motion allows time for all involved parties to communicate and would be a way to satisfy what has occurred without going through the courts.

Mr. Thomson advised Council his client still has a Site Plan for 93 units in the approval process. Attorney Prather stated it can simultaneously be considered but cannot be approved or permits issued until the issue under discussion is solved.

The motion carried 3-1. Mr. Williams voted no.

Mr. Bromkey advised Council he was not in favor of the process. There are two separate issues; overwhelming evidence supporting 93 units and a review to increase the units to 843, which he does not oppose. He further stated he did not intend to go through a public forum to maintain something he already has.

#### 11. DEPARTMENT HEAD'S COMMENTS

Mr. Schmitt, Interim City Planner

Commented on becoming familiar with the projects and his support staff.

Mr. Hickey

Briefly commented on the following items:

- Ceiling failure at City Hall
- City auction and staff's involvement
- Keep Manatee Beautiful Earth Day
- Installation of Jo Harrison memorial bench
- Progress of trail at Hidden Lake
- Installation of kiosk at Riverside describing River Walk
- Installation of reclaimed water irrigation signage
- Repaired cave-ins
- Estuary Park progress
- Oakridge preliminary walk through
- Traffic issues on Laguna Drive
- Right-of-way identification on 13th Avenue

Jim Free

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The auction summary provided by Mr. Keranen.

Council to receive monthly financial, new business, building permit & code enforcement reports under separate cover. Mr. Williams requested the code enforcement reports be done by address with habitual violators noted.

Captain Hedrick

Police Department participated in a successful county-wide traffic force east of the City limits.

Citizen's Academy graduation services are Thursday. Captain Hedrick extended his gratitude to staff involved in the academy.

12. MAYOR'S COMMENTS

Updated Council on his recent lobbying trip to Tallahassee; the CRA question is gone, additional equity for police and firefighters is still pending.

13. COUNCIL MEMBER'S COMMENTS

Ms. Cornwell

Lincoln Middle School is hosting a read-a-thon April 17, 2003 to benefit two families who lost their homes to fire. Elected officials and employees of the City were invited to participate.

Mr. Grace, Ms. Cornwell and Captain Lowe attend the last mobile home park meeting Saturday at Colonial Mobile Manor. The residents are interested in the fishing laws. The residents expressed concern about their units over the summer. Ms. Cornwell asked that data be kept on patrols in the area. She also asked that hurricane preparedness be included in the packet of information regarding how the residents may prepare their homes for the time they are away.

Code Enforcement has been notified the Taco Trailer was operational on Saturday.

Requested the electrical box at Hydrant Park be inspected as electrical lines as exposed near the playground.

Inquired of Mr. Prather why there was opposition to the motion to increase the units. Mr. Prather stated his belief the developer did not believe the review would determine if they should have the 93 units; it is their position they have the 93 units, they should be processed so construction can begin. Mr. Prather stated it is his opinion the City is acknowledging past City Council action and the process will be to give the developer an additional 43 units.

Ms. Bryant

The Palmetto Historic Commission elected new officers at its monthly meeting on Saturday.

Received a question from Tropic Isles on taxing. She has forwarded the question to the appropriate person at the Property Appraiser's and a meeting will be scheduled with the park's officers.

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The Tax Collector can also provide information regarding fishing laws.

Mr. Williams

Code Enforcement has been notified that the owner of the red-tagged mobile home is in town. Stated the City needs to move forward on this item.

Requested the letter from Mr. Flynn at Jet Park regarding the storage area be addressed by staff.

Requested an update from Public Works regarding the meeting held with Palmetto Mobile Home Park.

Requested a copy of the reply correspondence to the citizen inquiring about alcohol sales in Palmetto on Sunday.

Mr. Grace

Stated the red-tagged mobile home issue at Jet Park has been on-going since November and should be resolved.

Commented on the Colonial Mobile Manor meeting. Chief Lowe discussed how to leave units in the summer with the residents.

Questions and answers from Rainbow, Jet and Tropic Isles meeting will be delivered tomorrow.

Requested staff looks at a parking lot in Jet Park that is being used to store construction materials.

He will attend the Citizen's Academy graduation on Thursday.

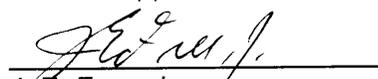
Mayor Bustle requested that the landlords and he be involved in the final walk through at Oakridge.

15. PUBLIC COMMENT

Charles Smith inquired if the streets in Riviera Dunes are approved, if that would open other subdivisions for renaming or extending street names. Mr. Williams quoted Section 25-35 of the Code of Ordinances addressing platted subdivisions. Mr. Smith recalled from his memory an attorney's opinion stating that once a home has been built in a subdivision the streets cannot be renamed. If stated if it can be done members of the community would like to see the same applied to Martin King Place. Ms. Bryant informed Mr. Smith she had made it very clear she supports Chief Johnson's opinion regarding the grid system.

Meeting adjourned at 8:55 pm.

Minutes approved: April 21, 2003

  
\_\_\_\_\_  
J.E. Free, Jr.  
City Clerk

Point Paper  
on  
Terra Ceia Parcel Unit Count  
April 7, 2003

- There are three opposing positions on the subject:
  1. City of Palmetto, in view of previous resolutions, is inclined to support a position of 50 units for the parcel in question. Tom Little Trust would support this position because they believe any residual units belong to them.
  2. Snyder/Romkey believes that the correct number is 93 units, that it has always been 93 units, and that Council should declare that number is correct.
  3. Zirkelbach states that he had to redesign his planned development for a decreased density of approximately 1 dwelling unit per acre, and if an increased unit density were approved for Snyder/Romkey it would be detrimental to his development; specifically, it would decrease property values in his development.
  
- City of Palmetto dilemma:
  1. If City does nothing, Snyder/Romkey may sue for a ruling in favor of 93 units.
  2. If City declares arbitrarily that 93 is correct, Zirkelbach and Tom Little Trust may sue; also, decision may be at variance with City comprehensive plan.
  
- The irony of litigation:
  1. In any lawsuit each party will be funding both sides of the litigation team: therefore,
  
- Alternatives:
  1. City request that Tom Little Trust, Snyder/Romkey and Zirkelbach submit to a joint mediation process and return to Council with a proposal that avoids litigation, and/or,
  2. Snyder/Romkey present proposal to City which would increase total unit count to 843 units. DRC and full public hearing process would be followed. Evaluation by City Planner and P & Z Board could result in fewer than 93 units, depending on area/densities used in evaluating the request.

AFFIDAVIT

STATE OF FLORIDA  
COUNTY OF Palm Beach

**BEFORE ME** this day, personally appeared **Michael T. Redd**, who after being first duly sworn, deposes and says:

1. That Affiant has personal knowledge regarding the statements contained in this Affidavit and is over 18 years of age.

2. That Affiant is currently the President of Team Plan, Inc., 631 U.S. Highway 1, Suite 300, North Palm Beach, FL 33408.

3. That Affiant has been affiliated with or employed by Team Plan, Inc. for approximately 23 years.

4. That Team Plan, Inc. provided planning services to Fru-Con Ocean Golf Park Ltd. (hereinafter "Fru-Con"), the developer of a portion of a Planned Unit Development in Palmetto, Florida, commonly known as Terra Ceia Bay Golf and Tennis Club (hereinafter "the Project"), from approximately 1987-88 to 1996.

5. That Affiant was affiliated with Team Plan, Inc. during this time period and performed planning services for Fru-Con for the Project and has direct knowledge of the events relating thereto.

6. That Affiant affirms that a portion of the Project commonly known as Tract 2 (hereinafter "Tract 2") was originally allocated 93 residential units for the construction of a five story condominium complex, originally referred to as 1600 Pennsylvania Avenue.

7. That, to the best of Affiant's knowledge and belief, Fru-Con did not, during the time of the planning and development process for the Project, outlined above, have or acquire any ownership interest in Tract 2.

8. That Affiant was aware of and involved in certain amendments to the Project, during the time period outlined above, requested by Fru-Con and submitted to the City of Palmetto to reduce the allowable number of residential units within the Project from those originally approved by the City of Palmetto in the early 1980's, which approval allowed approximately 1896 residential units. Specifically, these amendments include City of Palmetto, Florida Resolutions 92-31 and 96-25, which included as exhibits, revisions to the master development plan for the Project.

9. That Affiant affirms that said exhibit to the master development plan for the Project attached to Resolution 92-31 erroneously reduced the number of residential units on Tract 2 from 93 to 50, as Fru-Con had no ownership interest in Tract 2 at the time, nor the joinder or approval of the then owner of Tract 2.

10. That Affiant affirms that said exhibit to the master development plan for the Project attached to Resolution 96-25 erroneously deleted Tract 2 from the

Planned Unit Development zoning district, as Fru-Con had no ownership interest in Tract 2 at the time, nor the joinder or approval of the then owner of Tract 2. Additionally, said exhibit continued to erroneously assign 50 units to Tract 2.

11. That, to the best of Affiant's knowledge and belief, that Tract 2 has always and should continue to be allocated 93 residential units within the Project and should be allocated 93 residential units on any master development plans or Planned Unit Development plans for the Project on record with the City of Palm Beach, Florida.

**FURTHER AFFIANT SAYETH NOT.**

*Michael T. Redd*  
*Michael T. Redd*  
Michael T. Redd



Sworn to and subscribed before me this 4<sup>th</sup> day of April, 2003, by Michael T. Redd who is personally known to me or who has provided \_\_\_\_\_ as identification.

*Karel Van Gelder*  
Notary Public, State of Florida

My Commission Expires:



Karel Van Gelder  
MY COMMISSION # DD142100 EXPIRES  
August 23, 2006  
BONDED THRU TROY FAIN INSURANCE, INC.

**PORGES HAMLIN KNOWLES & PROUTY, PA**  
**ATTORNEYS AT LAW**

JASON M. DEPAOLA  
JENNIFER L. FURY\*\*\*  
CURTIS D. HAMLIN\*  
JAMES A. HARRISON\*\*  
TIMOTHY A. KNOWLES  
ADELE M. KURTZ\*\*\*  
JOSEPH L. NAJMY\*\*  
GREGORY J. PORGES\*\*\*  
STEVEN W. PROUTY  
STEPHEN W. THOMPSON  
RICHARD A. WELLER  
  
OF COUNSEL:  
SHELLY A. GALLAGHER  
HARRY W. HASKINS\*

**BRADENTON**  
1205 MANATEE  
AVENUE WEST  
BRADENTON, FL 34205  
  
TEL: (941) 748-3770  
FAX: (941) 746-4160

**LAKEWOOD RANCH**  
6320 VENTURE DRIVE  
SUITE 104  
BRADENTON, FL 34202  
  
TEL: (941) 907-3216  
FAX: (941) 907-3947

**SARASOTA**  
3400 SOUTH TAMiami TRAIL  
SUITE 201  
SARASOTA, FL 34239  
  
TEL: (941) 366-1388  
FAX: (941) 953-4284

April 4, 2003

*Via Facsimile, 941.748.1573, and Hand Delivery*

\* BOARD CERTIFIED  
REAL ESTATE LAWYER  
\*\* ALSO CERTIFIED  
PUBLIC ACCOUNTANT  
\*\*\* ALSO ADMITTED IN NEW YORK  
+ ALSO ADMITTED IN IOWA  
++ ALSO ADMITTED IN MINNESOTA  
+++ ALSO ADMITTED IN VIRGINIA

REPLY TO: Bradenton

Alan H. Prather, Esquire  
Dye, Deitrich, Prather,  
Petruff & St. Paul, P.L.  
1111 - 3<sup>rd</sup> Avenue West, Suite 300  
Bradenton, Florida 34205

Re: Tract 2, Terra Ceia Bay  
OFN: 8266-02

Dear Mr. Prather:

This is a follow up to our letter of yesterday regarding the above-referenced matter. After submission to you, we noticed a typographical error on the second page of the letter. Our reference to Resolution 93-21 should read Resolution 92-31. We apologize for any inconvenience this may have caused you. If you have any questions or need additional information, please do not hesitate to give me a call.

Sincerely yours,

FOR



Stephen W. Thompson  
Firm Principal  
e-mail: [swt@phkplaw.com](mailto:swt@phkplaw.com)

JAH/jls

**PORGES HAMLIN KNOWLES & PROUTY, PA**  
**ATTORNEYS AT LAW**

JASON M. DEPAOLA  
JENNIFER L. FURY\*\*\*  
CURTIS D. HAMLIN\*  
JAMES A. HARRISON\*\*  
TIMOTHY A. KNOWLES  
ADELE M. KURTZ\*\*\*  
JOSEPH L. NAJMY\*\*  
GREGORY J. PORGES\*\*\*  
STEVEN W. PROUTY  
STEPHEN W. THOMPSON  
RICHARD A. WELLER  
OF COUNSEL:  
SHELLY A. GALLAGHER  
HARRY W. MASKINS\*

**BRADENTON**  
1206 MANATEE  
AVENUE WEST  
BRADENTON, FL 34205  
TEL: (941) 748-3770  
FAX: (941) 748-4180

**LAKEWOOD BARR**  
6320 VENTURE DRIVE  
SUITE 104  
BRADENTON, FL 34202  
TEL: (941) 907-3218  
FAX: (941) 907-3947

**SARASOTA**  
3400 SOUTH TAMiami TRAIL  
SUITE 201  
SARASOTA, FL 34239  
TEL: (941) 560-1388  
FAX: (941) 953-4284

April 3, 2003

*Via Hand Delivery*

\* BOARD CERTIFIED  
REAL ESTATE LAWYER  
\*\* ALSO CERTIFIED  
PUBLIC ACCOUNTANT  
\*\*\* ALSO ADMITTED IN NEW YORK  
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REPLY TO: Bradenton

Alan H. Prather, Esquire  
Dye, Deitrich, Prather,  
Petruff & St. Paul, P.L.  
1111 - 3<sup>rd</sup> Avenue West, Suite 300  
Bradenton, Florida 34205

Re: Tract 2, Terra Ceia Bay  
OFN: 8266-02

Dear Mr. Prather:

As you requested during our conference call this morning with you, Bob Schmitt, Jim Harrison and myself, I am writing this to you. As we discussed, and as was discussed at the Palmetto City Council workshop on March 31, 2003, it is our contention that, under the master development plan for Terra Ceia Bay, Tract 2 is entitled to 93 residential condominium units.

As you know, the only, currently available documentation for any original amendments to the master plan is an exhibit to City Resolution 92-31. This exhibit purports to amend the approved number of residential units for the development from 1876 to 800 and identifies Tract 2 as containing 50 units "by others." Previous resolutions contain no such exhibit, so it is presently not possible to determine where other, proposed reductions in density or reallocations occurred. Next, Resolution 96-25 contains a similar exhibit that refers to Tract 2 as 50 units "by others" and "Not in P.U.D." One important point is that all resolutions affecting the property occurring after Resolution 86-10, which only made amendments to sites 3-7, were requested by Fru-Con, which has never had an ownership interest in Tract 2. Our office has verified this through a search of the public records of Manatee County.

Alan H. Prather, Esquire  
Dye, Deitrich, Prather,  
Petruff & St. Paul, P.L.  
April 3, 2003  
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All available documentation relating to the original development plan for the development indicates that Tract 2 was allocated 93 units. There exists no information that reduces this density from 93 units to 50 units other than the exhibits to Resolutions 93-21 and 96-25 and these are apparently being relied upon by City staff when reviewing submittals for Tract 2. Nor, to the best of our knowledge, has any owner of Tract 2 joined in any such reduction when such amendments to the master plan were submitted to the City. Therefore, it is our contention that such purported reductions and removal from the PUD were the result of scrivener's errors when Fru-Con prepared its revisions to the plans submitted with the two resolutions. Unfortunately, these plans prepared by Fru-Con were attached to subsequent resolutions. Clearly, these plans were in error because Tract 2 could not have been taken out of the PUD or the density reduced without the joinder in the application of the owner. In this regard, the owner of Tract 2 never joined in any such application(s).

To remedy these errors, we propose that the City initiate an additional resolution that indicates that Tract 2 remains within the PUD area and restores the original 93 unit allocation for Tract 2. To prevent any argument by owners of the balance of the property, the City could also add an additional 43 units to the balance of the property. As discussed during the March 31 workshop, such an increase could be accomplished without triggering a DRI review. We, on behalf of our clients, feel that this is the easiest and most equitable solution to remedy the apparent errors in the exhibits.

If at all possible, we request that the possibility of this solution be presented to the City Council at the April 7 meeting. In the meantime, if you need us to assist you by providing any additional information or can assist in preparing other information for consideration by the Council, do not hesitate to contact me.

Sincerely yours,

  
Stephen W. Thompson  
Firm Principal  
e-mail: [swt@phkplaw.com](mailto:swt@phkplaw.com)

JAH/jls

F:\Stephen\Snyoer,Gerald\Prather,04.03.03.ltr.wpd