

**TOWN OF BAY HARBOR ISLANDS  
MINUTES OF A REGULAR MEETING**

A Regular Meeting of the Town Council was held on Monday September 17<sup>th</sup>, 2019 7:00 p.m. in the Council Chambers. Upon roll call the following members responded:

Mayor Stephanie Bruder	Council Member Jordan Leonard
Council Member Kelly Reid	Council Member Isaac Salver
Council Member Elizabeth Tricoche	Council Member Robert Yaffe

**QUASI-JUDICIAL PUBLIC HEARING AGENDA**

Vice Mayor Fuller recused himself for this meeting.

Assistant Town Attorney Simone swore in all individual speaking at the meeting.

**Item 1. Presentation of the proposed Development Agreement by N / R Wharton Kane Concourse Property Owner, LLC to construct a mixed used development zoned in the B-1 Business District which includes 104 residential units; 86,400 square feet of office space and 14,900 square feet of commercial space.**

Attorney Neisen Kasdin of Ackerman, LLP came forward and explained the applicant requests for the council to consider a proposed development agreement in order to construct a mixed-use development located at 1177 Kane Concourse. The applicant proposal to convey the waterfront property that was direct across the street from the site to be utilize as a public park; the Town conveyance of the alley way; transfer of 24 TDR's from the Town commercial pool; and approval of the shared parking.

Architect, Peter Louis came forward and thanked the Design and Review Committee; Planning & Zoning Board and Staff for working together to better project. He provided a detailed presentation of the proposed development that included the proposed renderings of the residential component; commercial views; views of the east and west of Kane Concourse; a proposed vision of restaurants and retails on the ground floor and a rendering the proposed public park to be granted to the Town.

Attorney Kasdin further explained proposal by the applicant that included the following:

- upgrade the 50-year-old sewer infrastructure
- Town will retain an easement for the sewer and the alley onto 97 street.
- Has submitted a traffic study that concludes that there will be no traffic impact
- The developer will incorporate a sidewalk around project, which current does not exist.
- Project design will not permit a left turn exit from the alley to west bay harbor drive.

**Item 2. Town Manager's Report and presentation. Attached is a memorandum from Town Manager Jimenez with attachments.**

Town Manager Jimenez presented his report on the proposed development and conducted property appraisals on the waterfront lot, the alleyway and have also conducted our independent traffic study. After several discussion the applicant has negotiated the following points to the Town:

- the Transfer of 38 TDR's from the Town Commercial Pool.

- The conveyance of the waterfront lot to the Town.
- Upgrades to the sewer main infrastructure.
- One-time monetary payment of \$250,000 for the 10 feet bonus height.
- Applicant has agreed to not utilize the property for short term rentals.

Assistant Town Attorney Simone further clarified the components for their proposal:

- They offer the waterfront parcel, in exchange for 38 TDR's, in addition to the alley vacation.
- They are seeking to increase the building height from 65 feet to 75 feet.

The public benefit would equal \$530,000 in sewer upgrades and a \$250,000 onetime payment for park enhancements.

**Item 3. Public Comment concerning the proposed Development Agreement.**

Kathleen Kennedy, 9180 W. Bay Harbor Drive, came forward and was in favor with the proposed project felt that this was what the Town needed.

Kathie Horowitz, 10350 W. Bay Harbor Drive, came forward and opposed to the proposed project, she was concerned with the parking.

Dr. Robin Strauss Furlong, 1011 Kane Concourse, felt that there will be a parking impact to the business district.

Lisa Levy, 9660 W. Bay Harbor Drive, came forward and was concerned with the proposed development traffic pattern and congestion.

Frances Neuhut, 1060 Kane Concourse, came forward and asked what the voting process was for the project. Majority vote. She was concerned with the parking increased; value of the right of way; and waterfront lot appraisal.

Joan Webber, 10350 W. Bay Harbor Drive, came forward and was concerned with the shared parking and urged the Council to consider the quality of life of the residents.

Paul Ruthfield, 1231 95 street, came forward and was concerned with the traffic impact of the proposed project: the church by the sea project and the new enhancement to the school.

Kathie Srur, 10350 W. Bay Harbor Drive, came forward and thanked the developer and staff on the project enhancements. She was concerned with the proposed density, traffic and parking. She also asked why the developer assessed the TDR value 23% less than its current value.

Linda Zilber, 1231 95 street, was concerned with the proposed project proposal.

Scott Hannon, 9160 W. Bay Harbor Drive, came forward and was in favor of the proposed project. He felt it project could attract more pedestrian traffic for the business district.

Robin Parker, 9660 W. Bay Harbor Drive, came forward and was in favor of the new development but was concerned with the traffic impact that the project could bring.

Ileene Wallace, 10350 W. Bay Harbor Drive, came forward and was in favor of the project.

Scott Polackwich, 1165 98 St, came forward and felt that there isn't much happening on the Business District on a day to day basis. He was in favor of the project and felt that the proposed project will enhance the community.

Leah Elias, 1165 98 Street, came forward and felt that the Town needed a pool and did not agreed with an additional park. She stated that the parking garage was being occupied by the Cadillac Dealer.

Paula Lynch, 10101 E. Bay Harbor Drive, came forward and stated that the real estate buyers are demanding 2 parking spaces and stated we need a public park for the kids.

Jody Campbell, 9800 W. Bay Harbor Drive, came forward and asked the council to minimize the impact to the Town. She was concerned with the traffic impact and parking.

Frederic Mark, 9601 E. Bay Harbor Drive, came forward and was in favor of the proposed project.

Michelle Payer, 10350 W. Bay Harbor Drive, was concerned with the parking and traffic.

Milton Raijman, 1135 Kane Concourse, came forward and was in favor of the proposed project. But was concerned with the traffic flow in the alley way. He asked if the 15 feet clearance was enough should there ever be a need to address a broken sewer line. Will there be any self-parking for the commercial or residential component? Is the site plans shows 3 parking spaces on Kane Concourse, is that permitted?

Markus Frankel, 10261 E. Bay Harbor Drive, was in favor of the proposed project. He felt that it will bring commercialization to the Business District.

Norma Orovitz, 9240 W. Bay Harbor Drive, came forward and was a long time resident for 65 year. She was concerned with the traffic and parking.

Vincent Martino, 1050 93 St, came forward and he agreed that it was a great building, and amenities. He was concerned with the parking; school traffic; and new developments such as the church by the sea will soon be built.

Ryan Johnson, 9660 W. Bay Harbor Drive, came forward felt it was a beautiful well design project, but was concerned with parking and traffic.

Ana fishman, 9900 W. Bay Harbor Drive, came forward and in favor of the proposed development.

Natasha Cortez, 9180 W. Bay Harbor Drive, came forward was concerned with the traffic and parking. She felt that the project was too massive.

Leticia Silveria, 10359 W. Bay Harbor Drive, came forward and felt that the existing business in Kane Concourse have no parking for people to wish to visit them. The project design is great but was concerned with the parking.

**CLOSED PUBLIC COMMENT**

Attorney Kasdin clarified that the restriction for short term rentals was included on the development agreement, they could never add short term rentals. The property had two independent traffic studies that were performed, one of the studies was done by the town. Both analysis show that adequate to

handle the parking demand. He felt the parking issues come from the older building that do not have sufficient parking, not the new developments. All new building are being built to standard and meet the parking demands. The project was design to better the traffic flow of the alley than what is existing now.

#### COUNCIL COMMENTS

Council Member Tricoche felt that this was an unprecedented project and did not agreed with the proposed conditions and provided the following suggestions:

- Bonus height – needs to be codified
- Sewer line upgrades and \$250,000
- TDRs – not in favor – only in favor to transfer 10 TDR’s.
- Waterfront lot, applicant to pay \$1.3 Million.
- Suggested a \$58,000 per TDR transfer.

Council Member Reid was concerned with the size of the units; number of residential units proposed; parking and traffic impact. She suggested for the applicant to compromise by lowering the density and to address the parking.

Peter Louis, the units are considered large for rental units.

Council Member Salver did not find fit the \$250,000 in exchange for the bonus height and was opposed to the Town conveyance of the alley way. He agreed with the residents comments to reduce the density and suggested for the Town Manager to continue to negotiate with the developer.

Council Member Leonard asked as it relates to the valet parking, was the valet service complementary or will there be a charge? He had the following suggestions:

- Applicant has chosen to have several tenant, he suggested an anchor tenant.
- Lead and Resilience Certified Building – would want a guarantee of a lead or equivalent silver certified.
- Shared Parking – 492 parking spaces proposed – suggested to pay for parking in the Town parking garage up to 139 spaces could be rented. The project can meet the 631 parking spaces required without a parking reduction approval.
- Waterfront Park – in favor of the acquisition of the land.
- Not in favor of the size of the units, but it was design per Code.
- Parking – suggested to work on increasing the number.
- Staging Area – Did not agree with the staging area at the vacant lot. He suggested the staging area at the brown lot parking on 97 street and west bay harbor drive.
- Traffic – was concerned with traffic impact on west bay harbor drive.

Council Member Yaffe thanked all the residents for attending the meeting and participating in the process. He had the following comments and suggestions:

- Development Agreement – why is there a 10 year term? Attorney Kasdin responded the Florida Statue allows the flexibility.
- When does construction commence? As soon as a Building Permit was obtained in approximately 8 to 10 months.
- Lease of the park as staging area. He was not in favor and urged them to negotiated with staff on other suggestions.
- No assign parking ? Mr. Kasdin responded that there was no assigned parking it could be on a first come, first serve basis.
- Public Benefits, (250K, sewer upgrades) was not in favor and felt more can be negotiated.
- Parking – was concerned with the proposed number being provided onsite.
- Density – He felt that the proposed number of residential units need to be modified.

Mayor Bruder, agreed with all the council suggestions and shared the same concerns with the parking, number of residential units proposed and suggested for the waterfront lot to be convey upon approval. She was opposed to have the vacant lot be used as the staging area.

Architect, Peter Lous, came forward and was open to leasing the space from the Town for the staging area and have heard the council suggestions and can work on collectively leasing a number of spaces from the parking garage if needed.

Attorney Kasdin requested for the items to be continue to the next meeting.

**Item 4. Approval of an ordinance on first reading approving a development agreement as authorized under the Florida Statutes Section 163.3220-163.3243 between N/R Wharton Kane Concourse Property Owner, LLC and the Town. The agreement will authorize the development of approximately 1.96 Acres at 1177 Kane Concourse of a mixed use project consisting of 104 residential units, 87,000 square feet of office space and approximately 15,000 square feet of commercial use.**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, APPROVING A DEVELOPMENT AGREEMENT AS AUTHORIZED UNDER THE FLORIDA LOCAL GOVERNMENT DEVELOPMENT AGREEMENT ACT, SECTIONS 163.3220 – 163.3243 OF THE FLORIDA STATUTES, IN SUBSTANTIALLY THE ATTACHED FORM, BETWEEN N/R WHARTON KANE CONCOURSE PROPERTY OWNER, LLC (“OWNER”) AND THE TOWN OF BAY HARBOR ISLANDS (“TOWN”), RELATING TO THE DEVELOPMENT OF APPROXIMATELY 1.96 ACRES OF LAND GENERALLY LOCATED AT 1177 KANE CONCOURSE, AS MORE PARTICULARLY DESCRIBED IN EXHIBIT “A,” ATTACHED AND INCORPORATED, FOR THE PURPOSE OF REDEVELOPMENT OF SUCH LAND FOR MIXED USES PERMITTED BY THE BAY HARBOR ISLANDS COMPREHENSIVE PLAN – FUTURE LAND USE MAP DESIGNATION AND TOWN’S ZONING AND PLANNING CODE, AS AMENDED, WITH SAID DEVELOPMENT TO BE IN ACCORDANCE WITH THE SITE PLAN APPROVED BY THE TOWN AND TO CONSIST OF UP TO 104 RESIDENTIAL DWELLING UNITS, UP TO 87,000 SQUARE FEET OF OFFICE SPACE, UP TO 15,000 SQUARE FEET OF COMMERCIAL SPACE, AND 493 PARKING SPACES IN A BUILDING WITH A MAXIMUM HEIGHT OF 75 FEET; AND WITH**

**SAID DEVELOPMENT AGREEMENT HAVING A TERM OF 10 YEARS AND ALSO MEMORIALIZING: (1) OWNER'S CONVEYANCE OF A WATERFRONT LOT AT 9600 WEST BAY HARBOR DRIVE TO THE TOWN FOR USE AS A PUBLIC PARK, (2) TOWN'S CONVEYANCE OF 37 TRANSFERRABLE DEVELOPMENT RIGHTS (TDRS) TO OWNER FOR USE AT 1177 KANE CONCOURSE, (3) CONDITIONS FOR THE TOWN'S PARTIAL ALLEY CLOSURE BETWEEN WEST BAY HARBOR DRIVE AND BAY HARBOR TERRACE AND OWNER'S PROVISION OF APPROPRIATE ACCESS EASEMENTS WITHIN SAID ALLEY, (4) TOWN'S APPROVAL OF A HEIGHT INCREASE FROM 65 FEET TO 75 FEET UNDER THE TOWN'S PUBLIC BENEFIT PROGRAM IN TOWN CODE SECTION 23-11(C)(8), BASED ON THE LISTED PUBLIC BENEFITS FROM OWNER; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE DEVELOPMENT AGREEMENT, IN SUBSTANTIALLY THE ATTACHED FORM; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**Item 5. Announcement of the date (October 7th, 2019) of the second public hearing to consider the approval of the development agreement.**

Consensus was the Town Clerk to coordinate with the Town Council to schedule a Special Meeting.

There being no further business to discuss meeting was adjourned at 10:38 p.m.

ATTEST

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TOWN CLERK

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MAYOR

DRAFT