

# Minutes

## BOARD OF ADJUSTMENT

Regular meeting

6 p.m. Feb. 14, 2024

Board Meeting Room of Town Hall Annex, 105 E. Corbin St.



Present: Chair Sean Kehoe, Vice Chair Raul Herrera, Richard Chapple, Portia Made-Jamison and Jenn Sykes

Absent: Eddie Sain and Robert Iglesias

Staff: Town Attorney Bob Hornik and Senior Planner Tom King

### 1. Call to order and confirmation of quorum

Chair Sean Kehoe called the meeting to order. Senior Planner Tom King confirmed the presence of a quorum of 4 members present.

### 2. Agenda changes and approval

There were no changes to the agenda.

Motion: Vice Chair Raul Herrera moved to approve the agenda as it stands. Richard Chapple seconded.

Vote: 4-0

### 3. Minutes review and approval

Minutes from the regular meeting on April 12, 2023

Motion: Herrera moved approval of the April 12, 2023, minutes as submitted. Chapple seconded.

Vote: 4-0

### 4. Adoption of 2024 Meeting Schedule

Motion: Herrera moved to approve the 2024 meeting schedule as presented. Chapple seconded.

Vote: 4-0

### 5. Quasi-judicial evidentiary hearings

Case BA-01-2024: Collins Ridge Phase 2 — Special Use Permit request at 256 & 258 Orange Grove Street (Orange County PIN 9874-10-4417). The applicant is The John R. McAdams Company, Inc. The property owner is SFTEN, LLC. The request is to allow the subdivision of 130 lots from a 97.08-acre tract of land in the Collins Ridge development.

Kehoe introduced the case and asked board members if any members present had had any ex parte communication regarding the case. Board members indicated they had not. Kehoe stated he had driven the site earlier in the day but what he saw did not affect his opinion one way or another.

King asked if any board members had any conflicts of interest. It was established that the board members had no conflicts of interest with the case.

Motion: Herrera moved to open the quasi-judicial evidentiary hearing. Chapple seconded.  
 Vote: 5-0

Kehoe swore in King, David Bergmark, Jonathan Cooper and Brad Rhinehalt.

Town Attorney Bob Hornik advised the applicant that there were only four board members present and that a simple majority was required to approve the requested permit. He asked if the applicant wished to improve their odds by being heard by a full board of five members. The matter became a moot point as a fifth board member, Jenn Sykes, entered the room at 6:07 p.m.

King entered the following into the record:

- the staff report for the request, and
- a MicroSoft PowerPoint presentation outlining the general history of the Collins Ridge development the proposed overall site plan for Collins Ridge Phase 2.

King answered questions from board members involving the overall Collins Ridge project.

At the conclusion of his presentation, King informed the board that town staff recommends five conditions be attached to the permit, if approved:

- one related to proposed dedication of 2 tracts of land to the town,
- one related to timing of construction drawing submittal for the perimeter walking/biking trail/greenway,
- one related to negotiation of an off-site easement for a section of the perimeter walking/biking trail/greenway, and
- two related to stormwater management.

King stated the project has been found to comply with the use-specific standards of approval for a “special subdivision” outlined in Unified Development Ordinance (UDO) section 5.2.47.1 and the general standards/findings of fact found in UDO section 3.8.3.

King stated the project was also reviewed against the Collins Ridge Master Plan Conditions of Approval and found to comply with all applicable conditions; noting that condition 15 of those conditions states that “...in the event that there are inconsistencies between the Town Unified Development Ordinance and the Collins Ridge Master Plan at the time any Special Use Permit application is submitted, the terms of the Collins Ridge Master Plan shall control.”

King stated he had no further information to present.

Kehoe asked if the applicant wished to speak to the application.

David Bergmark addressed the board. Bergmark stated he is a Senior Planner with McAdams, working out of their Raleigh office, and was involved in the June 2023 Master Plan amendment process. His address is 10612 Long Home Way, Raleigh, North Carolina.

Bergmark stated that staff had adequately described the request and that he and his client agree the project meets both the master plan and UDO requirements. He did want to address staff’s recommended conditions of approval; stating that he may be joined by other project members in attendance.

- A. The first recommended condition would require dedication of a 0.77-acre parcel on the north side of Gold Hill Way and a 12.45-acre parcel on the south side of US Interstate 85 to the town before any additional

approvals for Phase 2 are granted. Bergmark stated the Master Plan already contains a date for this to occur and asked staff why a separate condition on the special use permit should change the timetable set by the Town Board of Commissioners. King asked why the dedication should be deferred to a later date. Bergmark responded that land transfers require due diligence with review by the applicant's and town's attorneys. As worded, the proposed condition could prevent issuance of a grading permit, sign permit, or a building permit authorizing construction of one of the proposed townhomes. It could be interpreted to limit anything.

Kehoe asked if this condition is proposed to ensure good faith so the land cannot be used and absorbed later. King stated that it is taking a long time to get things like this done and it would be easy to get the dedication process in motion sooner rather than later.

Jonathan Cooper addressed the board. Cooper stated he works for D.R. Horton with an address of 2000 Aerial Parkway, Morrisville, North Carolina.

Cooper stated that, in his recent experiences with these situations, it is hard to be definitive given the time needed to prepare surveys and legal documents for local reviews. One could possibly get documents together in a month, but not knowing how long attorney and town review processes will take causes some concern. Cooper asked if a town board meeting would be required to effectuate the dedication.

King stated the survey plats prepared for each portion of land would both be exempt from town review by state statute because the 0.77-acre parcel could be combined with abutting town-owned property. The 12.45-acre tract south of I-85 is greater than 10 acres with no street dedication involved. King noted that once dedicated, the town would have to take action to accept the dedication to complete the process.

Cooper went on to state that the Master Plan condition states the properties must be dedicated, and they intend to do that as quickly as possible. For instance, even if they could get everything together on their end in 60 days, they do not have much control over how long the rest of the process with the town may take.

Kehoe stated that, based on Cooper's testimony, they have known that the properties were to be dedicated. Cooper said they did, but they wanted to wait to do so until after Phase 2 received approval. Cooper said the Master Plan condition gave them 2½ years to do so. King clarified that the Master Plan condition requires dedication occur within 24 months of June 12, 2023. That requires it be done by June 12, 2025.

Kehoe recognized member Jenn Sykes. Sykes wanted to clarify that the proposed condition says the land is "to be dedicated," but her understanding from staff and the town attorney is that "dedication" and "approval" (*note: this should read "acceptance"*) are two different concepts. "Dedicated" sounds like paper transfers that does not specify approval.

Town Attorney Bob Hornik offered a suggested amendment to the condition such as "shall be formally offered for dedication within" some specified date. Cooper agreed they would be amenable to that but had not met with their staff to discuss timing.

Kehoe stated that he understands not wanting contractors on-site just waiting around on paperwork, but that the town does want some sign of good faith that this is going to happen before the dust settles and the project is finished.

Herrera asked Hornik to re-state his earlier suggestion. Hornik said instead of saying “to be dedicated,” it could read “to be formally offered for dedication to the Town within” and insert some milestone or specific date. Cooper suggested 60 or 90 days as an example.

Brad Rhinehalt addressed the board. Rhinehalt stated he is the civil engineer for the project and has been working with D.R. Horton throughout the project.

Rhinehalt stated they already had a county approved grading permit and town approved construction drawings for Phase 1B. Phase 1B will require that dirt be removed from some of the Phase 2 area. The approval of Phase 2 will allow that to happen. Thus, earthwork is needed for the section they are currently building, so it is important additional permits will not be held up. Saying “any” hurts the timeline for the project. Rhinehalt stated that a construction drawing submittal for Phase 2 is probably 6 months out.

Cooper stated they would rather set a date for dedication submittals to be made to the town and have that in order regardless of when the matter of acceptance is heard by the town board. Hornik suggested the condition be reworded to read “shall be formally offered for dedication within 90 days of this special use permit approval.” Cooper agreed that language is acceptable. Rhinehalt suggested adding language about construction drawings for Phase 2.

King read over how he thought the amended condition would read: “The 0.77-acre parcel of land located on the north side of Gold Hill Way and the 12.45 acre parcel of land located on the south side of US Interstate 85, both labeled in the submitted Collins Ridge Phase 2 Special Use Permit plans as ‘to be dedicated to the Town of Hillsborough,’ shall formally be offered for dedication within 90 days...” Hornik finished King’s thought by adding “within 90 days of this special use permit approval.”

- B. Cooper asked if the board would mind discussing recommended condition 3 next which reads “Construction plans for the remaining portions of the perimeter walking/biking trail/greenway shall be submitted to the town for review at the time of construction drawing submittal for Collins Ridge Phase 2. The plans shall be submitted as a separate document as part of the Phase 2 construction drawing submittal.”

Currently, a portion of Phase 1 of the Collins Ridge project is to be developed for apartments, and a separate entity of D.R. Horton is involved with that project. They are already showing a segment of the perimeter greenway on their plans. Cooper asked if the condition could be rewritten so that each segment of the trail is reviewed as part of construction drawing review for each individual project. Review of the trail as a separate project unto itself could delay construction drawing review for other projects within the development.

King stated the apartment plans currently under review only show an easement for the greenway trail. Proposed grading for trail construction is not shown on those plans. Also, the Collins Ridge Master Plan Conditions of Approval, as amended, requires the trail be constructed ready for dedication on December 31, 2027. King stated the idea was that the developer would begin working with Public Space and Sustainability Manager Stephanie Trueblood moving forward. Trueblood and Stormwater and Environmental Services Manager Terry Hackett recently walked a portion of the trail and have concerns that need to be discussed.

Bergmark reminded the board that the applicant's concern is not with the trail construction drawing submittal requirement, but that requiring a separate review may delay review and approval of other project construction drawings.

Hornik noted the oddity of a condition being placed on an existing condition the Town Board of Commissioners have already approved. Cooper wanted clarifying wording to address the separate submittal and review of the trail construction drawings. Kehoe asked Hornik's advice on the wording.

Hornik clarified that construction drawings for the trail and other project construction drawings would be reviewed separately. King reiterated the proposed condition states the trail construction drawings will be submitted as a separate document from the Collin's Ridge Phase 2 construction drawing submittal. Hornik then expanded the language, suggesting addition of "and they are not contingent on each other."

King relayed that the condition placed on the Collins Ridge Phase 1 special use permit approval states "trail construction must be completed and offered to the town for dedication before approval of the 451<sup>st</sup> certificate of occupancy or before construction begins on units of Phase 2, whichever comes first."

Cooper stated the trail will have to be completed before Phase 2 begins, and Herrera reiterated it would need to be in before Phase 2 construction begins. Bergmark stated the 451<sup>st</sup> certificate of occupancy will likely be reached with the apartment project currently under review.

The board agreed proposed condition 3 is not needed.

- C. Cooper introduced discussion of recommended condition 2, which states, "Project developers shall be responsible for negotiating with the property owner of the off-site greenway easement crossing the Department of Transportation property..." Cooper was unsure why this condition was being recommended since the adjacent .77-acre tract will be dedicated to the town. Since D.R. Horton is dedicating the land, Cooper felt negotiating the easement across the Department of Transportation property wasn't needed. In his reasoning, it was unclear if the trail would be in this exact location. The applicant's current responsibility is to build the trail to the Collins Ridge property line, but the future path of the trail from that point on is unknown. Cooper does not want to negotiate on behalf of the town for an unknown need.

Herrera wondered why staff recommended it. King relayed it was requested by Public Space and Sustainability Manager Stephanie Trueblood.

Rhinehalt stated the town is working on building a train station on the town-owned property to the north. He suggested the town obtain the easement while working with the Department of Transportation on the project. Hornik noted the trail was shown crossing the Department of Transportation property on D.R. Horton's plans submitted to the town. Because of this, King noted the Department of Transportation could be seen as being committed, without their knowledge, to a trail easement on their property. Herrera agreed the town was committed as well, leading Sykes to acknowledge the uncertainty of the trail easement location on that property.

Referencing the original drawing by McAdams staff, Hornik reminded the applicant that when the trail is depicted on the plans, the developer is accountable for its completion.

Bergmark reminded the board that their plans stated the off-site easement is to be obtained by others. Because Town Commissioner Robb English had discussed the land dedication with the Parks and

Recreation Board, he asked if Pod B in Phase 2 would be the only development pod without a park. If .77-acres could be a trail head, the pod would still have direct access to a park. Hence, once the .77-acre parcel is dedicated, the developer no longer has authority over it.

Kehoe scrutinized the relevancy of the condition and Sykes assumed that, with the decision made on recommended condition 1, condition 2 becomes moot.

Chapple inquired whether the space exists on the Department of Transportation property to accommodate the trail. King said he thought there was only around eight feet in width. Cooper explained the logistics of the trail and the lack of space being an issue, noting that Public Space and Sustainability Manager Stephanie Trueblood had requested earlier that the trail and sidewalk be separated rather than joined as one at this location.

The murky language, “developer shall be responsible for negotiating,” gave Hornik pause. Discussion between Hornik, Cooper and Herrera ensued around the language of the condition based on ownership of the land.

Hornik introduced new potential wording as: “The project developer shall cooperate with the town in negotiating with the property owner regarding the greenway easement.” Cooper consented and pointed out it was part of the trail submittal anyway.

- D. Recommended conditions 4 and 5 pertained to stormwater. King reported the conditions were requested by Stormwater Program Coordinator, Heather Fisher.

Rhinehalt stated he did not understand why the conditions were requested since Fisher will be reviewing the Phase 2 construction drawings for stormwater compliance. Hornik suggested problems in Collins Ridge Phase I may be the reasoning. King asked if Fisher and Rhinehalt had discussed the subject matter of the conditions. Rhinehalt said he was not aware of the concerns. Cooper pointed out that D.R. Horton was not the original Collins Ridge developer. He said everything will be submitted and reviewed per town standards.

Rhinehalt explained current temporary stormwater erosion to the pond and future designs for piping through Pod A of Phase 2. No stormwater piping can be added within the area of concern until Phase 2 begins. Rhinehalt added that notes could be added to the forthcoming construction drawings regarding Fisher’s concerns. Hornik suggested adding the following wording to the recommended conditions: “these notes shall appear on construction drawings.” King stated he would rather not add the recommended conditions since stormwater will be reviewing construction drawings for Phase 2 anyway.

King added that, for future applications before the board, the staff member recommending conditions be added to an approval reasoning for imposing the conditions. Kehoe, Sykes, Herrera and Hornik agreed.

Kehoe suggested clarifying the language. Sykes suggested eliminating the recommended conditions since the matter will be addressed during construction drawing review. Hornik stated he had discussed the conditions with Stormwater staff but has an unclear understanding of the issue.

Cooper underlined the desire to align timing and accuracy with the town. To complete the project, they will have to coordinate with town staff. The proposed wording of these two recommended conditions could hinder that goal.

Hornik suggested alternate wording. Cooper, Bergmark and Rhinehalt agreed.

King stated that he did not want open-ended conditions. Hornik said no condition is better than a hazy one. Hornik and Herrera agreed eliminating a condition is better than writing one with flaws.

Kehoe declared that recommended conditions 4 and 5 were no longer necessary.

The board had no further questions regarding the request. Kehoe asked if any others present at the hearing wished to speak. No additional persons spoke to the matter.

Motion: Sykes moved to close the quasi-judicial evidentiary hearing. Herrera seconded.

Vote: 5-0

The board did not deliberate further on the application.

King pointed out staff's findings relative to UDO section 5 regarding special Subdivisions, as well as the project's compliance with the general standards and findings of fact found in UDO section 3.8.3.

Hornik read the required findings specified in section 3.8.3:

- 3.8.3.1- The use or development is located, designed, and proposed to be operated so as to maintain the public health, safety, and general welfare.
- 3.8.3.2- That the use or development complies with all required regulations and standards of this Ordinance, including all applicable provisions of Articles 4, 5, and 6 and all applicable regulations.
- 3.8.3.3- That the use or development is located, designed, and proposed to be operated so as to maintain or enhance the value of contiguous property, or that the use or development is a public necessity, and
- 3.8.3.4- That the use or development conforms with the general plans for the physical development of the town and is consistent with the town's Comprehensive Plan.

Hornik stated the board could adopt staff's findings, as stated in the submitted staff report, modify them, or make their own. The board agreed to accept staff's findings as their own.

Motion: Herrera motioned to approve the special use permit subject to two conditions as discussed during the hearing, as follows:

1. The 0.77-acre parcel of land located on the north side of Gold Hill Way and the 12.45 acre parcel of land located on the south side of US Interstate 85, both labeled in the submitted Collins Ridge Phase 2 Special Use Permit plans as "to be dedicated to the Town of Hillsborough," shall be formally offered for dedication to the Town of Hillsborough within 90 days of the approval of the approval of this Special Use Permit (SUP).
2. The project developer shall cooperate with the town in negotiating with the property owner regarding the off-site greenway easement crossing for the Department of Transportation (DOT) property identified as Orange County Parcel Identification Number 9874-22-0495 and described in Deed Book 6316, page 175, in the Orange County Registry.

Sykes seconded.

Vote: 5-0

King informed the applicant that he will provide a letter informing them of the action taken by the board. Also, a final decision document will be drafted for review and approval by the board and applicant. The 30-day appeal period will begin once the approved written decision, signed by the Chair, is delivered to the applicant.

Hornik confirmed that email communication between the board members and staff regarding review of the final written decision is acceptable to approve the decision. He suggested the board only reply to staff when providing any proposed changes, comments, or approval relative to the draft decision.

**6. Committee and staff reports**

There were no staff reports.

**7. Adjournment**

Motion: Sykes moved to adjourn the meeting. Herrera seconded.

Vote: 5-0

The meeting was adjourned at 7:30 p.m.

Respectfully submitted,



Tom King, AICP, CZO  
Senior Planner  
Secretary to the Board of Adjustment

Approved: April 10, 2024