

TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Barbara McDaniel, MMC, Assistant Town Clerk/954-797-1023

PREPARED BY: Barbara McDaniel, MMC, Assistant Town Clerk

SUBJECT: January 30, 2008 minutes

AFFECTED DISTRICT: n/a

ITEM REQUEST: **Schedule for Council Meeting**

TITLE OF AGENDA ITEM: January 30, 2008 (Workshop Meeting)

REPORT IN BRIEF: Council minutes from the January 30, 2008 Council meeting.

PREVIOUS ACTIONS: n/a

CONCURRENCES: n/a

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

RECOMMENDATION(S): Motion to approve

Attachment(s): January 30, 2008 minutes

**TOWN OF DAVIE
WORKSHOP MEETING
JANUARY 30, 2008**

The meeting was called to order at 6:00 p.m. and was followed by the Pledge of Allegiance.

Present at the meeting were Mayor Truex, Vice-Mayor Caletka, and Councilmembers Crowley, Luis and Starkey. Also present were Town Administrator Shimun, Town Attorney Rayson and Assistant Town Clerk McDaniel recording the meeting.

Mr. Rayson reminded Council that their intent was to create an affordable housing trust fund, enact inclusionary zoning, develop exit strategies for mobile home parks and employ density bonuses. He indicated that he had provided Council with a memorandum describing the legal aspects of the Mobile Home Task Force's proposals. Mr. Rayson informed Council that in instances where the recommendations entailed fiscal impact, this would be a policy issue for Town Council to decide. He advised of other steps the Town could take to protect mobile home dwellers: encourage asset building among mobile home dwellers, especially renters, promote the creation of homeowner associations; promote partnerships with community land trusts.

Mr. Rayson was fearful of requiring park owners to pay thousands of dollars to a mobile homeowner about to be displaced. He explained that some years ago, the Legislature required park owners to purchase the mobile homes of owners they were displacing and this had been stricken as unconstitutional. Mr. Rayson wanted to build consensus regarding the ordinance and any steps taken should be reviewed after one year to consider what did or did not work and to discuss possible changes. He suggested that Council direct the Town's lobbyist to seek beneficial changes to State Statute 723.

Mr. Rayson believed the current law was in flux and there would be legislative corrections to Statute 723. He also felt the Town must work to balance the competing interests of the property owners and the mobile home dwellers.

Mr. Rayson advised that a member of the Mobile Home Task Force had created an exit plan that he felt contained a "lot of wisdom." This plan required notice, some assistance on relocation, and a number of other strategies he believed the Town could adopt into an ordinance and be on solid legal ground.

Mr. Rayson stated that the inclusionary zoning was a very important part of the ordinance. While this was a great concession on the part of the builder, he believed this was enforceable and the Town could offer density bonuses to the builder in return, or the builder could opt out by paying into the affordable housing trust fund. This strategy had been employed elsewhere and was less controversial than the linkage fee.

Mayor Truex asked if the Town had to offer something to a builder in return if the builder was required to include affordable housing units in any development, or if the Town could require a certain percentage of affordable housing units without compensation. Mr. Rayson felt they must allow the developer some way to make up for the reduction of profit they would suffer by building the affordable housing units.

Housing & Community Development Director Shirley Taylor-Prakelt explained that research indicated it would be legally enforceable to require a set-aside for affordable housing units without compensation. She believed it was disingenuous to state that developers lost money on affordable housing units. The current incentive plan waived all fees for affordable housing units and the Town paid water and sewer impact fees. Ms. Taylor-Prakelt said there was a "balancing act" to ensure that the developer did not lose money. She believed it was legally enforceable and constitutionally valid to require mandatory set-asides for affordable housing

units. Ms. Taylor-Prakelt felt it would make sense to add to this to make it easier and less painful for the developer to encourage construction of affordable units in the Town, rather than paying into the trust fund account.

Ms. Taylor-Prakelt explained that the Mobile Home Park Task Force had recommended the 20% set-aside in deference to the 20% affordable housing goal for all new housing Council had set when they considered the Evaluation and Appraisal Report component of the Comprehensive Plan. Mr. Rayson felt it was good to offer incentives to developers for constructing affordable housing and believed the success of the program depended upon the willingness of all parties to be stakeholders.

Housing Consultant James Carras advised that they had conducted a nationwide evaluation of inclusionary zoning ordinances and had found one case where the courts overturned an inclusionary zoning ordinance, in the city of San Diego. The city had not offered any type of compensatory benefits to the developer, and a State court had determined that this constituted an illegal taking. Inclusionary zoning ordinances had been challenged twice in Tallahassee, and Florida courts had upheld them, primarily because Tallahassee had provided incentives such as those mentioned by Mr. Rayson and Ms. Taylor-Prakelt. Mr. Carras noted that the 20% seemed to be an informal national standard. He explained that the City of Coral Springs was the only one in Broward County with an inclusionary zoning ordinance. Broward County had a voluntary inclusionary zoning ordinance, which Mr. Carras pointed out did not work in the County or anywhere in the country, so he would advise against this.

Ms. Taylor-Prakelt informed Council that the following set-asides applied: 10% in Coral Springs; 25% in Palm Beach; 30% in Key West and 10% to 25% in Boynton Beach. She pointed out that Davie was ahead of other cities in the County regarding affordable housing incentive plans. Ms. Taylor-Prakelt felt strongly that what the Town and County already had in place more than met the benefit test for developers, but they wanted to go further. Discussions with developers had resulted in good suggestions to expand the incentive plan further to help it effectuate the inclusionary zoning so that it did not cause the developer to lose money.

Vice-Mayor Caletka asked what the provisions were if the mobile home park were rezoned for commercial instead of residential use. Acting Development Services Director Marcie Nolan explained that the Regional Activity Center had a 20% set-aside for residential components, consistent with Council's direction from the Evaluation and Appraisal Report workshop. Commercial development did not require an affordable housing component. Ms. Nolan explained that the trigger was the nature of the new development, not the old development.

Ms. Taylor-Prakelt informed Council she had received an email from Jamie Ross, president of the Florida Housing Coalition, which specifically addressed this issue. Ms. Ross had stated that if the mobile home park was to be converted to a nonresidential use, or to any type of housing that was unaffordable to those existing residents in the mobile home park who would be permanently, involuntarily displaced, the local government must demonstrate that after such conversion there would still be an adequate supply of affordable housing. Local governments must bear in mind that they were required to provide for housing for the entire current existing population within its municipal boundaries. This meant the local government could not change the land use to nonresidential, or rezone in any manner if to do so would cause its residents to be homeless.

Ms. Taylor-Prakelt stated this echoed the Mobile Home Task Force report. Anything that caused permanent, involuntary displacement of Davie residents with no comparable housing to which they could move must result in one of two things: the zoning must be denied, or in order to obtain the rezoning the park owner must be required to make a financial payment to prevent the residents from becoming homeless. Ms. Taylor-Prakelt reminded Council that they had declared the affordable housing crisis prior to the time mobile parks began closing. The addition of the mobile home park closures exacerbated this problem. She pointed out there were two

problems: the lack of affordable housing for Davie's work force and the redevelopment of mobile home parks.

Mr. Rayson believed it was not the Town's job to enforce the Growth Management Act. If the Department of Community Affairs (DCA) wanted to stop a project, they could do this if it was within their purview. Mr. Rayson acknowledged that Statute 723 had problems, which he did not believe the Town could fix with an ordinance.

Councilmember Starkey wondered why DCA had not enforced the rules and asked Mr. Rayson if the Town should enjoin a resident who challenged this to avoid the Town being forced to bear the cost. Mr. Rayson responded that he would not enjoin any citizen on a private cause of action, which is what courts were for. He said to his knowledge, there was no prohibition to prevent a landowner from seeking a rezoning.

Vice-Mayor Caletka asked how available affordable housing would be calculated. Ms. Nolan explained that the Town was required to provide adequate sites for affordable housing including mobile homes. Planners and the DCA interpreted that to be based upon density. Land-use categories were described in units per acre, and what made a property affordable was density. From a land-use plan perspective, the Town had demonstrated it had adequate sites for affordable housing. When considering a rezoning, the affordable housing model Ms. Nolan used judged affordable housing within a 20-minute drive radius. The Mobile Home Task Force had indicated to Ms. Nolan that they had heard there was also a tri-county area requirement and a 15-mile radius requirement.

Ms. Taylor-Prakelt reminded Council that State Statute 723.083 took precedence over any action Council could take because it stated, "No unit of local governments will permit the rezoning or the closure of any mobile home park unless they can prove to the town's satisfaction that comparable replacement housing affording to the people being displaced exists." The Town had declared that comparable replacement affordable housing did not exist, therefore the Town Council may not permit the rezoning or closing of a mobile home park for any reason.

Ms. Taylor-Prakelt said that after meeting with Mr. Rayson and the Mobile Home Task Force, they agreed to bring the following things to Council this evening: the need for an affordable housing trust fund, the need for inclusionary zoning at 20%, and the need for bonus densities. There had been some disagreement regarding what should be contained in an exit plan and who should pay for that, so Ms. Taylor-Prakelt suggested they postpone discussion of the exit plan and continue with the other items right away.

Ms. Taylor Prakelt stated, "If an owner of a property that is currently zoned for mobile homes wishes to change its zoning for any reason that causes people to become homeless, it is the duty of this city to protect its residents under what I would deem the health, safety and welfare agenda. By causing homelessness, we are increasing the cost to Davie taxpayers to pick up the tab because a private developer wants to reap money off the redevelopment of their site. I do not think it's inappropriate nor do I think it's onerous to ask someone who wants to make money by changing the zoning or land use to pay to keep people from becoming homeless. That, in my opinion, is not onerous and it is not something that I believe is an undue economic burden on the property owner." She noted that it would take at least three years for affordable housing units required as part of the new development code to actually be built, and asked where the families would go for that three-year period without the financial assistance granted in an exit plan.

Mayor Truex opened the public hearing portion of the meeting.

Mr. Carras said he had co-authored the linkage fee study for the County. County staff was now reviewing comments on the study and would present their findings and recommendations to the County Commission. Mr. Carras believed that if the County passed the linkage fee, they would take the money and put it into their own trust fund and not disperse it among the municipalities. He noted the linkage fees were a very important component, especially when properties were rezoned commercial instead of residential.

Mr. Carras clarified that the affordable housing trust fund should be used for the production of affordable housing only, not for funding of exit plans for mobile park residents.

Regarding the radius for the affordable housing requirement, Mr. Carras said affordable housing was still an issue and the recent downturn of the housing market had still not resulted in housing prices within workforce housing range. The need, the demand, and the availability of affordable housing were major issues despite recent market changes.

Henry Widden said he was infuriated with Mr. Rayson's presentation and his indication that the Town should fear a lawsuit from a developer who was denied a rezoning. He stated that the State had recognized that mobile homes were viable affordable housing and he did not believe they should be distinguished from other affordable housing.

Mitzi Clark did not believe rezoning was a right and the loss of mobile homes would result in homelessness. She pointed out that the relocation trust fund was seriously outdated and the inability to pay just the costs to move a mobile home could result in an owner's becoming homeless.

Gerry Pass, president of Park City West Homeowners Association, invited Council to tour their beautiful mobile park. Mr. Pass agreed that Statute 723 was antiquated and would take years to fix. He recommended creating a 723 task force.

Janet Riley, Mobile Home Task Force member, agreed they should move forward on the three items recommended by Ms. Taylor Prakelt and the exit plan should be tabled to allow time for interested parties to come to a consensus. Ms. Reilly believed requiring a developer to pay into a fund to help relocate mobile park residents would be legally supportable.

Ellis Traub said he and some colleagues were developing a solution to benefit the mobile home owners at risk. He noted the difficulty of administering a solution and the need to provide staffing. Mr. Traub felt the Town should approach the colleges and universities regarding an intern program to assist Ms. Taylor Prakelt.

One individual suggested that another method be found to move the mobile homes and to retrofit antiquated plumbing and electrical service.

Mitchell Chester stated that attorneys considered the fact that municipalities had the duty to see to the health, safety and welfare of their residents. While Statute 723 discussed the unique nature of the mobile home park owner and dweller relationship, it did not attempt to address housing crisis and shortages, or affordable/workforce housing. Mr. Chester and Frank Serra provided Council with a proposed ordinance they had created.

Mr. Chester had also provided the outline for a relocation plan he believed would be constitutional and asked Council to review the documents. He remarked that there were outside funding sources available for the relocation plan.

Mr. Serra, Chair of the Mobile Home Task Force, urged Council to implement as many of the Task Force's recommendations as possible.

Brandon Biederman, government affairs director for the Builders Association of South Florida and member of the Mobile Home Task Force, pointed out that of the 34 recommendations discussed by the Task Force, 95% were agreed upon unanimously, but the issue of inclusionary zoning generated much debate and had barely passed. He acknowledged that land, labor and material prices were increasing, while State and Federal funds for affordable housing were decreasing. Mr. Biederman felt it was "criminal" that Florida's previous governor, Jeb Bush, had taken \$600 million of Sadowski funds and put them into general revenue.

Mr. Biederman said there was clearly an affordable housing problem, and noted that 50% of the County's population made less than \$25,000 per year, making it very difficult for them to purchase a home. He believed this was a community-wide problem requiring community-wide solutions. Mr. Biederman did not think inclusionary zoning was a comprehensive way to address the affordable housing crisis. He felt bankers, realtors, and employers must each agree to give something up to help alleviate the problem. Mr. Biederman believed inclusionary zoning was

akin to price-fixing, and felt that if builders were forced to sell homes at below market rates, their losses would be passed on to the market rate units.

Mr. Biederman said one of the recommendations of the Task Force had been to fully implement the Resident Owned Communities (ROC) USA Program. This program assisted resident owned communities across the country, partnering with technical assistance providers and community development financial institutions to allow residents to purchase mobile home parks themselves.

Paul Figg said the linkage fee was actually an impact fee and the problem with imposing an impact fee was that the developer upon whom it was levied must derive a special benefit. Mr. Figg did not see practical way for the Town to ensure that the affordable housing solution generated by a linkage fee provided a special benefit to the developers. This was therefore an unlawful tax.

Bill McGee, representing Riverstone Communities, explained that they owned 45 mobile home parks in the United States and 35 within Florida. He said he was disturbed by the Task Force recommendations. Mr. McGee noted there were State laws granting residents rights and he fully supported these, but impacting a property owner concerned him. Councilmember Starkey asked Mr. McGee to be specific regarding his concerns. Mr. McGee said he did not wish to address any of the three issues they had agreed to pursue this evening, but believed he would at some future time.

Mr. Shimun advised Council to determine what areas Mr. Rayson should develop for the ordinance.

Mr. Rayson distributed a draft ordinance including an affordable housing trust fund, a provision for inclusionary zoning, a provision for bonus densities and an exit plan without economic impact.

Councilmember Luis asked Ms. Nolan if the RAC provided bonus densities to developers or if they should be considered in the RAC to encourage affordable housing. Ms. Nolan replied that the Town, and every local government in the County, had affordable housing bonus densities. She explained that the County had changed their administrative rules document regarding bonus density, and the County's Land Use Plan was incorporated into the Town's Comprehensive Plan. Ms. Nolan added that the Town followed the County's Administrative Rules document.

Councilmember Luis asked if due diligence had been done to determine what it would cost the Town to purchase and operate the mobile home parks. Ms. Taylor-Prakelt said the Town did not want to become a landlord, but should be a facilitator of a program such as ROC USA, a community land trust or a cooperative. They had not researched the possibility of buying the parks.

Mr. Rayson informed Councilmember Luis that the Town could not go beyond State Statute, but under the health, safety and welfare standard, the Town could implement the four Task Force suggestions discussed this evening.

Mayor Truex opposed the bonus density unless there was a very good reason. He wanted to pursue the concept of mobile park dwellers owning their communities and Town-wide mobile home homeowner's association.

Mayor Truex said it was not a matter of the Town's not having the money; it was a matter of priority. He said he would not oppose using a bond issue to afford some of the recommendations.

Mayor Truex was concerned that Mr. Rayson had not presented his draft ordinance to Council until tonight's meeting. He said he did not like "working at the last minute," and advised that if Mr. Rayson did not have the ability to provide documentation sooner, the Town would need to hire another attorney.

Vice-Mayor Caletka opposed the automatic bonus densities as well and felt this should be a Council policy decision. He did not support the linkage fees because he believed this would cause development to move to another town. Vice-Mayor Caletka favored creating a trust fund

but not using general fund money to create it, nor did he support using bond money unless there was an “immediate need for the well-being of the community.”

Councilmember Crowley said he would review both drafts and hoped they could pass an ordinance at Council’s second meeting in February.

Councilmember Starkey felt they should look at areas where they could encourage densities. She noted they had already identified areas in Town where they wanted increased densities to be located. Councilmember Starkey felt they must address an exit plan as part of the ordinance. She also supported the creation of an affordable housing trust fund.

There being no further business to discuss and no objections, the meeting was adjourned at 8:11 p.m.

Approved _____

Mayor/Councilmember

Town Clerk