



**CITY OF ST. PETERSBURG  
COMMUNITY PLANNING & PRESERVATION COMMISSION  
PUBLIC HEARING**

**The Sunshine Center, Auditorium  
330 Fifth St. N.  
St. Petersburg, FL 33701**

**AUGUST 13, 2019  
TUESDAY  
2:00 PM**

**MINUTES**

**Present:**

Jeff Rogo, Chair  
Christopher “Chris” A. Burke, Vice Chair  
Keisha A. Bell  
Will Michaels  
Jeffery “Jeff” M. Wolf  
Sharon Winters, Alternate  
Thomas “Tom” Whiteman, Alternate

**Commissioners Absent:**

Gwendolyn “Gwen” Reese  
Lisa Wannemacher, Alternate

**Staff Present:**

Derek Kilborn, Manager, Urban Planning & Historic Preservation  
Laura Duvokot, Historic Preservationist II, Urban Planning & Historic Preservation  
Kelly Perkins, Historic Preservationist II, Urban Planning & Historic Preservation  
Britton Wilson, Planner II, Urban Planning & Historic Preservation  
Michael Dema, Assistant City Attorney  
Heather Judd, Assistant City Attorney  
Katherine Connell, Administrative Assistant, Planning & Development Services

The public hearing was called to order at 2:02 p.m., a quorum was present.

**I. OPENING REMARKS OF CHAIR**

**II. ROLL CALL**

**III. PLEDGE OF ALLEGIANCE AND SWEARING IN OF WITNESSES**

**IV. MINUTES**

The minutes from the July 9, 2019 meetings were approved by a consensus vote.

**V. PUBLIC COMMENT – None****VI. QUASI-JUDICIAL PUBLIC HEARINGS****A. City File 19-90200031 Contact Person: Laura Duvekot 892-5451**

**Request:** Review of a Certificate of Appropriateness (COA) for the demolition of a Contributing resource to the Driftwood Local Historic District, a landmark district listed in the St. Petersburg Register of Historic Places

Commissioner Michaels stepped away due to conflict.

**Staff Presentation**

Laura Duvekot gave a PowerPoint presentation based on the Staff Report.

**Applicant Presentation**

Applicant was represented by counsel, Matthew Weidner, Esq. Counsel and Timothy Clemmons handed out a presentation to the Commission.

**Registered Opponent**

None.

**Public Hearing**

Ms. Tiffany Weidner, in support of the COA demolition;  
Mr. John Cappa, in support of the COA demolition;  
Ms. Elizabeth Schuh, in support of the COA demolition.

**Cross Examination**

By Administration:

Waived.

By Applicant:

Matthew Weidner, Esq., I would like to ask a question or two of Ms. Duvekot. In front of the board is the chart which represents the values that you assert might provide some basis for demolition, in fact you did not pull any MLS listing or anything to know about those four pieces of property did you?

Laura Duvekot: I cannot see that chart but if it is the information from the Staff Report, that was from the Pinellas County Property Appraiser which was the best information that I had access to.

M. Weidner: And you are not licensed as a contractor or as an architect or a property appraiser or a realtor.

Laura Duvekot: No sir, I am an Historic Preservationist.

M. Weidner: Did you make any adjustment of the values as the board is looking at those, for instance the one

on the bottom the Rainey property which you indicate is outside the boundaries, you didn't make any adjustment on cost per square foot basis because that lot, as you see members, about double the size of the Schuh property, correct?

Laura Duvekot: I was using the information I had access to which is from the Pinellas County Property Appraiser's Office.

M. Weidner: In court I might ask to strike and be more responsive, but I won't here. In your Report you assert that you agree that the demolition should occur, that some demolition should occur, correct?

Laura Duvekot: Removal of some of the aspects of the house should occur, that is correct.

M. Weidner: Ok, so at least we have agreement there, but then there is qualification that a certain non-historic should be retained but part of the truth is you haven't actually seen the property so you do not have any factual basis to make an assessment as to what should or should not be retained or what could or could not be retained, correct?

Laura Duvekot: Most of the comparables I was going with the information that you provided. This is the best that we had available to evaluate the Application for Demolition. This is not an Application for a COA (Certificate of Appropriateness), for rehabilitation at which point more information on the condition of the various elements of the house would be required.

M. Weidner: No further questions.

### **Rebuttal/Closing Remarks**

By Administration:

Derek Kilborn: Thank you, I have a few quick comments in response to some of the different information that you've heard. First, I do not know if it was intended or not, but I certainly received it as criticism of Staff as not being subject experts or "qualified experts" was the term. I want to make sure the Commission understands Laura Duvekot and Kelly Perkins, are trained and degreed in the subject of historic preservation. That makes them qualified experts for the purpose of interpreting City Code and in answering all other questions related to historic preservation.

Second, to the case that you have under review, an offer was extended to City Staff to inspect the property. That offer was rescinded. You have heard reference to speculation and that is correct. Some of what Staff has to go on is incomplete information because we were not allowed on to the property to inspect the site and verify whether the information you have been provided is correct or accurate. There is some speculation involved based on that lack of access to the site. There was no appraisal included in the information, the best information we had to work from was publicly available information through the Pinellas County Property Appraisers Office. Access to an appraisal or some other mechanism for measuring value would have been helpful to us in providing you a more detailed analysis, that was not given to us and the tools that are out there we do not have access to.

Evidence regarding prior contracts and deals at the time the Staff reviewed the Application and prepared its Report, we were not aware of or presented any information documenting that contracts had been signed or put in place, information that you heard today, is the first time that we heard of it. The document from All Trades is something we did not see before today. Please keep that in mind. Staff analysis on page seven (7) of the Report

refers to a renovation cost between \$580,000.00 to \$690,000.00. In the Applicants presentation you heard a reference to that being a low number. That number is directly extracted from the Applicant's cover letter in their application material. I know that they have provided you some other information, the All Trades document for example, that references a higher number, that is not Staff acting on its own. That is Staff using numbers provided by the Applicant for your consideration. I just want to be sure that it is understood that any reference to speculation here in this particular case is because information was not provided to us in a way that we could include it in the Staff Report. We only had the numbers to use that were provided to us with the application. Obviously, there will be some discussion and questions that we can try to answer as you deliberate this particular application. That concludes our closing remarks for now, thank you.

Commissioner Rogo: Mr. Kilborn, during Ms. Duvekot's presentation she did show us some photos and I believe she referenced the photos were taken during an inspection, can you explain what that was? Was that City Staff who made that inspection or a third party?

Laura Duvekot: Those were home inspections that were provided as part of the application.

By Applicant:

M. Weidner: As an Applicant and members of this community we are bound to follow a process that this Commission has given, that the City has given. That process is in front of you, your rules. It says that the evidence that is before you at this hearing. It is not the Staff report, it is confident substantial evidence. The only confident substantial evidence that you have comes to you from the Applicant. Confident substantial evidence is, if you read through what the conditions are, is that which you can rely on. These are professionals that have provided you that confident substantial evidence. There is no question that demolition has to occur, concession from Staff, they say part of it is but not all of it. Frankly, you just can't do it. We see a demolition of the entire structure without reservation, with that I ask you to look at what Staff is asking for in its suggestions. The panel right there tossed up what your job is, respectfully your job is to look at a structure once you decide it is not historic is demolition, your work is done. That is under 16.30.070.2.3, your charge is historic, once you determine the historic function of this property is done, then it is over. I have seen some prior hearings where you have a condition on there about another approval, the next house that go in there, I would suggest that even if the code says you can do that, you should not do that. The Section of the Code that provides for that, provides to make sure another property gets built in its place. If you grant the application without qualification, what is the worst that is going to happen? The neighbors will look at a vacant lot but understand that in your Code is why they have that potential for a new plan. I would suggest to you that if you are dealing with confident substantial evidence, and your thinking about granting a demolition, then your work is final. If you grant a demolition and then say; but wait a minute, we want to wait and see what plans might be approved, that takes you outside the ambit of your jurisdiction sort of, but at least your charge. The decision making occurs here, right now today, not today but maybe something else will be approved. Again, I really want you to think about that confident substantial evidence because this is the rule that is before you. The only other thing I would suggest to you is that there was a suggestion about the archeology, have an archeologist on site. Again, 16.30.070.2.6 provides an explicit condition and that is, owners of properties which are subject to COA shall make all artifacts and archeological sites available, we are willing to do that. I would suggest that the condition that Staff asked to place in there about having an archeologist on site, it goes beyond what would be appropriate in this case. I include in the material some of that other archeology material going back to the 70's. You have had since the 70's to decide if there is something significant here that bears preservation, it is

just not there. Again, if you grant demolition and we will take whatever we can get, please understand the financial, the emotional very serious toll it takes on this family we have here. We are begging with you to give us a demolition, please let house go on its way in a way that is respectful the community is respectful of the family that is in front of you. Let's let something get built there in front of it. Again, if you put a condition on there the demolition is conditioned upon approval, I think you are then second guessing the City Staff on the second side of things, approving, that is LDR, that's building, that's their Codes, that is outside your purview I would suggest. I respectfully suggest to you, that in terms of where we are, the demolition without restrictions, what should be implied. One other final point that I want to touch on, which is included, I think it is on panel 4, sorry panel 3, that is the Order to Show Cause in the Driftwood historic designation case. You should be aware of that. To know that the judge has entered an Order to Show Cause which should bear on your consideration but frankly what is really important to you is looking at this property, looking at the estimate of a legitimate contractor, who had to go out and make that estimate, having seen the property after we got the Staff Report to understand on a first look basis it just doesn't work. I will stay around for any questions, but again please consider the impact on the family, consider the impact on community and grant the application without restriction, thank you.

### **Executive Session**

Commissioner Winters: I have several questions, first for the attorney (Weidner), can you explain the difference in the discrepancy between the estimated rehab cost in your packet and then when All Trades came in?

M. Weidner: All Trades came out, actually looked at the property, physically walked it, came up with what I would say is a rebuttal to what Staff came up with. Mr. Clemmons, he comes in to the numbers based on his information, not through looking at it. The All Trades report which is what I am asking you to accept as evidence, is a more definite number. I will ask him to explain.

Timothy Clemmons: The additional number was generated by myself after inspection of the property. I wrote about a three (3) page report outlining the work and came up with a rough order of magnitude that I felt would be reasonable to the cost of the work. I suggested to Mr. Weidner that they get a qualified general contractor. I have worked, I am currently working with All Trades right now in the Union Trust Building on Central and M.L. King and that is what I know in the area and I will always defer to a general contractor in estimating construction costs. Especially on specialized work such as this.

Commissioner Winters: This is a process question, getting materials at the very last moment, creates frustrations and difficulty processing the information quickly enough to act. Is there not a deadline for submitting application material? We seem to see this problem every once in a while.

Attorney Dema: There is a cutoff, for what you will get published online and get distributed to you by Kate roughly a week out. There is nothing preventing anybody from the public, Applicant, Registered Opponent or even Staff from supplementing the record in the days and the day of leading into the public hearing. We are wholly cognizant of the frustrations that might cause and the limitations the short amount of time may have on your ability to evaluate that.

Commissioner Winters: When is that deadline, for publication online, the weekend?

Attorney Dema: We try to get it done a week out.

M. Weidner: I would like to respond if I may. Quiet frankly it was one of the things I was frustrated with about this process and you hear from family, I think you should all cognizant of that, read what your rules are.

Commissioner Winters: Have there been code violations on this property over the years?

Attorney Judd: Yes.

Commissioner Winters: Can Staff talk about those because I get concerned if we are face with a demolition, that this was demolition by neglect, and this did not happen overnight.

Attorney Judd: It is my understanding that the property has been through the Code Enforcement Board process and completely through that process through the, it has been lien by the Special Magistrate. For Code Enforcement, you go, you have time to comply, I believe a lot of the conditions were related to the garage area portion. That is the most visible from the right of way I am not clear on how far the extent of codes inspection was allowed to progress but from the right of way and some of the codes case files that I am personally familiar with I know some of them go back before I was with the City and with Code Enforcement. I believe there are under twenty thousand dollars' (\$20,000.00) worth of assessed liens on the property right now.

Commissioner Winters: How far back do the code violations go?

Derek Kilborn: If I may, I know the Applicant provided in their materials to you copies of two references to liens that date back to 2012. Those would have been actions from the Magistrate dating to 2012.

Commissioner Winters: Then the district was put on the register, was anything about the condition of this building noted in the nomination or any code concerns?

Attorney Judd: At the hearing for the district designation?

Commissioner Winters: Yes, when the assessment of all the properties in the district in the determination of contributing.

Attorney Judd: I do not believe an assessment of open codes case was made during any of those hearings. This code case as Mr. Kilborn just indicated, this lien order was from 2012 but this case was initiated in 2011, it wasn't something that had been ongoing at the time of the certification for more than a year.

M. Weidner: May I address that? Not demolition by neglect, the problem that this family has had is that contracting work that was done was not appropriate. He has been an attorney he is not a contractor. He could not properly supervise what happens. The roof gets on the licensed general contractor permit are opened and then there is such a problem trying to meet the new addition with the old house, they literally could not put it back together again. It was not for want of care, this family desperately tried to save this house. They fought internally bitterly over this. It was simply contracting, it didn't happen.

Commissioner Winters: I totally understand, again, it's not so much, I have a lot of concern around demolition by neglect. Trying to get out in front of this, working with others, to try protecting the asset, thank you.

Commissioner Wolf: The one observation I have had is that the Applicant has indicated that this number, the

lower number was something that staff pulled out of the air when Mr. Kilborn has already observed that the numbers, both the low numbers that were referenced in Staff, I shouldn't say both numbers, the number referenced in the Staff Report actually came from data submitted by the Applicant. I think it is somewhat in error to try and indicate that that was an error on the part of Staff. Second, I think, possibly a lot of this issues could have been resolved by allowing Staff to get in and inspect the condition of the property, so they could determine for themselves the extent of damage, that may have simplified this process. I will observe having just done a complete whole house renovation at 2620 that I would not argue with the numbers that were presented by All Trades. Those are probably entirely reasonable and certainly you could spend that much money on a renovation. You could also spend twice that much on a new structure. I wouldn't say the numbers presented are out of line at all, based on my experience in the area. I think the biggest question is, we are presented with a report today that does not give us a lot of time to review to attest to the conditions in the house but the All Trades report, other than their commendations and letters of award consists of about three pages of findings and it is difficult for us at this point to determine the accuracy of those findings. I think one of my big concerns with that area, given the amount of renovation that might be necessary or restoration, is that those properties are below base flood. In this case, perhaps substantially, I would have liked to see a flood elevation certificate. The property we did barely cleared base flood in its original, the City is now asking for new properties to be two feet higher than that. That is certainly that would have an impact on any new structure that is built there. I do have some question about trying to totally renovate a structure that is below base flood and will be below base flood unless something is done to raise the whole structure. At that point I am not sure what is left that is historic. I can sympathize with the plight of the owner in terms of trying to make a decision on how to renovate the structure.

Commissioner Rogo: If I may follow up on that, it is my understanding that if someone were to come in and renovate or rehabilitate the property, the historic structure, they would not have to raise it up.

Commissioner Wolf: That is correct.

Commissioner Rogo: That is correct, ok.

It could still flood

Commissioner Rogo: It could still flood, sure, but they would not be required to raise it.

Commissioner Wolf: By virtue of it being historic and again I would like to get this disseminated, at the Staff level, as I mentioned in our hearing the other day, I pulled the actual documentation from FEMA at the federal level and with historic properties they are not required to comply with the FEMA 50% Rule. Again, if we are looking at the amount of work and what might be left of the structure when we are done to do all that and then have a property that is still at risk. That is where I would begin to question my decision on where we would fall on demolition versus restoration.

Commissioner Whiteman: Where is the neighborhood association on all of this? I have not seen anything from them, since they are silent does that mean they are in favor of the COA?

Derek Kilborn: We do not have anything from the association directly, but we have the public comments that we have received on this case that have been included in the report provided to you.

Commissioner Whiteman: The three letters, in favor of demolition?

Derek Kilborn: We have the public comments just received to share with you.

Commissioner Whiteman: They are all just neighbors, ok.

Commissioner Bell: Question for City Staff, I am not sure when you actually received this report (Applicant Report) or if it was at the same time, we have received it or if you received it a little earlier? Have you had a chance, do you think you had enough time to review it and if so, do you stand by your recommendation?

Laura Duvekot: Today's report, I have not had a chance to look through it. I received it when you did.

Derek Kilborn: If I may add to that answer, we did take a quick look at the documentation, as Laura indicated we received it the same time you did. We were going through the material and in the All Trades document Commissioner Wolf touched on this, it is brief, not very detailed breakdown of how they arrived at their estimates. They do refer to a number of \$994,000 to \$1.1 million, it appears that estimate is looking at the entirety of the structure that is there, 4,419 square feet, including the garage, porch and utility. That does not narrow it down to just the enclosed living area, which we believe is 2,991 square feet. If you were to get into those numbers and focus on just the enclosed living area, which is the more traditional way of looking at these. That would be, calculated based on their cost per square foot conversion, \$747,750.00.

Commissioner Bell: A follow up, but you can see work done on those other external areas as well. You conceived of that before. That work could be done.

Derek Kilborn: We try to be very surgical in our review and discussion with the Commission with what could or could not happen. There are some non-historic additions that could be removed to make way for new construction that could append to the historic structure that would be retained.

Commissioner Wolf: Just relating to process, I would like Staff to clarify, we heard the Applicant say that we should approve this without any conditions and I believe our conditions are any new approval of a site plan in that area would require compatibility with the historic character of the neighborhood. I do not think it is unreasonable at all for us to have conditions, if we were to go in the direction of demolition, I do not think it is unreasonable at all for us to have conditions on that because it is going to come before us, regardless for a COA review.

Attorney Dema: It is almost redundant and new construction is going to need a COA in an historic district. We can add that condition now or not, that is something that is in the code now and it will be a requirement when a new builder comes in, so the demo would be granted.

Commissioner Burke: Just to follow up on that, adding the condition, if we were to approve this and not add the condition then that would allow for the demolition of this project and for that lot to sit indefinitely. If we did add that condition the home would not be taken down until a new COA was issued for the new construction, is that correct?

Attorney Judd: That is correct, without that condition, which is an optional decision that is provided by the code of the Commission. They would be able to as soon as you approved the demolition COA, take that in submit building plans for a permit for demolition and then they could take the house down.

Commissioner Burke: I have never been in the historic preservation business, but I have been in the reconstruction and repair business for 30 years and I do not argue with the numbers that All Trades has come up with on a square foot basis. That doesn't scare me. May I ask a question of the Title Agent? Mr. Cappa, you

received three contracts to your office with an inspection condition, is that correct?

John Cappa: Yes.

Commissioner Burke: Those three contracts are withdrawn, did you get an official letter from them or do you have something from these people that were buying, that state they do not want to buy it because we are not comfortable restoring in the home? Did you receive official notice of that or is that what you think why they were cancelled?

John Cappa: We were told that it was cancelled, Tiffany would be able to answer this question better than I would. They were "as is" contracts and had an inspection period, I think Tiffany gave you the period of time. As soon as the people inspected it and found out they could not tear it down, they cancelled.

Commissioner Burke: I appreciate the testimony of a Title Agent, I think that is pretty compelling, which is why I was asking you. You did not hear directly from the buyer saying this is why we are cancelling?

John Cappa: Regardless to notice of cancellation. If I may, I was friends with one of the first offers that came in, Michael Deljoya, was his name and he told me he did an inspection of the property found out some of the estimates it would be a little over \$500,000 to repair this property and put it in the condition that the City wants. It would make no financial sense to do that.

Commissioner Bell: I was interested in hearing, Tiffany Weidner, the answer if you have the answer to what he was asking I would be interested to hear the answer.

Tiffany Weidner: How the process works is typically, the buyer's agent emails me with the reasoning as to why they are cancelling. All the cancellation was due to the extent of how much needed to be done they would be cancelling, they wanted the escrow back. The second offer was zero inspections because that person in particular already knew, viewed it before he put in an offer and knew the amount of work that needed to be done. He wanted to build an Earnest Hemingway house and was going through the process and that is how all of this started. Everybody who has viewed the property, has viewed it as wanting to buy the house, and restore it, once they see it they say there is absolutely no way this can be restored. I have seen their proof of funds, they have unlimited funds.

Commissioner Winters: This is a very difficult case. I have to say it is telling that Preserve the 'Burg is not here, the neighborhood association is not here, to speak to the issue. I found the letters from neighbors, longtime neighbors, very compelling. I also, to speak to the family, I know this is your family home, you made attempts to be really good stewards, things got away from you and I understand that. I am concerned that we lose some of these properties over time to deterioration, what I refer to as demo by neglect. Not intentional neglect necessarily but neglect nonetheless. I am a member of a church that has actually gone through some of that and I think there are a number of challenges to getting back on top of it. I empathize, I am going to support demolition with conditions laid out by Staff. I do think seeing a site plan is reasonable and my sense is there are potential buyers out there who would purchase the property, sadly demolished, but they need to work within the COA to do a new construction. It is a very sad tale, it is a very significant house, the family knows that better than the rest of us do. It is challenging, and I really thank Staff for putting a lot of energy into this, it is their job to preserve houses and buildings in this City and they do their very best and are incredibly professional. It is not often that we take action that is different from what Staff recommends.

Commissioner Rogo: Commissioner Winters, thank you for saying that, I was going to say virtually the same thing. We do indeed rely upon the evidence that is provided to us by our Staff. We have found them to be

experts, professionals, trustworthy and I have no reason to ever question that. We will certainly question some of the details and hearing different opinions and different facts we might make a decision that goes against them but more often than not we are very supportive of the information that they provide to us and very appreciative of the information that they provide to us to help us reach our decisions. I too am concerned about the idea of demolition by neglect, I am a little naïve about the process, I guess what I foresee happening is that if we do grant a COA the owners of the property will somehow find the means to demolish this home and I am sure that isn't cheap either. Then hopefully be able to sell the property. As has been made very clear, whatever is constructed on that property will come before us again before it is built for a Certificate of Appropriateness to make sure it meets the standards of that neighborhood, the Driftwood neighborhood. Having said all that, any further comments?

Commissioner Burke: I would like to question what you just said, about them being able to demolish it.

Attorney Dema: That is not what the conditions says right now. It would have...

Commissioner Rogo: We have no conditions yet.

Attorney Dema: Right, the proposed conditions. The Staff proposed condition one.

Commissioner Burke: The buyer would have to demolish the property.

Attorney Judd: The condition, just to be clear, is not just that they come back for a COA for new construction and that be approved. That is something they have to do anyway to build. The condition is independent from that requirement that is already in the code. This is an additional condition that says, that beyond the COA for new construction being approved that they would actually have to be approved by the building department to receive the permits for the new construction and the plans be approved for the new construction before their demolition permit would be released. If you do not want them to wait all the way to that point then you would have to modify or not adopt the condition proposed by Staff.

Commissioner Rogo: My understanding of the conditions proposed by Staff are only if we chose not to simply deny that was provided to us as an option. If we choose to simply deny, that is the recommendation that Staff has made to us.

Attorney Dema: Yes, if you deny than it is moot.

Commissioner Rogo: If we do choose to approve a Certificate of Appropriateness then Staff has recommended some conditions to us.

Derek Kilborn: If I may add to that point, what Ms. Judd was reading to you, was the condition that Staff has recommended in the report, which ties to the submission and approval of a construction set of drawings, what the City Code actually says, the City Code goes one step further which we did not do in our recommendation. The City Code section actually says, the Commission may condition any demolition approval upon the receipt of plans and building permits for any new structure and submission of evidence of financing in order to ensure that the site does not remain vacant after demolition. In the past, when these have come up, we have not included the requirement related to financing because we felt that pinning it to the construction documents was a more flexible way of approaching the issue or the question but still making sure that we did not have a situation where we ended up with a vacant lot years into the future without the new construction coming in behind it. There still is a possibility that in the process of marketing the site that a buyer would come along and

chose to preserve in whole or in part the structure that is there and either retain that in total, in part or even append a substantial new construction to the side or rear of the existing building. Whatever decision the Commission makes today, please remember that any future action on this site, whether the building is retained or not, the retention of the building could be accompanied by new construction the existing building does not have to be removed.

M. Weidner: I am begging for someone to ask me a question.

Commissioner Rogo: Mr. Weidner, unless someone does please be seated, thank you.

Commissioner Whiteman: My questions would be, what is better for the community, to have a house in this condition with all these citations against it and with mold, or a vacant lot?

Derek Kilborn: That is a good question, I will say that when we were attempting to schedule the inspection of the property, we had coordinated with the City's building official to accompany us on that inspection. The building official has certain authority to make decisions that City Staff in our division does not. We thought that would also be a credible source for our analysis in the Report. We were not provided that opportunity, so we did not get a chance to go in and take a look at it from that perspective. I do not know that I can answer that question for your today.

Commissioner Rogo: The building official might have found that the home is simply not habitable. There Ms. Shuh where I certainly understand what you were saying to us, because so often I find myself in the position of listening of owners of properties who are forced to come before us and tell us how their piece of property has degraded over the years, I do not feel comfortable watching you in that position. At the same time, I feel very strongly about demolition by neglect and that is something as a Commission we have to be aware of and be responsible for. Does someone have any further questions or comments, or a motion?

Commissioner Burke: If we approve the COA I would hate to see it done without conditions. Tom asked what is best for that community, I don't think the best for that community is to have a vacant lot there. We have seen some recent cases too, where these COAs have been approved for demolition and the home wasn't demolished, it just dragged out and 18 months later we are back at it. I appreciate the testimony of the Title Agent and I appreciate the report from the contractor, and I put a lot of weight in that. If we are going to approve this COA then we need to put at least the first and third conditions on it. If I can ask, City Staff, how much value is there to you to have a professional archeologist go in and inventory that home, what value does that provide for you?

Derek Kilborn: The City does have and has prioritized archeology as something we are supposed to review and give some level of importance to. The way that the archeological program works is there is a sensitivity level classification for certain properties in the City. Based on those sensitivity levels there is a requirement to obtain what is called a Certificate to Dig. This Commission has not seen a Certificate to Dig because most of what has been processed through our office is handled at the administrative level. Essentially what happens when we have identified locations, there is a high probability that there might be some artifacts discovered during the ground disturbing activity. The purpose of the Certificate to Dig is to have an organized method on how to deal with artifacts when they are identified during that work. This is a standard condition that we require for cases that come in on a Certificate to Dig and essentially the property owner has an option, they can have someone on site observe during the demolition or they can have an archeologist come out ahead of time and do some ground sampling and then submit a memo or report that we then put on file for future reference. We have not had a case yet that has resulted in elevating up to the Commission for a public hearing review.

Commissioner Burke: I do not think that is unreasonable, under the circumstances.

Commissioner Whiteman: What is the cost to do these two things, number two and three?

Derek Kilborn: I do not know the answer to question number two, we have never seen anything that suggests what that cost is. I know you have an archeological item later on the Agenda and I do not know if the archeologist associated with those cases is here to possible answer that question for you. With regard to number three that is a reference to even historic preservation staff being able to come on site so that we can at least photo document the structure and the property before, if there is a demolition decision, we can at least get a phot documented for the files, for future refence and research if somebody is doing investigation of the area.

Commissioner Whiteman: Ok so Staff would take care of number three.

Derek Kilborn: there would be no cost to our Staff going out to photograph the site.

Commissioner Bell: Clarification, you mean no cost to the property owner or no cost to the City?

Derek Kilborn: There is a cost to the City in resources but there would be no cost to the property owner, we would just be given access to the property and we would photo document the building and the site for the permanent file.

Commissioner Winters: Question for Ms. Duvekot, do you think there are any salvageable, architectural features that should be, there should be some reconstruction that happens with this?

Laura Duvekot: It is honestly difficult to say, given the photographs that we have seen. I really am not sure, there could be.

Commissioner Rogo: Commissioners do we have a motion?

Commissioner Winters: I will move that we grant the requested COA for demolition and that we include the conditions of approval, all three recommended by Staff.

Commissioner Rogo: Can we repeat what those three conditions are, so we are all clear as of to what those are.

Derek Kilborn: First condition, a Certificate of Appropriateness for new construction. I am sorry, that this “Commission is required to approve a Certificate of Appropriateness for new construction and that a complete set of construction drawings for building permit be submitted and approved prior to our office releasing the demolition permit,” that is condition number one. Condition number two is that a professional archaeologist confirm the absence of artifacts prior to work at the property or be present on-site during demolition and construction or in this case, I am going to say demolition because the construction would be conditioned as part of any future COA for new construction. Finally, number three, the Applicant be required to provide key photo documentation prepared by professional architectural historian or allow Historic Preservation Staff access to photo document the site and the property to complete that documentation for the file.

Commissioner Rogo: Thank you, do we have a second for that motion?

Commissioner Burke: I will second the motion.

Commissioner Wolf: I share the same concerns that Commissioner Whiteman had expressed about whether we do anything beneficial for the community if we require demolition to be held until a new site plan and construction plans are approved. On the other hand, I think a lot of this could have been put to bed by allowing Staff to be on site. I have thought about the possibility of condition one or an alternate allowing Staff and building Inspector to be onsite to determine if there is a hazard to that property staying at this point. To say it really should come down because in its present condition it is more of a hazard or a nuisance than it would be otherwise. If the Building Official was allowed to go in and inspect and make that determination, I might be much more amenable to allowing demolition to occur sooner.

Commissioner Rogo: Would you like to make that in the form of an amendment and then we will see.

Attorney Dema: For what it is worth the City Attorney's office shares that concern with respect to the current condition of the house as well as it being a potential attractive nuisance.

Commissioner Wolf: I would suggest adding an amendment to say condition on which requires construction plans to be approved have an alternate that if the owner will allow City Building Official to make an inspection and determine if the home is actually a nuisance and more of a hazard that at that point a demolition permit would be allowed to go forward.

Commissioner Rogo: Why don't we take a separate vote on the amendment, is a second required?

Attorney Dema: You are allowed a friendly amendment.

Commissioner Rogo: If it is friendly? Is it friendly?

Commissioner Winters: I accept the friendly amendment.

Attorney Dema: So now it is amended...

Attorney Judd: The term that we use in code for the building official is if a determination of a building or structure is unfit or unsafe for its intended purpose, which in this case since it is a dwelling would be human habitation. All of that section is found in Chapter 8 of our City Code.

Commissioner Burke: May I just ask, the condition would then be if the building determines that, this demolition would be allowed to move forward without meeting condition number one. You would still meet condition two and three.

Attorneys: Correct.

Attorney Dema: If the building official determines it unfit or unsafe for human habitation then that would be away to get the demo permit prior to a COA for new construction.

Commissioner Rogo: Before I ask for a roll call, out of curiosity, Mr. Weidner, do you think the owners of the property would be amenable to that?

M. Weidner: We will take what we can get, I just want to, both your comments about the decision of demolition. It is the bifurcation of the process that makes it problematic because if you go to sell then you are dealing with two parties, that is why I suggested demo now a new buyer comes before Staff has said comes with

a COA anyway but when you hang it up as you have done with other ones you have two parties with conflict. So, we certainly would accept that as a condition.

**MOTION:**                    *Commissioner Winters moved on approval of demolition with Staff conditions*  
*Commissioner Burke seconded*  
*Commissioner Wolf made a friendly amendment*  
*Commissioner Winters accepted the amendment*

**VOTE:**                    *YES – 6*  
*NO – 0*

*Motion passed by a vote of 6 to 0 with Staff Conditions two and three and an Amendment to Condition one.*

**B.            City File 19-90200040    Contact Person: Kelly Perkins, 892-5470**

**Request:** Review of a Certificate of Appropriateness for the construction of a permanent art installation in the north creek bank parkland, between 7<sup>th</sup> Street South and 6<sup>th</sup> Street South, consisting of five sculpted disks. Each sculpture is approximately 40 inches tall by 42 inches wide.

**Staff Presentation**

Kelly Perkins gave a PowerPoint presentation based on the Staff Report.

**Applicant Presentation**

Susan Ajoc, Community Services Director spoke on behalf of the installation.

**Public Hearing**

Mr. Larry Biddle, The Hermitage, 151 7<sup>th</sup> Street South, in support of installation

**Cross Examination**

By Administration:

Waived.

By Applicant:

No, I did want to mention, Ron Motika did send in a letter that I did provide to Staff that we could share with the Commission in support of the project.

**Rebuttal/Closing Remarks**

By Administration:

Waived.

By Applicant:

Waived.

**Executive Session**

Commissioner Rogo: Commission we are in Executive Session, any questions, comments or motions?

Commissioner Wolf: I would just like to comment, if you asked me two years ago, I would have said no its only the beginning of the year, time flies. I would move approval in accordance with the Staff Report.

Commissioner Michaels: Second.

Commissioner Rogo: We have a motion and a second, any further comments or discussion?

Commissioner Michaels: As I recall we approved this unanimously the last time it came before us. It is a great project; the neighborhood association is deeply involved and enthusiastic about it. I like the idea of children and celebrating the wildlife that we have in the Roser Park area. It is nice that we still have otters coming up Booker Creek.

Susan Ajoc: There is a family.

Commissioner Michaels: Yes, this is a great project.

Commissioner Whiteman: I just want to clarify, subject to the conditions in the Staff Report?

Attorney Dema: Yes.

**MOTION:** *Commissioner Wolf moved approval with original Staff conditions  
Commissioner Michaels seconded*

**VOTE:** *YES – 7  
NO – 0*

*Motion passed by a vote of 7 to 0.*

**C. City File 19-90700005 Contact Person: Laura Duvokot, 892-5451**

**Request:** Nomination of the Abercrombie Park Site Complex (19-90700002) to the National Register of Historic Places as part of the Archaeological Resources of the Lower Pinellas Peninsula, Florida Multiple Property Listing.

Expansion of the boundaries of, and addition of supplementary documentation to, the listing of the Jungle Prada Site Complex (19-90700003) in the National Register of Historic Places.

Nomination of the Maximo Beach Site (19-90700004) to the National Register of Historic Places as part of the Archaeological Resources of the Lower Pinellas Peninsula, Florida Multiple Property Listing

Nomination of the Princess Mound (19-90700006) to the National Register of Historic Places as part of the Archaeological Resources of the Lower Pinellas Peninsula, Florida Multiple Property Listing

**Staff Presentation**

Laura Duvekot gave a PowerPoint presentation based on the Staff Report.

**Applicant Presentation:**

Bryan Eichler, Parks and Recreation Manager

Commissioner Whiteman: I was a little confused, the Jungle property it says part of it is located on City property? Is there adjacent property that is owned by someone other than the City?

Bryan Eichler: There is, the Anderson property which is located next to that property, there is a portion of that, which was designated prior to this.

Commissioner Whiteman: For this?

Bryan Eichler: That is not included in this application, just our property limits.

Commissioner Michaels: First of all, I think this is a fantastic recommendation and designations are coming before us. It is lifting up our wonderful historic resources here. The Native American resources the prehistory resources at the national level. We already recognized these at the local level. This really has my enthusiastic support, I did come in with my history hat, I did have one issue with the narrative that was written, that has to do with The Narvaez landing in the vicinity of St. Petersburg. There seems to be some doubt expressed in the history that was attached to the recommendations with respect to that. They were in particular I thought citing Jerald Milanich from the University of Florida and his work. One time I think he did talk about an alternative site but since then I believe he has changed his position on that and is in agreement that Narvaez did land somewhere in the vicinity of Boca Ciega Bay and crisscrossed Saint Petersburg over to the Safety Harbor area by land. You might want to, the person who did the research might want to take a second look at that. Perhaps do an addendum to the package that goes into the State. Otherwise I thought it was a fabulous job. I am glad to see that you also mentioned Tony Jannus piloted the world's first scheduled airline flight from Saint Petersburg to Tampa back in 1914. Some of you might not know but we just recently got a group that is working on a monument to the first airline and we just recently reached our funding goal on that so we are hoping to start construction on the monument in September. Our claim to international fame here.

Commissioner Burke: A quick question just so I understand. What benefit will the City receive as a result of having these added to the National Historic Register other than civic pride is there any other benefit?

Bryan Eichler: Sure, and Derek can probably talk about the level of protection that it adds which is first and foremost for the Parks Department, we want to make sure we are protecting these properties for generations to come. It also helps us for future funding, for grants, it opens the door for a number of federal grants that can be used for these resources, candidly with the amount of money that drying up throughout the City these finding resources that are grant worthy and certainly the City of St. Pete having these four specific sites so close would certainly be highly regarded.

Commissioner Rogo: I would just comment here that I think this first item, it is our responsibility to determine the technical completion of the nomination and then we will take very quickly the four different sites which you

see there. So, this initial piece is kind of the Application and I have no cards for public hearing.

### **Public Hearing**

None

### **Cross Examination**

By Administration:

Waived.

By Owner:

Waived

### **Rebuttal/Closing Remarks**

By Administration:

Waived.

By Owner:

Waived

### **Executive Session**

Commissioner Burke: Can you explain the procedure here? Again, I don't.

Commissioner Rogo: I am going to look to Mr. Dema here to help me, we do have this item, 000005 and then four separate sites which are also items on our Agenda. My understanding was that we are in essence certifying the nomination was done properly.

Laura Duvekot: That is correct, in a way there are five questions which is, the context and then the four sites. They were presented to us as the Certified Local Government (CLG) from the State Bureau of Historic Preservation Office within a single letter. I gave them multiple case file numbers so that in the future we will be looking at them as individual sites. Mostly for our own filing purposes.

Commissioner Rogo: Is it fair to say that we are agreeing there is a relationship a context that all these sites are indeed related?

Laura Duvekot: Yes, I suppose the question is whether you agree that the context has appropriately achieved significance by the narrative and that each of the four sites does meet that significance that we have established.

Commissioner Rogo: The potential to provide important information about pre-history or history and or the association with historic events or activities.

Commissioner Whiteman: Do you think it would be more appropriate to do this after we have gone through all four of them?

Attorney Dema: If you want to do number 2, number 3, number 4 and number 6, lets just keep it clean, do one at a time. Then do number 5 at the end, the motion being that you find that they are contextually linked as a

multiple property.

Laura Duvekot: Yes, they all meet the theme.

Attorney Dema: That is fool proof, so if we want to do it that way, then there is nothing that can be said on the back end.

Commissioner Rogo: Thank you Commissioner Whiteman, do we need to go through all the steps? City do you wish to make a presentation on each of the four now?

Laura Duvekot: I do not have a presentation for each of the four sites.

Attorney Dema: You do not need to go through all of those steps. I would just ask for a motion on each.

Commissioner Rogo: Ok, and Mr. Eichler, I do not know if you were prepared to or wish to speak to any of the four.

Bryan Eichler: I can speak if there are any questions about them, I do not have anything prepared. If you have any questions, I can answer those.

Attorney Dema: Are there any cards?

Commissioner Rogo: There are no cards, if there are no more closing remarks or comments or rebuttal from the City or the Parks Department we will now entertain a motion or further discussion or questions from Commissioners.

Commissioner Wolf: Based on the input from Staff, we just vote on each of these individually, saying we find they are related and do support, or that the.

Commissioner Rogo: Meet one of the criteria for significance:

Derek Kilborn: Correct.

Commissioner Wolf: Would that be starting with...

Attorney Dema: Go ahead and do number 2, the Abercrombie Park Site Complex please.

Commissioner Wolf: I move approval of the Abercrombie Site Complex, I find it is significant and the presentation does merit forwarding to the State for the certification.

Commissioner Whiteman: Second.

Abercrombie Site Complex: Approved.

Commissioner Rogo: Our next motion would address the Jungle Prada Site; does it meet the criteria for significance?

Commissioner Wolf: I move approval of the Jungle Prada Site to find that it does meet the criteria for

significance and to forward it on to the state.

Commissioner Whiteman: Second.

Jungle Prada: Approved.

Commissioner Wolf: I would like to do the same motion for the Maximo Beach Site, we find that it is significant and to forward it onto the state for designation.

Commissioner Whiteman: Second.

Maximo Beach Site: Approved.

Commissioner Rogo: Did I hear yes from Commissioner Winters?

Commissioner Winters: Yes.

Commissioner Wolf: I make the same motion regarding the Princess Mound.

Commissioner Whiteman: Second.

Princess Mound: Approved.

Commissioner Rogo: Now item 19-907000005 which address the context that these are all related sites and can be included in this application because we have found them to be significant.

Commissioner Wolf: How should I word that?

Attorney Dema: Move approval of the archeological resources of the lower Pinellas peninsula Florida multiple properties listing.

Commissioner Wolf: I move approval of the archeological resources of the lower Pinellas peninsula Florida multiple properties listing.

Commissioner Whiteman: Second.

National register of Historic Places: Approved.

**MOTION:** *Commissioner Wolf moved on approval of Staff recommendations  
Commissioner Whiteman seconded*

**VOTE:** *YES – 7  
NO – 0*

*Multiple motions passed by a 7 to 0 vote*

**D. City File LGCP-2019-02 Contact Person: Britton Wilson, 551-3542**

**Request:** City-initiated text amendments to the Comprehensive Plan pertaining to housing initiatives.

**Staff Presentation**

Britton Wilson gave a PowerPoint presentation based on the Staff Report.

**Applicant Presentation**

None

**Public Hearing**

None

**Executive Session**

Commissioner Michaels: I appreciate the level of service, reports here, particularly those related to sanitary sewer and drainage. I note the 40% increase peak flow capacity, I think that shows that we are making pretty good progress as a City with respect to that part of our infrastructure. I do have a question again about the level of services standards per se and the work that was initiated a couple of years ago to revise those to provide for a peak level of service standard; peak water flow is that still being done or has that been stopped.

Britton Wilson: Yes, this 40% increase is addressing the peak flow capacity.

Commissioner Michaels: What is the standard though? Do we have an actual standard for peak flow?

Attorney Dema: I don't think a level of service (LOS) was established for peak flow it remains for dry weather base line conditions.

Commissioner Michaels: Alright and is that LOS still being worked on or has that been dropped.

Britton Wilson: The integrated water resources master plan is looking into that further. They have not come up with a conclusion at this time.

Commissioner Rogo: It has taken on a new name though. Wet Weather Wastewater, say that three times fast. I had the opportunity to attend a couple of those meetings at the library and well handled, a lot of discussion. A lot of discussion revolving around parking. Most of what we are proposing here today is development near transit and are we reducing parking requirements for those particular kinds of properties.

Derek Kilborn: We are and that is part of a separate application that is going to the Council in September. That application will do several things. First it will reduce the minimum number of parking required for multi-family units. What we are doing with the parking standard is we are bifurcating that number into two levels of requirements. The first level is for dwelling units that are 750 square feet or less and obviously the other standard is for more than 750 square feet. As an example, with the downtown center, in order to incentivize a higher supply of units, units that are 750 square feet or less, will have a zero parking requirement. Those that are larger will have a one space per unit requirement, which is the current standard today. As you move out into the traditional zoning categories and the suburban categories, the proposed numbers are both reducing but there is still a minimum requirement.

The second thing that we are doing is we are reducing the number of parking spaces required for projects that include 50% or more work force housing units. Where that condition exists, we will reduce the minimum number of parking required by 10%. If those projects are age restricted and senior limited, an additional 5% can be stacked on, so that would be a reduction of 15%. If the multi-family project is within an 1/8<sup>th</sup> of a mile of a premium transit route, then there is an additional 10% reduction on top of that. That is our ongoing effort to further synchronize transportation and land use policies, which are important, being linked. There has not been a lot of objection to those standards in previous public hearings. I anticipate those will be approved. We will continue to look at parking standards for all other land use types in the code. Right now, the initial effort was to focus on those multi-family units as part of our affordable housing discussion, but we are discussing other potential reductions for other land use types outside that scope.

The other parking reduction we are looking at, but not part of the active application, is some type of exemption or reduction for local landmark buildings. We have a number of historic buildings along the corridors that could benefit from some parking exemption, as an example off the first 2,500 square feet or first 5,000 square feet. We are looking at other creative solutions but right now we are focused on parking reductions for multi-family units only.

Commissioner Rogo: Thank you, any other comments or questions from Commissioners?

Commissioner Burke: If it was in the report, I apologize, how do you define a major road. Did you call it major road?

Britton Wilson: The comprehensive plan has an adopted future major streets map, number 20 as shown here.

Commissioner Burke: Ok, thank you.

Commissioner Michaels: I move approval on the Staff recommendation.

Commissioner Wolf: Second.

**MOTION:** *Commissioner Michaels moved on approval of the Staff recommendation  
Commissioner Wolf seconded*

**VOTE:** *YES – 7  
NO – 0*

*Multiple motions passed by a 7 to 0 vote*

## **VII. PUBLIC HEARINGS**

None

## **VII. CPPC MEMBER/STAFF COMMENTS, ANNOUNCEMENTS**

Commissioner Rogo: Commissioners or Staff, any comments, closing remarks as we near the end of our Agenda?

Derek Kilborn: I know usually you expect a long list from me, but I just wanted to say thank you for your

participation in our meeting last week. I think it was very helpful to everybody involved and certainly City Staff. We are now working on some ideas now to bring forward to you as discussed last week. Thank you again for participating.

Commissioner Rogo: Thank you for facilitating the conversation because I found it very valuable too.

Commissioner Winters: I have one question, I appreciated the proposal to operationalize some kind of requirement around a certain number of City initiated nominations a year given the dearth of applications that have been submitted by the City in the last thirteen years. What does that actually look like because, it is not clear to me what the role of Council is and what the role of City Administration is in initiating and supporting City initiated nominations. Could the be operationalized and then not happen?

Derek Kilborn: I think it is what we have been tasked to figure out. I do not know that in the short time we have had since then that I have some great answers for you. That was definitely some new direction provided. We have some work to do.

Attorney Dema: We put together a work plan on Friday, the day after the meeting. We are anticipating having a substantive update to the Commission for September's meeting. To provide a broader sketch of what we are anticipating of bringing to you in terms of formal action, text amendments to the Code or other possible policy changes.

Commissioner Michaels: Just a comment here, listening to the discussion of the first item on the agenda from the audience prospective. There were two things that jumped out at me. One was the problems that were presented to these cases was the Staff's lack of access to the site to actually inspect and perhaps that is something you could give thought to and come back to us, maybe with some proposals that would make that more of a level playing field. I think the Staff are at a great disadvantage here, in a lot of these cases because you are not actually given access to the site.

The other was this issue of the evidence being brought in during the hearing, not being shared with the Staff or the Commission earlier, so that Commission has time and the Staff has time to properly consider it. Perhaps something can be done there to establish an earlier timeline for the submission of evidence or testimony that bears on the case.

Derek Kilborn: I have an answer for both of those, I do not know which one to answer first. The first one is trickier than the second.

Attorney Dema: Derek if you want to handle the second, I will talk about the first. Our hands are kind of tied with access inside homes. We are bound by the Fourth Amendment as a local government, a couple of cases, this was really settled in 1966, just a brief history. A couple of cases, *San Francisco v. Camara* and *Seattle v. See*, both matters made it to the Supreme Court of the United States, and both clearly established the right of property owners to deny access to local code enforcement type bodies from entry into the home to look for interior code enforcement violations. We do not have a whole lot we can do there in terms of being able to require that because being a local government we are bound to the Bill of Rights just like any other form of government. That really is the primary factor in terms of having our hands tied unfortunately Commissioner Michaels.

Commissioner Wolf: What about access to the exterior of the property? Can they tell you, code enforcement, that you cannot get on their property at all and you just have to view it from the street or?

Attorney Dema: Right of way.

Attorney Judd: There are some relaxed standards for vacant properties. It is kind of a hierarchy for permissions and you interest for your Fourth Amendment interests go up as you come from vacant commercial is probably your lowest and then commercial open for business and then vacant residential and then occupied residential being the very highest. Based on these permissions that's what needs to be considered for code enforcement. We do go out to vacant properties, exterior portions and for our own demo processes, if a house is unsecure there are no windows, no doors and it is unoccupied, and we feel safe we do go into the property, if thing is secured, we do not. Now code enforcement can obtain inspection warrants be we have to actually go to a judge and have a reasonable suspicion that there are violations located in the property. For most of what Derek and Laura would do, they do not have the reasonable suspicion of violation and they are just trying to supplement a report. This case, maybe there was a violation aligned with the case but in most cases, you won't have enough to be able to get an access warrant.

Commissioner Wolf: I thought as a Commission if an owner has refused access that at that point our requirements for the owner to prove their case ought to be perhaps a little bit more rigid or more rigorous. I don't know if there is any issue with that but at that point it certainly seems reasonable, if Staff has not been able to get in and evaluate the conditions in a historic property and the owner is presenting evidence to us that we can say, if you are presenting this without the ability of a neutral third party or City Staff to go review it, then you really need to prove your case substantially to us before we accept your word for it since nobody else has been able to confirm that.

Attorney Judd: That would be more of going to weighing of the evidence type issue. There are not just supreme court cases but actually Florida cases that would be binding on us that particularly address creating inspection scheme or writing code that would penalize a person for not waiving their Fourth Amendment right. We cannot create anything in code that would say, you won't get X, Y and Z or you could be sighted for X, Y and Z if you do not waive your Fourth Amendment rights.

Commissioner Wolf: I wanted to find out if that was reasonable or not reasonable, it sounds like we would have to be very careful.

Attorney Judd: It is reasonable, you as Commission could always take that into account for weighing the evidence.

Attorney Dema: You each get to apply your own lens and if that is worrisome to you then by all means, take that into consideration.

Commissioner Whiteman: Mr. Chairman, back to the COA for the demolition, there was a letter from Preserve the 'Burg, that is late as far as I am concerned because I just saw it 10 minutes ago because it was attached. I think someone stated we did not here from Preserve the 'Burg. So we did have it, you di give it to us.

Derek Kilborn: I think the reference was to the fact that they were not physically present in the chamber or participating in the discussion. The materials that you get at this table on this day are the materials we receive last minute, in between the reports going out and our turning them around.

I know there was a two part questions, and that goes to the timing of when materials are submitted and what can we do when someone shows up at the hearing with materials, I know we have had this conversation before internally and again I am not sure there is much that we can do to prohibit the submission at the public hearing.

We will continue to talk about that but, it goes to the overarching theme which is, the Applicant is here to make a case and if there are concerns that they have not provided the evidence necessary for you to make an informed decision, then you can take that into some account in weighing of the evidence. For Staff, what we are going to do, is tell you that we did not have access to a site, we were not provided with information to make a complete and informed decision like we did today.

Attorney Dema: I would say any person bringing in materials, particularly large packets at the hearing, do so at your own risk. With the reasonable expectation that the Commissioners or the Council whoever it is you are distributing to at that point, it is also your job to be listening to what is happening in a hearing and not lost in a packet, however big a packet that is. We have said that to folks, do so at your own risk.

Commissioner Wolf: I wonder if that would be grounds for a deferral.

Attorney Dema: It could be.

Commissioner Wolf: Defer so that we can go through this.

Attorney Judd: Or in a finding, when you are making a decision, you could specifically outline, we received these materials but I did not have time to use them so I am making my decision on X, Y and Z evidence. That is always a great way to make findings. To say we have this and it is all part of the record but I made my findings based on this competent substantial evidence.

Commissioner Rogo: To say that diminishes their ability to appeal our decision, by saying, we gave them all of that information, what do you mean they didn't look at it.

Attorney Judd: That is always good to point out, I am making a decision and yes I was provided with these but there is a caveat to that provision in that it was three hundred pages. They might be presenting some of it to you like today, and you can say, ok I found that compelling based on this but not based on the entire three hundred pages of technical documents which I had no ability to read.

Attorney Dema: So that fact that it makes it into a record, if a decision of you all or Council, in the land use realm gets appealed to the circuit court, the record of what happened below goes up there and a judge could look at it and think oh this is really good evidence, not knowing that the trier of fact in a quasi-judicial proceeding received it right as the hearing started. Making that finding in and of itself is something good for Heather or I if we are defending a decision of the Council or Commission.

Commissioner Burke: Today, the Applicant in case number 1 had the ability to defer this because we had such a small group. When does that ability to defer end? Could they defer right up until the vote or do they have to do it in the beginning of the case?

Attorney Dema: They have to do it at the beginning of the case.

Commissioner Burke: They couldn't say, wow this is not going my way and say stop, I want to defer.

Attorney Dema: No.

Attorney Judd: No because, we do not want to open a hearing that is ultimately going to be deferred to wait for other Commissioners because if we are going to do that than the other Commissioner would not have heard the

piece that had went before.

Commissioner Burke: We are still down one member, is that right?

Derek Kilborn: We are working on it.

Attorney Dema: We do not want any fishing expeditions.

Commissioner Burke: If I could just say, that workshop last week I just thought was fantastic and I want to thank you for including us in that. I hope we can do more of that. I left that with a completely different perspective on both the third-party application and the potentially eligible list, than I walked in the door with based on legal's and Staff's presentation. Thank you very much and please include us again in those.

Attorney Dema: We thought it was pretty helpful too, we got some good direction. I think there will be some significant things to talk about starting next month and the months ahead.

Commissioner Winters moved to adjourn.

Commissioner Bell seconded.

## **VIII. ADJOURN**

With no further items to come before the Commission, the public hearing was adjourned at 4:25 P.M.