

2023-0059

Public Hearing and Request for Preliminary Site Condominium Plan Approval - Walton Oaks Site Condominiums, a proposed 11-unit, detached single family condominium development on approximately 6.8 acres at 3510 Walton Blvd., located on the north side of Walton Blvd. between Adams Rd. and Firewood Dr., zoned R-2 One Family Residential, Bruce Michael, Walton Oaks, LLC, Applicant

(Staff report dated 5/2/23, Reviewed Plans, revised EIS from 3/16/23, tree letter from Applicant, Applicant's presentation, attorney letters and response tables, J. Staran letter and email, residents' and neighbors' questions and answers, neighborhood meeting attendance and applicant's email to residents, public comment received and Public Hearing Notice had been placed on file and by reference became a part of the record thereof.)

Present for the applicant was Bruce Michael, South Oaks LLC, Bill Godfrey and John Danowski with Three Oaks Communities, their Legal Counsel Sarah Karl with Makower, Abbate, Guerra, Wegner Vollmer, PLLC, and Alan Green with Dykema.

Chairperson Brnabic introduced this item for public hearing and request for preliminary site condominium plan approval for Walton Oaks Site Condominiums, proposed 11-unit detached single family condominium development on approximately 6.8 acres at 3510 Walton Boulevard located on the north side of Walton Boulevard between Adams Road and Firewood Drive, zoned R-1 one family residential, Bruce Michael, applicant.

Mr. McLeod summarized the staff report, noting that this is a request for a preliminary site condominium as well as a tree removal permit for the proposed Walton Oaks site condominium, similar to the South Oaks item earlier this evening. He explained that this will ultimately be a recommendation to City Council for approval for the preliminary site condominium. He noted that both items will come back for final site condominium in front of both Planning Commission and City Council. He stated that this property is just short of seven acres and again, is another heavily wooded site. He noted that the zoning classification is R-2, consistent with the surrounding neighborhood to the west and to the north. As you go to the east, you get into a little less dense area. He stated that the site condominium as proposed is 11 units with a single loaded road. It would be a PC modification to allow a sidewalk on one side of the road, but here you can see obviously as the road comes in there will be a detention basin to the east side of the road as you come in and then to the far west side of the homes there will be a secondary storm detention area as well. He noted that the project will ultimately culminate in the T-turn in terms of the emergency access turnaround being provided at the terminus of the development.

He noted that again, one of the things that came up at the Planning Commission's meeting back in February, was whether there is the ability to increase the plantings throughout the site. He noted that the same conditions applied here as before, and technically our tree replacement requirements do not allow for increased tree sizes to offset the number of tree credits being or being required with one small caveat when you remove a specimen tree that's

based off of a per-inch replacement calculation. He explained that the City's Natural Resources Department basically said in that instance, they will work with the developer to provide larger trees and that would count as an inch by inch replacement in terms of the size of trees being proposed on site. He noted that some of those trees did get larger in the depiction at the entrance to the subdivision or the site condominium; for the landscaping to the far west side, those evergreens are proposed to be 12-foot tall. As you move southward on the site as you go along the property line to the bottom of the screen here in that instance, most of those trees are also been increased to 12 foot height. He noted that again, the same conditions apply here, and showed the existing and proposed trees as Planning Commission also wanted to see per the potential canopy locations of existing trees and how those fit into the proposed trees being provided. He stated that in most instances, especially with units 9, 10, and 11, how densely populated those lots are with trees being planted on those sites. As you reach the end of the site itself, in terms of the terminus and the that T turn, again, he showed the screening being provided along the proposed roadway and then again along the detention basin and throughout each one of those lots, again, trying to provide as many of the replacement trees on site as possible. Based on all the formulas being provided, the applicant got the tree credits down to 44 being proposed to be entered into the City's Tree Bank. Otherwise, all the replacement trees that were otherwise required were able to be accommodated on the site in some form. He stated that much like the Commission heard in the last presentation, one of the questions that came up was in terms of architectural diversity. He noted that the applicant went back, used the base models and then provided architectural variations of each one of those models to provide a variety of potential options for housing stock within the development itself over those course of those 11 units being proposed. He stated that this provides some of the different models or different architectural features. He stated that in summation, the tree plantings, evergreen sizes in most cases have been increased to 12 feet, particularly around the outskirts of the development. The landscape plans existing tree canopy sizes are now shown.

He noted the Environmental Impact Statement was updated to reflect the changes in the notations discussed at the Commission's last meeting in February. Meetings with the neighbors were held again in early March about the same time as the other meeting with the neighborhood. The review of single family status was reviewed by Mr. Staran, the City Attorney who has provided that his opinion is that the unit configuration in this particular scenario does constitute a single family residence. He noted that the elevations have been updated to provide a variety of housing options in terms of architectural diversity. He offered to try to answer any commissioner's' questions.

Mr. Michael offered that he was there to answer any questions as well. Chairperson Brnabic opened the Public Hearing, and noted that many of the speakers' cards included South Oaks and Walton Oaks and they were heard at that time. She stated that she would call those whose speakers cards specifically listed Walton Oaks.

William Kerr, 438 Bellarmine Dr., stated that he has been there for over 27 years and attended the Planning Commission review on February 21st. He

noted that the developer scheduled a session to discuss the project on March 6th. He stated that the proposed development is zoned R-2 and that is for single family homes. He noted that the only exception is State-licensed group homes. He noted that having one kitchen is one of several characteristics of a single family home, and commented that another is to have one owner. He listed other characteristics of a single family home, and noted that a multi-family home is any property that contains more than one housing unit or a collection home with different owners. He noted that as these IDD homes have multiple financial interests, they are multifamily homes. He stated that a development that truly meets the R-2 zoning would be acceptable. He stated that the developer is using noble IDD objectives to guilt residents into supporting the project.

Svetlana Kerr, 438 Bellarmine Dr., stated that the resident meeting instead of a civil discussion was a hostile attack on her as a person because she opposes the development. She stated that the homes are multiple residents and would not likely be affordable. She stated that she wanted to see proof that the homes would be sold to people with special needs.

Roger Smith, 139 Bellarmine Dr., commented that in a previous public meeting Three Oaks announced that there would be three IDD homes instead of two and what kind of floor plan that third home would have; while they don't have the same water problem that they have at South Oaks, who would take responsibility for any water flowing under his property or property to the west in Brookdale West; and whether Three Oaks could install the line of trees discussed early in the building process to shield from the construction clutter as the road is right behind their house.

Dr. Lauren Davenport, 236 Stonetree Circle, stated that she backs up to the property and the issue is not IDD people living in the area, it is the development area in general. She stated that there is currently a pond in her backyard with ducks and expressed concern about wildlife displacement. She noted that deer would be pushed out into a major busy road. She commented that residents could purchase one of the existing homes for sale in their neighborhood for less money than what they are planning on selling these homes for. She questioned the definition of a single family home and stated that there are other ten-acre parcels open for sale. She stated that she does not trust anything the developer says as he has said contradicting things.

Ray Toma, 202 Stonetree Circle, stated that he spoke earlier about the single-family issue and questions how a multi-unit structure can be in a single family development. He noted that this is not a State-licensed facility and is moving along under the definition of a single family structure based on the City Attorney's opinion. He commented that the opinion makes clear that this is a new creature. He questioned whether there was any consideration given to the fact that this is not like a single-family and the characteristics of another zoning classification should apply. He questioned whether he could bring a structure with eight units and one kitchen and it would still be single family and stated that he did not see where this issue was addressed.

Ellen Smith, 215 Bellarmine Dr., stated that she is speaking for the four residents that run along the back side of the proposed development on

Bellarmino. She noted that there is 16 feet from the end of that property to the roadway. She stated that there will be a multitude of traffic as the end units have support staff that will be coming in, and they already have a busy street in Bellarmino. She commented that she is not against the IDD concept, but they are against it looking at their own property values, the environment, the removal of the trees, and as it is rolling land, there will be a severe drainage problem as her subdivision was platted in 1955 and does not have drainage that newer subdivisions have. She commented that they would like an assurance for the residents against a prolonged or abandoned building project that the residents will not have to live with a messy mudhole for years. She asked if unit number one's driveway can be flipped so driveways can be together and would remove car traffic away from their house. She added it would take care of the problem of using the turnout as auxiliary parking. She asked if porches would be open or have foundations. Ms. Roediger was asked to address Mr. Toma's concerns and commented that there has been much discussion with staff and the City Attorney regarding single family and multiple-family. She noted that when you talk about what the structure is most like, in talking to the attorney of how the structure is used, because there is one communal area, kitchen, living room, it is most like a four bedroom house. The only difference is in the ownership, and the City does not get into different types of ownership; we do not prohibit whether you rent or own or lease. Ownership concerns are not the structural integrity of the building. She stated as mentioned in the last topic for South Oaks, this could exist right now in neighborhoods with people having multiple bedrooms and sharing ownerships. She stated that it was determined by the City Attorney that it is deemed single family. She noted that the multiple family districts would allow more.

Chairperson Brnabic asked Mr. Davis to address whether there is a higher risk of flooding with the new development.

Mr. Davis responded that his previous comments this evening stand for this development as well. He stated that the City has criteria used for any development to determine what detention is required and it has changed over the years. The City used to have a 10-year design storm criteria and now it uses a 25-year design storm criteria, and has gotten more stringent or demanding on developments to provide more detention than what had been done decades ago. He stated that this development will be reviewed just like any other one.

Mr. Michael stated that with regarding to flooding for anyone that lives on the Bellarmino side, the gas property is actually the high point. He stated that their entire site is actually lower than the property directly to the east. He stated that his property and the gas property and probably some of Bellarmino actually drains across his property to the west and does indeed flood the homeowners to the west, and pointed out that his proposal capture all of the water that is falling to the west in the detention basin located on the west side, pipes it out of that end of that basin to the south and into the second basin and then ultimately down into Walton Boulevard. He commented that he believed it would improve the situation because they would be grabbing all of the water coming off of their site and directing it to the detention basin and then the outflow of that detention basin to the south versus right now how it is unrestricted.

Chairperson Brnabic commented that there was a question on why only three homes will be IDD.

Mr. Michael responded that there are a couple of different things, including that caregiving is often paid for by Medicaid funds for caregivers of disabled individuals, and a lot of the county agencies that administer the Medicaid actually believe that they have the right to dictate settings, and they do not want to have too big of a concentration of disabled people in one spot. He commented that they always selected that 25 to 35 percent of the overall project would be IDD dwelling units. Three of the 11 units would be in the upper 20 percent range. He stated that they did not think they ever had only two units under any scenario in this particular development. He commented that they were talking about a potentially higher density two years ago.

Chairperson Brnabic questioned the deed restrictions and asked if those would be supplied to the City.

Mr. Michael responded that they will be restricting the deeds and bylaws so that they have to be sold to subsequent individuals. Ms. Karl stated that this would be structured like a condominium with master deed and bylaws, and the bylaws would have a lot of restrictions in terms of use as in any other condominium but it will have more because of the IDD component as well. She stated that there will be screening mechanisms, notices of selling, additional leasing restrictions; and the Board will also be composed in a way that includes the neurotypical owners and the IDD owners as well. She stated that a declaration will be recorded against the properties to restrict the use of these three buildings to IDD owners alone. She noted that a declaration takes it out of the condominium statute where two-thirds of the owners could vote to amend the document.

Chairperson Brnabic noted a question regarding unit one's driveway and if something was under the porches.

Mr. Michael responded that the porches are open air front porches covered by roofs, so therefore they are within any of the setback requirements and thought of as part of the structure. He added that the front porch could end up being done as a deck with a post going into the ground or it could end up being a frost wall that goes underneath and supports the deck. He stated that either way, those porches will be located within the setbacks.

Chairperson Brnabic questioned whether plantings could be done in advance.

Mr. Michael responded that they could not put the plantings in until the land development is done, the site graded and utilities, streets, curb and gutters in; but after that point yes, he would plan on putting in all of the common area plantings possible. He noted that the plantings that cannot be put in are the ones on individual lots until the house is in. He stated that the intention is to put in all of the detention area, detention basin plantings, edge plantings, and particularly along the east side of the proposed street.

Chairperson Brnabic noted that as she had not closed the public hearing she

had one more speakers card and asked for any additional at this time.

Ms. Davenport commented that her question on wildlife was not addressed.

Mr. Michael responded that wildlife will get displaced because of what they are doing. He pointed out that there is also a gasline property that will open forever that creates a corridor where the wildlife can traverse.

Chairperson Brnabic commented that unfortunately that happens with any development across the city, and wildlife does move on and find different properties.

Noreen Meganck, 172 Stonetree Circle, commented that most were under the assumption that there were two IDD houses. She asked where the third was.

Mr. Michael responded that it was unit 3. And there are three units that may have only three people in them.

Ms. Meganck stated that she sent a letter to everyone on the Planning Commission and had a long conversation with Mr. Davis a few weeks ago about the sanitary sewer that collapsed in 1991 about 10 feet off the corner of her property. She commented that this will be tying into that and questioned how it will be addressed. She stated that they have a pool that was badly damaged when Mr. Karas' house was built.

Mr. Davis stated that subsequent to the conversation it was asked if the City would televise the sanitary sewer and check the integrity. He commented that the owner expressed concern regarding some pretty significant damage to her pool from tree roots, and he noted that there is always a concern about tree roots making their way into sanitary sewers. He noted that they did televise it and found one area leaking at a pipe joint pretty significantly and that will be addressed; however they did not find any tree roots. He stated that as far as DPS is concerned, he has no objections if the big tree near the sewer is removed.

Chairperson Brnabic noted an email was received regarding the City requiring bond insurance.

Ms. Roediger responded that the City has a number of performance guarantees in place that ensure that when a development starts these bonds and performance guarantees are required from both landscaping and engineering standpoints to ensure what is on the plans is actually installed. She explained that from the Planning Department's purview, the landscaping is inspected once it is installed and the bond is reduced 75 percent and 25 percent is kept to ensure it maintains a healthy status. Two years afterward, staff reinspects the property and adjusts the guarantees accordingly. She commented that she knows the engineering department has a pretty thorough process on their end how they handle guarantees and bonds.

Mr. Davis stated that Engineering collects a lot of bonds to ensure the utilities, water, sanitary sewer and storm sewer is built. He noted that one is collected for

roads and pathways, and detention basin bonds. Those are in effect until all utilities are accepted. Once accepted the bonds are reduced down to maintenance bonds, and then after a final inspection two years later, they require as-builts to be completed for the development. He commented that this generally works very well and is typical for all of their projects.

Chairperson Brnabic questioned what about damage to a neighboring property.

Mr. Davis responded that typically they come to the City and say that they have been wronged and expect the City to coordinate with the developer to have concerns corrected. He stated that they have a number of ways to follow up including getting the Building Department involved that no additional building permits will be issued until the problem is corrected.

Chairperson Brnabic noted one more card.

Charles Reynolds, 439 Donegal, commented that he used to do real estate appraising and cannot see it being a single family home. He asked how they would be appraised and whether there would be conventional financing on the properties. He asked what would happen if there was any criminal activity or protection orders. And he questioned whether the people who were assisting those living there would live on site or own a part of the property.

Chairperson Brnabic noted that she was formally closing the public hearing.

Mr. Godfrey addressed the questions one by one, and stated that the bylaws have restrictions against that kind of activity. If they do commit a crime, they would be treated the same the neurotypical owners would be treated. He commented that he did not expect a crime rate among the IDD population, although he would expect it would be pretty close to zero.

Mr. Michael stated that there would be an application or review process which includes a background check.

Mr. Godfrey noted that these questions are asked during the application process and this would be for the caregivers as well. He stated that the association and families have interviewed multiple caregiving agencies and landed on two agencies that will have staff on site. Those agencies are very large well-known established agencies that do background checks on their employees. He commented that at this point they would not be living on the property. He stated that initially they thought they would have a community builder live within the community, but at this point the agencies felt that they could meet that need without having anyone live on site. He stated that they do reserve the right to have a caregiver or community builder living within the home, but at this point in time, the homes that are being purchased by the IDD families are just for the IDD homeowners.

Chairperson Brnabic questioned how that would work in the future because if the home was sold for a bedroom, and bathroom, how a caregiver would move in.

Mr. Godfrey responded that if some of the homes are a walkout, the basement

could be finished in the same manner to create an extra living space with a separate entrance. He noted that a neurotypical homeowner could do the same thing.

Mr. Struzik stated that many of his comments about the previous development do apply to this development as they have a lot of similarities, including his comments regarding private property rights and how that creates friction with existing property owners. He noted that his commentary about relying on the City Attorney's opinion stands as well. He commented that these look very similar to homes in his neighborhood and nobody questions the relationships of the people inside of those homes. He commented that he does not think it is fair for them to interrogate the relationships between people inside of a homes in determining whether or not it is a single family home. He added that his home is not owned by a single person; it is also owned by his wife; and the home across the street from him is owned by an LLC and is rented out.

Mr. Reynolds stated that his question was not answered as to how these properties are appraised or financed.

Mr. Godfrey responded that the appraiser will appraise the IDD homeowner's property and put a value on it, and there are lenders, particularly credit unions and community banks, that would provide financing on the IDD homeowner's property. He stated that they would hold it as a portfolio loan. He noted that they have a commitment from a credit union to do just that. He pointed out that since there will be at least six of these homes being purchased in the two neighborhoods, they have created the comps. He commented that it will take a couple of closings for that market to be established.

Mr. Weaver asked if the buffer plantings on the east side of the property are over a water main and if that would be a problem.

Mr. Davis responded that sometimes there are constraints that have to allow for a give and take between two departments. He commented that he prefers not to have trees planted over a water main, but they do exist in other areas of the city. If a repair is needed, the tree is getting pulled out and the repair made.

Mr. Weaver asked how deep the water main will be.

Mr. Davis responded that it is typically six foot of cover unless it is at a major road where it might be deeper.

Mr. Weaver asked when the sewer repair that was mentioned will happen.

Mr. Davis responded that this type of repair will be done trenchless and the joint will be grouted from the inside.

Mr. Weaver questioned whether pretreatment was necessary for the storm sewer.

Mr. Davis responded that the City's stormwater standard has a water quality component and sometimes with a detention basin has a four bay unit

associated with it that will encourage sediments to be settled out before it reaches the detention basin. He stated that this will be improving the water quality by sediment and nutrient removal. He added that another way is through a manufactured treatment device, and he commented that this is the direction most developers go.

Mr. Weaver stated that he noted this on the plan and wanted to see what they were thinking about. He stated that he would concur with planting trees early. He asked about the owners of the IDD units finishing their basements and asked if that would affect ownership of the current owners.

Mr. Michael responded that generally what happens is the caregiver or team builder might live there and would not necessarily own that unit. It would stay a limited common element of the house.

Mr. Weaver asked if all of the other owners would utilize the in-house care.

Mr. Michael stated that they would. He noted that they also include a line item in the budget of the associations for cleaning out of the storm interceptor or aqua swirl unit as it will get some silt in the beginning during construction.

Mr. Weaver asked if the IDD homes were appraised because an individual owner wanted to sell, does the appraisal take place of just the unit or the dwelling as a whole.

Mr. Godfrey responded that it would be just the unit.

Chairperson Brnabic noted that it was indicated that the unit can only be sold to another IDD.

Mr. Godfrey stated that it is separate recorded restrictive covenant.

Ms. Karl stated that it is in the condominium documents but there would also be a declaration so that it cannot be amended by two-thirds of the co-owners. There would be another legal document declaration recorded that says these are IDD forever.

Dr. Bowyer stated that Mr. Weaver asked every question she was thinking of. She commented that it is a complex relationship that they are creating with the residents that will live together but it sounds like they have thought about all of the different parts, and by having the declaration, it makes it so that you cannot vote them out and gives them more security in ownership of one-fourth of the house with the commons area. She stated that she thinks that the idea is good and there is always that balance between letting a property owner develop their property under the laws, ordinances and zoning that the City has and making it aesthetically pleasing to the neighbors around it. She stated that they cannot stop building and progression in the city and it is one of the safest cities in the country and everyone wants to live in the city. She commented that if anyone wants to preserve property they need to be nominated for Green Space to buy or buy it so it cannot be developed. She commented that when it first came before the Planning Commission they were going to put 14 or 15 houses on it

and now they are down to 11 and this is a much nicer plan.

Mr. Michael noted that their very first proposals were in the 30s.

Dr. Bowyer concurred that it was really dense when they first came and now it is much nicer and fits in with the surrounding area and the lot sizes are good. She thanked the developer for taking into account all of the feedback from the Commission and the residents to make this development harmonious with the neighbors.

Chairperson Brnabic reminded the developer to provide color renderings for all four sides of the building when coming for final approval recommendation.

Mr. Hooper stated that he would echo his previous comments and moved the motion in the packet for recommendation of preliminary site condominium approval by City Council. Mr. Struzik seconded the motion.

After a voice vote, Chairperson Brnabic noted that the motion passed unanimously.

Mr. Hooper moved the motion in the packet to grant the tree removal permit, supported by Mr. Struzik.

After a voice vote, Chairperson Brnabic announced that the motion passed unanimously. She congratulated the applicants.

A motion was made by Hooper, seconded by Struzik, that this matter be Recommended for Approval to the City Council Regular Meeting. The motion carried by the following vote:

Aye 8 - Bowyer, Brnabic, Denstaedt, Dettloff, Gallina, Hooper, Struzik and Weaver

Absent 1 - Neubauer

Resolved, in the matter of City File No. PSP2022-0005 Walton Oaks Condominium, the Planning Commission recommends to the City Council Approval of the Preliminary Site Condominium Plan, based on plans dated received by the Planning Department on March 16, 2023 and supplemented with updated landscape plans received April 10, 2023, with the following findings and subject to the following conditions.

Findings

1. The site plan and supporting documents demonstrate that all applicable requirements of the Zoning Ordinance, as well as other City Ordinances, standards, and requirements, can be met subject to the conditions noted below.
2. The proposed project will be accessed from Walton Road, thereby promoting safety and convenience of vehicular traffic both within the site and on the adjoining street.
3. Adequate utilities are available to the site.
4. The preliminary plan represents a reasonable street and lot layout and orientation.

- 5. The proposed improvements should have a satisfactory and harmonious relationship with the development on-site as well as existing development in the adjacent vicinity.
- 6. The proposed development will not have an unreasonably detrimental or injurious effect upon the natural characteristics and features of the site or those of the surrounding area.
- 7. The requested modification for sidewalks to be located solely on the west side of Peregrine Street is warranted due to the limited number of home sites and the home being located only on one side of the street.

Conditions

- 1. Address all applicable comments from other City departments and outside agency review letters, prior to final site condominium site plan approval including providing the appropriate street names for City Approval.
- 2. Provide a landscape bond in the amount of \$197,350.00, plus inspection fees, as adjusted by staff as necessary, prior to the preconstruction meeting with Engineering.
- 3. Provide payment, equal to the current required fee for replacement trees, along with any addition fees associated with such, into the City’s Tree Fund for the remaining 44 trees identified on the site plan.

2023-0086

Request for Tree Removal Permit Approval - to remove one hundred sixty-seven (167) regulated trees and thirty-nine (39) specimen trees and provide two hundred sixty-two (262) replacement trees for Walton Oaks Site Condominiums, a proposed 11-unit, detached single family condominium development on approximately 6.8 acres at 3510 Walton Blvd., located on the north side of Walton Blvd. between Adams Rd. and Firewood Dr., zoned R-2 One Family Residential, Bruce Michael, Walton Oaks, LLC, Applicant

A motion was made by Hooper, seconded by Gallina, that this matter be Granted. The motion carried by the following vote:

Aye 8 - Bowyer, Brnabic, Denstaedt, Dettloff, Gallina, Hooper, Struzik and Weaver

Absent 1 - Neubauer

Resolved, in the matter of File No. PSP2022-0005 (Walton Oaks Condominium) the Planning Commission grants a Tree Removal Permit (PTP2023-0003), based on plans received by the Planning Department on March 16, 2023 and supplemented with updated landscape plans received April 10, 2023, with the following findings and subject to the following conditions:

Findings

- 1. The proposed removal and replacement of regulated trees is in conformance with the City’s Tree Conservation Ordinance.
- 2. The applicant is proposing to remove 183 regulated trees and 38 specimen trees, and provide 333 replacement trees, and plant an overall total of 432 trees (replacement plus required trees) onsite.
- 3. The applicant has increased the size of plantings in certain areas of the site to reduce the number of trees being paid into the City’s tree fund and to provide additional plantings

and screening onsite above and beyond ordinance requirements.

Conditions

1. Tree protective fencing, as reviewed and approved by the City staff, shall be installed prior to temporary grade being issued by Engineering.
2. Provide payment, equal to the current required fee for replacement trees, along with any additional fees associated with such, into the City's Tree Fund for the remaining 44 trees identified on the site plan.