



**City of Coconut Creek
Planning and Zoning Board Meeting
August 9, 2023
Minutes – Excerpt**

8. POMPANO AUTOPLEX, LLC: A REQUEST TO APPEAL AN ADMINISTRATIVE DECISION REGARDING THE APPROVED MAZDA SITE PLAN FOR THE PROJECT LOCATED AT 4101 WEST SAMPLE ROAD. (QUASI-JUDICIAL)(PUBLIC HEARING)

Deputy City Attorney Mehaffey asked for any ex-parte disclosures related to Agenda Item 8, and there were no disclosures.

Sustainable Development Director Scott Stoudenmire presented the item, providing a brief overview of the appeal process for an administrative interpretation and the history of the application before the Board. He stated the Coconut Creek Mazda site plan was approved by the City Commission on October 14, 2021, and was now under construction. He explained the appeal specifically addressed the landscape plan, which was included as an element of that approval. Mr. Stoudenmire noted that the applicant's position was that the site plan could be modified by administrative approval to remove four (4) oak trees and some palm trees, but staff's position was that because the trees were specifically preserved during the DRC process and subsequently approved during the Planning and Zoning Board review and the City Commission review, there was not a simple administrative remedy. He stated that the trees represented a substantial piece of the plan, and simply removing them would alter the original character and intent of the site plan and landscape plan. He discussed the specimen trees and the reasons their preservation was originally requested. Mr. Stoudenmire explained the role of the Board in the administrative appeal process. He stated Deputy City Attorney Mehaffey had prepared a Board Order as to whether the issue could be addressed administratively. He noted the question of removal of the trees was not before the Board at this time, but the administrative decision that removal of the trees would constitute a substantial site plan modification and formal application process.

Tom Curtin, co-owner of Coconut Creek Mazda, outlined obstacles in the construction of the project, noting issues with installation of the light poles and completing the site work due to the roots of the Live Oak trees, and visibility of the site. Mr. Curtin noted the project Arborist was present to answer questions.

Mr. Light spoke to the legal argument being requested of the Board, and commented the Board did not have enough information, including reference to an enhanced landscape plan. Mr. Stoudenmire responded that the appeal process was unusual. He stated the applicant was willing to present an enhanced landscape plan without the four (4) specimen trees if the appeal was approved, though that was not a part of the record at this time. He discussed the original review of the project.

Deputy City Attorney Mehaffey further clarified the issue before the Board. She stated the question was whether the removal of the four (4) trees substantially changed the intent and character of the approved site plan.

Vice Chair LaPlant stated the applicant was not asking to remove the trees because they don't like them, but because they were impeding work and stopping the project. She asserted that she was uncomfortable with the wording of the first finding in the Board Order.

Mr. Delgado asked if there was a metric for substantially altering the intent and character of the site plan. Mr. Stoudenmire provided additional detail on the intentional effort to preserve the specimen trees and the nature of the trees on the site. Discussion ensued.

Mr. Delgado asked whether the trees remaining on site were a fundamental cornerstone of the City agreeing to approve the site plan, and Mr. Stoudenmire responded, noting the preservation of the trees had started in the DRC review and was agreed to at that time. Mr. Delgado inquired as to next steps if the Board determined that Mr. Stoudenmire was incorrect in his decision. Mr. Stoudenmire explained that if the Board found he was incorrect, he would appeal that decision to the City Commission. He stated if the City Commission finds that the Director's decision is incorrect, there would be an administrative process to work through removal, mitigation, and a new plan.

Ms. Belvedere asked whether the issue with the trees could have been foreseen, and Mr. Stoudenmire responded that the design approved should have anticipated the impact of the trees on construction. Mr. Stoudenmire indicated that during DRC review, staff asked the trees be preserved, and the pedestrian walkway be designed around the trees, and the applicant agreed. He stated, at that point, there was no anticipation that there would be construction impacts.

Ms. Fry asked for clarification on how many of the trees specifically affected the site structurally and which were a visibility issue. Mr. Curtin stated the four (4) oak trees were impacting the site structurally, and the seven (7) palms and oaks identified for removal on the other side of the site were the source of visibility issues the applicant did not anticipate. Ms. Fry asked Mr. Stoudenmire whether separating out the two (2) issues and addressing only the four (4) oak trees still constituted a substantial change in his view. Mr. Stoudenmire stated the original discussion was only about the four (4) oaks, and the additional trees added by the applicant when submitting the appeal only strengthened his position. Ms. Fry inquired as to the timeline for the appeal compared to going back through the DRC process. Mr. Stoudenmire stated the appeal was tentatively scheduled for the August 24, 2023, City Commission meeting, so the process would move forward quickly.

Mr. Light asked for clarification whether the applicant was requesting four (4) trees to be removed or eleven (11) trees, and Mr. Curtin responded that it was a total of eleven (11).

Ms. Belvedere asked whether the applicant would be able to finish the project if the trees were not removed, and Mr. Curtin stated the four (4) live oaks had the project at a standstill.

Mr. Delgado stated it was unclear whether the Board was doing a substantive review of Mr. Stoudenmire's decision, or a procedural review. Deputy City Attorney Mehaffey responded that the Board did not need to weigh in on substance beyond whether the removal of the eleven (11) trees on the site plan would substantially alter the intent and character of the site plan, the standard provided by the Code was whether the decision was correct or incorrect.

Ms. Fry asked whether there had been other appeals like this. Deputy City Attorney Mehaffey explained it was the third in approximately 20 years. Discussion continued as to whether the original decision was reasonable and next steps.

Chair Barker stated he and Vice Chair LaPlant were the only Board members present at the time of the original decision. He noted he did not recall the trees being an important aspect of the site plan at that time, but the trees were significant, and he could see why

staff had taken the position that the request constituted a substantial modification. Chair Barker asked whether Mr. Stoudenmire would have found that the removal of only one (1) of the oak trees qualified as an administrative decision. Mr. Stoudenmire responded that all the trees were of different caliper and canopy, so it was hard to say what he would have found. Chair Barker asserted the trees were significant. He asked for clarification on negotiation within the administrative process. Mr. Stoudenmire explained that in any situation, staff would work hard to preserve as many of the existing trees as possible. Deputy City Attorney Mehaffey provided additional clarification on next steps after a potential City Commission action. She stated there was an ongoing negotiation during a site plan modification process.

Chair Barker stated the applicant was asking to make a substantial change and noted he was in favor of staff having the ability to negotiate with the applicant. He commented that the applicant had said they would not be able to continue if all four (4) trees did not come out, so if staff does not administratively approve that removal, they would be coming back with a site plan revision anyway. Mr. Stoudenmire commented that any field adjustments, which would be required to modify the plan, had not been evaluated at this time. Chair Barker suggested there may be a way that the applicant could review the issue and come to a compromise that identifies a specific tree that is having the most impact.

Ms. Belvedere asked whether the trees could be transplanted somewhere else at the cost of the applicant. Mr. Stoudenmire stated that was always a possibility, but these were quite large trees. Chair Barker commented that moving the trees would not help the City's position that those trees were there and were part of the site plan and view corridor.

Mr. Delgado asked how long the process would take to get to a conclusion based on the decision of the Board. Deputy City Attorney Mehaffey clarified the question was how long an administrative site plan modification would take and how long a formal site plan modification would take. Mr. Stoudenmire stated it depended on how motivated the applicant was, and noted in most instances the administrative process would move briskly as there were no public hearings. He reviewed the process briefly.

Mr. Delgado asked the applicant to make the argument that removal of the eleven (11) trees did not substantially alter the intent of the original site plan. Mr. Curtin stated he had met with a number of residents and Homeowners Associations, and the main concern was that the tree canopy buffering the site from the surrounding area remained. He noted they like the trees and had paid \$350,000 in mitigation. He discussed impacts of the construction on the four (4) trees and asserted they would become a liability and come down eventually from damage from the construction. Mr. Delgado asked staff to comment on the adverse impacts on the trees as outlined. Mr. Stoudenmire stated the City believed that with a watchful eye, the construction could be done properly with the trees in place.

Chair Barker highlighted Ms. Belvedere's comment that the trees had been there during the entire review process, and the applicant was aware of them. He noted that the rarity of the appeal process lead him to believe that staff was reasonable and does all they can to keep applicants out of the lengthier process. He stated Mr. Stoudenmire's position was hard to argue with and the applicant should consider a reduction of the request if they wanted to pursue an administrative review.

Chair Barker opened the public hearing. There were no questions or comments from the public, and the public hearing was closed.

Kristin Simeone, arborist with Phil's Expert Tree Service, shared her assessment of the four (4) oak trees. She stated she agreed that they were specimen trees based on size and height, but upon dissecting the trees, there were issues. She stated she would prefer trimming a tree to removing it, but in this case that was only an option for possibly one (1) of the trees.

Chair Barker clarified that Mr. Stoudenmire was not a tree expert but had consulted staff and made the decision based on the advice of other professionals. Mr. Stoudenmire added that it was a situation where arborists have differing positions and agree to disagree, which was not uncommon.

Mr. Delgado stated when looking at the criteria, the removal of the trees would constitute a substantial altering of the intent. He agreed it was foreseeable that the applicant would have to work with the trees. He commented that the Board substituting their opinion for the expertise of staff should be rare and sparing. He stated he hoped that some accommodation between the parties could be arrived at. Mr. Light agreed and added the fact that there were eleven (11) trees, not four (4), was important.

MOTION: Delgado/Belvedere – To confirm that the administrative decision by Director of Sustainable Development Scott Stoudenmire related to the approved Coconut Creek Mazda site plan was correct.

Upon roll call, the Motion passed by a 5-0 vote.