

**CITY OF FLORENCE
RESOLUTION NO. 24, SERIES 2015**

A Resolution Sustaining the Appellant's Objection to Condition 12 of PC 15 18 PUD 02 an
Application to Modify East Bank Final PUD to Permit 54 Single Family Homes.

RECITALS:

1. Application was made by Byron Roberts, representing S&C Investments, LLC for a modification to a Final PUD approval as required by FCC 10-1-1-5, and FCC 10-23-12-2; and
2. The Planning Commission/Design Review Board met in a public hearing on September 22, 2015 as outlined in Florence City Code 10-1-1-5 and 10-23-11, to consider the application, evidence in the record, and testimony received, and
3. The Planning Commission/Design Review Board determined per FCC 10-1-1-5 and 10-23-11, after review of the application, testimony and evidence in the record, that the application meets the criteria through compliance with certain Conditions of Approval and adopted Resolution PC 15 18 PUD 02; and
4. S&C Investments, LLC filed an appeal of the Planning Commission's decision per FCC 10-1-1-7 stating secondary access should be allowed through the Sandpines Golf Course; and
5. The City Council met in a properly noticed public hearing on November 2, 2015 and has considered the appeal, the evidence in the record including the staff report dated October 26, 2015, and the testimony presented;

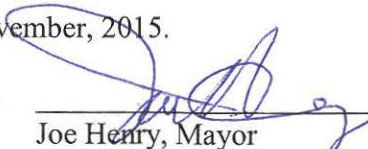
THE CITY COUNCIL OF THE CITY OF FLORENCE RESOLVES AS FOLLOWS:

Based on the findings attached hereto as Exhibit A, conditions of approval required by the Planning Commission are amended by modifying Condition 12 as follows:

Secondary Access for joint vehicular egress and emergency response and evacuation may either be provided through the Sandpines Golf Course access drive or onto Oak St. Secondary access provided through the Sandpines Golf Course shall require easements and maintenance agreements, and alteration of all gates to permit joint thru access onto 35th St. and Oak St. Secondary access onto Oak St., if provided, shall be through easement, partition or replat and shall be constructed in accordance with FCC 10-36-2-7. Council further finds that with this modification to the conditions of approval, the application, as presented, meets or can meet the applicable City codes and requirements, provided that all the Conditions of Approval are met.


ADOPTION:

This Resolution is passed and adopted on the 2nd day of November, 2015.



Joe Henry, Mayor

Attest:



Kelli Weese, City Recorder

EXHIBIT A

Council Findings in Response to Appellant's Appeal Issues

For CC 15 06 APP 01, the Council's decision in response to appellant's appeal of the Planning Commission's Modification to a Final Planned Unit Development (MPUD) approval, PC 15 18 PUD 02, the Council adopts the following findings.

I. PROCEDURE

Pursuant to FCC 10-1-1-7(E), the Council has determined to not open the appeal proceedings to new evidence. As a result, the Council's decision on this appeal is confined to the record before the Planning Commission and any argument submitted prior to the closing of the record after the public hearing on November 2, 2015. For these findings, the Council has only considered the evidence in the record before the Planning Commission and argument submitted into the record during the appeal. To the extent any new evidence was submitted, the Council does not consider the evidence in making these findings. Appellant has made no objections to the record. The appellant claims fault with Condition 12 related to provision of a secondary access onto Oak St. The appellant has submitted argument in favor of his appeal.

The Council finds that appellant waived its rights under ORS 197.763(6)(e) to submit final rebuttal written argument. This waiver was made on the record at the public hearing by appellant's counsel.

II. APPEAL ISSUE

A. Validity of condition imposed

The appellant objects to one of the conditions of approval imposed by the Planning Commission. The Council makes the following findings to the condition:

Condition of Approval 12

The applicant proposed modification to the final PUD's circulation by eliminating connectivity through the western golf course property and adding a turnaround in open space near the end of the Nandina Dr. Staff's recommendation required provision of secondary access as required in both the 2005 & 2007 approvals and through application of code. Secondary access was to be provided through the golf course or if an easement could not be secured then through Oak St.

The condition as approved by Planning Commission sought to bring the development up to current standards, promote efficient vehicular and pedestrian circulation and protect life and real property. Criteria FCC 10-36-2-6 which prevents cul-de-sacs greater than 400' long and FCC 10-36-2-9 which requires connectivity to surrounding streets furthered their interest to provide an efficient transportation network and accommodate public health and safety to require a secondary access onto Oak St. a public right-of-way rather than through property not owned or controlled by the applicant. PC concluded that requiring the appellant to gain secondary access from an abutting property under separate ownership did not insure the safety and welfare of the property and structures.

The Council supports Planning Commission's decision to require secondary access for East Bank PUD. They however find that it is in the best interest that the secondary access be allowed to be

provided through the adjacent western golf course property. FCC 10-36-2-9 states that planned streets shall connect with surrounding streets and property. FCC 10-36-2-9-B requires extension to future development phases of the same development. East Bank is part of the Sandpines PUD Master Plan and connectivity is available with modifications to the gates and provision of easements. FCC 10-36-2-9-C requires a 10 ft. wide multi-use pedestrian path in a 20 ft. wide easement where the maximum block length cited in 10-36-2-10 is impracticable. Council finds that placing an easement onto an existing lot or portion of lots to provide secondary access onto Oak St. to be impracticable. The applicant has provided a multi-use path connecting Nandina to Oak St. Widening would be required to meet the opportunity for emergency vehicle access as afforded by FCC 10-36-2-9-C-1. Council finds that FCC 10-35-2-10 affords the city the opportunity to require joint access for adjacent development where access onto an arterial street is limited and access spacing standards cannot otherwise be met. FCC 10-35-2-11 continues to require such a joint access to be placed under easement and maintenance agreement. Secondary access is critical for the safety and welfare of the property owners and the structures.

The Council is able to find that this condition relates to a particular PUD modification approval criterion, FCC 10-23-4-C. While the condition relates to important considerations in the location and design of the secondary access the condition as required is not properly assessed at the PUD Modification approval stage. The important concerns that gave rise to the condition of approval are more properly considered as part of a subdivision replat process.

The Council finds that the access provisions further the planning purposes of the Code, are authorized by FCC 10-35-2-10 and FCC 10-23-4-C, and are reasonably related to the proposed PUD modification. The Council also finds that appellant had notice of the possible imposition of this condition from the staff report available to appellant seven days prior to the public hearing. The condition was also discussed at the public hearing. Appellant offered no argument in opposition to this possible condition and waived its right to present rebuttal argument on this issue and all other appeal issues.

The Council finds that the Planning Commission's decision should be modified to reword Condition of Approval 12 to permit the requirement for secondary access to be met through easement and gated access through the westerly golf course property. Appellant's objection to Condition of Approval 12 is sustained and is replaced with the following:

Secondary Access for joint vehicular egress and emergency response and evacuation may either be provided through the Sandpines Golf Course access drive or onto Oak St. Secondary access provided through the Sandpines Golf Course shall require easements and maintenance agreements, and alteration of all gates to permit joint thru access onto 35th St. and Oak St. Secondary access onto Oak St., if provided, shall be through easement, partition or replat and shall be constructed in accordance with FCC 10-36-2-7. Council further finds that with this modification to the conditions of approval, the application, as presented, meets or can meet the applicable City codes and requirements, provided that all the Conditions of Approval are met.