

**TOWN OF INDIAN HEAD
PLANNING COMMISSION
Village Green Pavilion
PUBLIC HEARING #PC201701
February 15, 2017**

Chairman Michael Pellegrino called Public Hearing #PC201701 to order at 7:04 p.m. Roger Fink of Scott Law Group, David Cooksey and Cathy Flerlage of Soltesz and Randy Warren of Cook Inlet Region Inc. were present to request a zoning map amendment for parcel 609. Those in attendance were:

Chairman Michael Pellegrino
Warren Bowie
Wayne Higdon
Thomas Blake
Thomas Gordon
Ron Sitoula, Ex-Officio
Ryan Hicks, Town Manager
Karen Williams, Secretary Pro-tem
Lucinda Stevens, Zoning Administrator

Chairman Pellegrino began by welcoming the applicants, the public and the newest member of the Planning Commission, Thomas Gordon.

Chairman Pellegrino laid out the order of proceedings as it is stated in the Zoning Ordinance. The Planning Commission will first allow the applicants/presenters to make their case for the zone change, followed by the zoning staff report. After both presentations the floor will be open to the Planning Commission to ask questions, followed by public questions and comments. For the purpose of time and clarity, Chairman Pellegrino asked that everyone allow the presentations to be made without interruption.

Chairman Pellegrino explained that since it is a zone change there are two tests for considering the requested change. First, is there a change in the character of the neighborhood in the vicinity of the property, or is there a mistake in the Zoning Ordinance related to the original zoning placed on the property. The discussion will be limited to making the case for that kind of zoning change. Chairman Pellegrino then turned the floor over to the applicants for their presentation.

The applicants present for the presentation included Roger Fink of Scott Law Group, David Cooksey and Cathy Flerlage of Soltesz and Randy Warren from Cook Inlet Inc.

Mr. Fink began the presentation. The applicants are requesting an amendment to the zoning map for the approximately 7 acres of land zoned Open Space due to a mapping error. The classification of Open Space is intended to preserve publicly owned land or land intended for public use. Preservation of natural features on this private parcel of land can be accomplished with natural preservation buffers of the streams and woodland areas in accordance with already existing regulations and ordinances. Soltesz prepared the

amendment application. Mr. Cooksey reviewed the staff report and he feels it is very thorough and he agrees with the recommendation. Per Mr. Fink's request, Mr. Cooksey also discussed the concept plan, surrounding neighborhoods and current zoning. Mr. Fink asked if Soltesz analyzed the project's requested zoning in relation to the Town's Comprehensive Plan. Ms. Flerlage explained that yes they did do an analysis in relation to the Comprehensive Plan and they included a consistency analysis as part of the application. The analysis compared the proposed development with the Comprehensive Plan and the Zoning Ordinance. The general conclusion being the proposed development would be consistent with the Comprehensive Plan, with goals and objectives of land use for municipal growth for economic development, with natural resource protection and with transportation and pedestrian connectivity. Ms. Flerlage stated that the project very much keeps within the Comprehensive Plan goals.

Ms. Flerlage went over the concept plan and described the protection plan for streams and certain woodland buffers. The proposed amount of green space in the concept plan is equal to the current area zoned Open Space.

Mr. Fink asked Mr. Cooksey if he felt the mapping of the 7 acres of this parcel as Open Space was a mistake. Mr. Cooksey stated he does feel it was a mistake. Mr. Cooksey mentioned that when Soltesz was contacted by the property owner to look at doing a concept plan, the referred to the Town's Zoning Ordinance to see what they would be able to do with the density. Open Space was not listed in the first permissible use chart and on the zoning map everything zoned Open Space was owned by the Town. When Soltesz spoke with Town officials they were unable to explain why the split zoning was done and specifically why the 7 acres were zoned Open Space. Mr. Cooksey stated that they wouldn't be able to do anything on the property based on Town rules. The applicant feels the 7 acres were used for public property without the knowledge of the property owners. The applicants feel the proper zoning classification for the entire parcel should be TCMX.

Zoning Administrator, Lucinda Stevens reviewed the staff report on the rezoning request. According to the report the availability of public utilities is adequate. The State Highway did not require further analysis of the present and future transportation patterns. The proposed development is consistent and compatible with the surrounding properties. The proposed TCMX development is consistent with the Town's Comprehensive Plan. The fiscal impact of the project will consist of additional revenues in the form of taxes and impact fees. The parcel is currently undeveloped and unimproved and there are environmentally sensitive elements. DNR was solicited form input but no response was received. The staff report agrees that the zoning line was drawn in error. It is unusual for private property to be zoned Open Space. Open Space is generally confined to government owned land on which parks or other public uses can be made of the land. In this case, an arbitrary zoning boundary was placed on the property, most likely to protect and preserve environmentally sensitive areas. Protection of environmentally sensitive elements can be preserved by other means and in some areas, is required by the State government. Staff can only assume the open space was placed to protect and preserve the natural features of the site. Staff recommends approval of the rezoning of the Open Space to TCMX with conditions. The conditions include placing in a perpetual conservation easement all forest areas, streams and their buffers, and steep slopes, not proposed for development including the northern and perhaps the southern areas of the property.

Allow a natural buffer to remain along the common property boundary with the Navy Base. Comply with the provision of the Town's Forest Conservation Ordinance with any required reforestation implemented within the Town of Indian Head if possible. As an alternative, the Open Space could be preserved, but redefined to include the environmentally sensitive areas only. Ms. Stevens made one last point that if the rezoning is approved to be TCMX with required easements it could be providing more protection than what is currently there. (Staff Report attached)

Chairman Pellegrino opened the floor for questions and discussion by the Planning Commission.

Thomas Blake expressed that he is glad to see the area being built up and he hopes the Commission can come into a common agreement on the project. Mr. Blake feels it was clearly pointed out that it is likely an error and he feels at this point all his prior concerns with the project have been addressed.

Warren Bowie discussed when the Cook Inlet requested the parcel be changed from R1 to commercial back in 1988 and cited a zoning mistake for the reason. The Planning Commission and Council approved the owners request at that time. Mr. Bowie asked if the owner of the property objected at the time the parcel was split zoned. Mr. Warren stated that the Town did not notify the property owners of the zoning change and he does not recall the change to commercial. Mr. Bowie asked how many times the Town is supposed to change the zoning and say it was a mistake. Mr. Fink said the evidence shows it is reasonable and proper to cite a mistake for the request. Mr. Bowie asked how many acres will be used for construction. At this time Mr. Bowie has been unable to find when the split zoning took place.

Vice Mayor Sitoula asked if the property was ever public land. The applicant responded that the land was owned by the United States Government until 1987 when it was purchased by CIRI/Cook Inlet Region Inc. Vice Mayor Sitoula feels that since it was government owned at one point the zoning would not be a mistake and he asked if private ownership trumps what can be zoned Open Space. Mr. Fink said it could be problematic under the 5th amendment as taking exaction.

Warren Bowie stated that when CIRI bought the property it had been declared excess and went to auction where CIRI successfully bid. The property carried the County designation of R1 then it was requested to be zoned commercial based on a mistake and was approved. The property was never Open Space until the split zoning was done around 2009. Mr. Cooksey stated that if you read the title for the property you can find the original intent for the parcel.

Chairman Pellegrino stated that the 1988 Comprehensive Plan indicated that the parcel was dedicated to Open Space for residential purposes such as hiking trails or tennis courts. This was the earliest reference to Open Space. The 1990 Zoning Ordinance indicated that the Open Space district intent was to "identify open spaces within the Town that have been determined to be significant features of the landscape...open spaces within the Town may be protected from future development and preserved for the enjoyment of the community". The 1997 Comprehensive Plan indicates the entire parcel as Open Space and River Watch Commons as Open Space. The 2009 Zoning Ordinance

shows the majority of the parcel TCMX with a portion Open Space. Chairman Pellegrino questioned why this zoning issue wasn't raised 30 years ago. The Staff Report says environmental sensitive elements are primarily located in the area zoned Open Space. Chairman Pellegrino asked for the definition of steep slopes. The Comprehensive Plan references 25% and the Zoning Ordinance appendix A, item 40 slope analysis references 15%. Chairman Pellegrino asked if the 15% slope areas were identified on the drawings and he stated 15% does not appear to be shown. Chairman Pellegrino stated that if you look at 15% slopes it is very uncanny how the Open Space zoning line, corresponds to the line of the 15% slopes and that helps explain the purpose of the line and while the line might not be completely accurate it is not arbitrary. Mr. Fink stated that they are not criticizing the staff that the line was done. They are saying it will end up being community open space anyway and it may have been considered a rational decision at the time the split zoning decision was originally made.

Chairman Pellegrino stated that the application mentioned the Open Space zone creates an unnecessary hardship. Chairman Pellegrino questioned if, when exercising the right to zone is the Commission and Council are to consider the highest and best use of the property or just take into consideration a reasonable use of the property. Chairman Pellegrino does not agree with the statement that the Open Space zoning creates an unnecessary hardship. Mr. Fink expressed that overlay zones that prohibit uses can create a lot of problems without substantial justification for them. In this situation Mr. Fink feels it is an unusual property restriction because it appears Open Space classification is intended for land that is intended for public use or owned by a nonprofit or community organization for the use of the public not just private land.

Chairman Pellegrino brought up River Watch Commons in his earlier statement because it was also designated Open Space and not owned by a government entity when developed. When the River Watch Commons development occurred the Open Space designation was there and the developer worked with the Town to develop and look at plans to utilize the Open Space, therefore it is not necessarily a restriction.

Mr. Fink stated that proposed development next to River Watch where the community open space will be will provide pedestrian interconnectivity.

Chairman Pellegrino discussed the areas identified in the Comprehensive Plan and Zoning Ordinance as Open Space which he believes were intended for a possible trail network at the northern edge of the Town connecting the Village Green to the Potomac River access at Potomac Park. Chairman Pellegrino stated again that the Open Space designation was not arbitrary or inconsistent with the Comprehensive Plan.

Chairman Pellegrino stated that another argument by the petitioner was that the owner did not request or consent to the Open Space zoning. Chairman Pellegrino discussed the process undertaken when a municipality proposes to zone or rezone land in order to implement the Comprehensive Plan. During the zoning process a public hearing is held to solicit public input regarding the proposed zoning action before adoption.

Chairman Pellegrino also stated that the petitioner's argument included an alternative request to rezone the 7 acres partially to TCMX. Chairman Pellegrino pointed out that the

petitioner's first claimed that the zoning is a mistake. This subsequent argument would make it seem the petitioner would now accept a half mistake as an alternative.

Chairman Pellegrino stated that in the application it states that the zoning authority was unaware of or failed to take into account physical characteristics of the property when the base zoning category was established. Chairman Pellegrino then discussed soils maps contained in the Petitioner's Exhibit 'D', specifically that the discussion of the maps does not mention 15% to 40% slopes. Chairman Pellegrino stated he is trying to point out that the Open Space zoning was not arbitrary nor did the zoning authority fail to take characteristics of the parcel into consideration since the line of the 15% slopes as indicated in the Petitioner's Exhibit 'D' line up quite well with the Open Space Zoning line. Mr. Fink stated that the soil map is a National Map; it was not created by the applicant.

Chairman Pellegrino asked if the general development plan shows existing forested areas to be disturbed by construction. Cathy Flerlage explained that it is represented through colors on the map and everything not green is forest being removed but the balance is the proposed open green space.

Chairman Pellegrino stated that his position is that he does not think the line is arbitrary and there is a reason for it to be there. Chairman Pellegrino does not think the zoning is a mistake from his perspective.

Thomas Blake stated that it is his intent to recommend approval of the zoning amendment and he would like to hear from the public for their feedback.

Lucinda Stevens stated that there has been a lot of attention on the word arbitrary and she feels that may not be quite an appropriate word to use in the staff report because in the same sentence they note that the line/zoning boundary was most likely to protect and preserve the environmentally sensitive area. Ms. Stevens feels that thinking logically it was placed there because they wanted to leave it green so Open Space would have been the logical thing to do with it. The purpose would have been to leave it green. Ms. Stevens thinks that same purpose is being achieved with the reclassification with the conditions that the staff report noted because they will be placing the land in the perpetual easement so it will still be green space, but in a protected easement it is more appropriate. Ms. Stevens thinks that is why the staff report recommended to approve the zoning amendment because it seems more appropriate to protect the environmentally sensitive area in an easement.

Warren Bowie said the parcel may have been rezoned from commercial to all Open Space then with the latest Comprehensive Plan version it was decided to split zone the parcel. Mr. Bowie isn't sure if they State had input into that decision but he requested that staff research the change because he would like to know the history of the parcel of land. Mr. Bowie stated that under TCMX you can get 20 houses on an acre and he asked if the applicant would have enough acreage without the amendment to do the concept plan. The applicant said they would not.

Chairman Pellegrino opened the floor to receive public comments and questions.

Sybil Morris – River Watch Commons: Ms. Morris requested a better understanding of where the applicant is trying to build. The Commission explained the location in reference to River Watch Commons, Villages of Potomac and the water tower.
Timothy Morris – River Watch Commons: Mr. Morris asked where the road access to the residential development will be located. Mr. Cooksey said the property fronts on Dr. Andrews Way access and there will be a sidewalk tying into River Watch Commons.

Patricia Bell – Villages of Potomac: Ms. Bell asked about the pricing of the proposed homes. Randy Warren explained that the pricing will be set by the builders based upon their evaluation. The builders will hope to get as much as they can for the homes and increase the value of the surrounding properties but there is no specific price at this time. Mr. Blake referenced a report the Commission received previously that had the suggested price point of \$240,000 to \$301,000.

Jessica Jackson – Villages of Potomac: Ms. Jackson asked what types of residential properties are being proposed for the development and if there is a specific builder for the project. Mr. Cooksey stated it would be all townhomes, there would be 164 total. There is no specific builder at this time. Ms. Jackson asked about a buffer between the development and Village of Potomac and expressed a concern about parking. Ms. Flerlage stated that per the Town's ordinance 2 ½ spaces per unit are required and a substantial amount of guest parking will be provided. The proposed project has 503 parking spaces. Ms. Flerlage said there will also be a buffer yard between the two developments.

Barb Wheeler – Potomac Woods: Ms. Wheeler asked if the zoning does not change is there a plan B for the project. The applicants had no answer at this time.

Resident of River Watch Commons (name was not given): The resident asked the present zoning of the area the applicant wants rezoned and he asked how the development of the property will affect the wildlife and if all wooded area would be gone. The applicant stated the current zoning is Open Space which would allow recreation or public use. While the applicant and the Commission could not answer to the affect on wildlife it was stated that there would still be 7 acres of wooded area left after construction.

Jim Wheeler – Potomac Woods: Mr. Wheeler asked for the definition of TCMX and Chairman Pellegrino provided the definition as being a compatible mixture of residential and commercial development. Mr. Wheeler asked what consideration was given to a commercial aspect to the property since the development appears to be 100% houses. Mr. Fink explained that with the application they submitted a fiscal impact study that extensively analyzes some of the economic development needs of the Town. To generalize the report, Mr. Fink explained that the Town needs people to help lure in the businesses to do commercial development. This project is designed to bring in a demographically diverse group of residents into the Town who have walkability to various locations in the Town which could help attract businesses. The benefit to the Town in the construction phase just for fees and charges is around \$1.7 million. It is a substantial economic development engine to the Town and the parcel is one of only 3 large parcels left in the Town limits that has any possibility of intense development. Mr. Fink informed Mr. Wheeler that their application is public record and he is able to visit the Town hall to review it.

Chairman Pellegrino informed the public that there will be other public hearings down the road that would address the actual development and he added that he still thinks this could be a wonderful development. Chairman Pellegrino feels there is a lot of potential for the parcel and he thinks good things can happen there whatever the results of the hearing are.

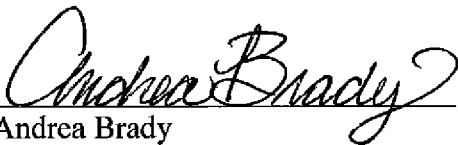
Chairman Pellegrino closed the public hearing at 8:27pm.

Chairman Pellegrino requested direction from the Commission on how they would like to proceed.

Warren Bowie made a motion to hold the record open for 10 days to get any written comment. Wayne Higdon seconds the motion. Motion carried.

Chairman Pellegrino said at the next Planning Commission meeting in March, the Commission will open the discussion on the requested zoning map amendment to see if there is an action to be taken

There being no further discussion, Thomas Blake made a motion to adjourn the meeting, and Thomas Gordon seconds the motion. The meeting adjourned at 8:32pm.



Andrea Brady
Town Clerk

Staff Report
Rezoning Request for
CIRI, Parcel 609

Introduction

The Cook Inlet Region, Inc. (CIRI) owns parcel 609, consisting of 19.3638 acres, more or less, within the Town of Indian Head. The Town's Zoning Map currently shows the parcel split zoned with approximately one third zoned open space and two-thirds zoned Town Center Mixed Use (TCMX). A general development plan for the property consisting of 164 townhouse units was approved by the Planning Commission in August of 2016. A traffic impact study was prepared by Traffic Concepts, Inc. in November of 2016 indicating that affected intersections will continue to operate satisfactorily under future conditions with full build out of the development.

Based on the proposed concept of 164 townhome sites on the subject property, the following impacts are noted by staff as required by Article 20 of the Town's Zoning Ordinance. Staff has determined that the application for rezoning provided by CIRI is complete. The application has requested that the entire parcel be rezoned to TCMX or as an alternative, preserve an open space sector that will be redefined to preserve the environmentally sensitive areas of the property.

Population Change

With 164 additional townhome units, and the current ratio of 2.76 persons/dwelling from the 2010 Census, the population increase from the project determined will be 452 people. With a current population of 3,857; this represents an 11.7% increase in population. It is expected that full buildout of the development will not occur for 4-6 years after initiation of the development. With actual growth from the date of the most recent 2009 comprehensive plan until now consisting of only a few new homes, the proposed level of population increase from this development is well within the levels anticipated in the comprehensive plan. Moreover, the increase in school enrollment for this property is estimated consisting of: 35 elementary school students, 21 middle school students, and 31 high school students which will not increase the schools capacity beyond its capability.

Availability of Public Utilities

The proposed increase in water and sewer usage from full buildout of the development will not increase the available treatment capacity beyond existing capacity.

Water distribution systems with adequate pressure and fire flow and sewage collection system are within close proximity to the development and available for extension to serve the proposed development.

Natural gas is also available within Indian Head Highway in the event the developer elects to be served by natural gas.

Present and Future Transportation Patterns

The proposed development will access at two (2) locations onto Dr. Andrews Way which then intersects Indian Head Highway, an arterial highway. Traffic will most definitely increase onto Dr. Andrews Way and Indian Head Highway. A traffic impact study, prepared by Traffic Concepts, Inc. on behalf of CIRI, has been completed and shows that all intersections impacted by the Development will operate at an acceptable level of service A or B after full buildout and anticipated 3% growth in background traffic volumes.

Compatibility with Existing and Proposed Development

The property in question is boarded by the Navy Base, the elementary school, and town and city parkland, existing townhouses in Riverwatch Commons and Riverwatch Development and multi-family units along Indian Head Highway. The proposed townhouse development with a gross density of 8.3 units/acre is consistent and compatible with the surrounding properties.

Relationship to the Town's Comprehensive Plan

The proposed TCMX development is consistent with the Town's 2009 Comprehensive Plan and further detailed in the applicant's petition for rezoning.

Fiscal Impact on Town Government

The fiscal impact on the Town will consist of additional revenues in the form of taxes, and impact fees. Impact fees will amount to approximately 1.7 million dollars. The Town will however be required to perform perpetual routine maintenance on public roads and utilities that will be initially installed by the Developer. The Town will not be responsible for construction of any improvements associated with the Development. The Town's police and fire protection manpower and facilities will be burdened with additional responsibility associated with 164 new residential units within the town limits. However, the Town's Comprehensive Plan identifies current police, fire, and other community services as adequate through 2030.

Suitability of the Property for the Intended Use

The existing 19.38 acre parcel is currently undeveloped and unimproved. The majority of the property is forested. Environmentally sensitive elements such as streams and steep slopes are located primarily within the area zoned Open Space. The property is not encumbered with the 100 year mapped floodplains or Chesapeake Bay Critical Areas. The soils, outside of the steep slopes, are suitable for development according to the Natural Resource Conservation Service. The applicant has made a written inquiry to the Department of Natural Resources concerning the existence of rare and endangered species. No response has been received at this time. On balance, the site is suitable for the development.

Changes in the Character of the Neighborhood or Mistake in the Original Zoning

According to State Law, the applicant must prove a change in the character of the neighborhood or that there was a mistake in the original zoning. We agree with the applicant's assertion that there was a mistake in the original zoning. It is unusual for private property to be zoned Open Space. Open Space is generally confined to government owned land on which parks or other public uses can be made of the land. In this case, an arbitrary zoning boundary was placed on the property, most likely to protect and preserve environmentally sensitive areas. Protection of environmentally sensitive elements can be preserved by other means and in some areas, is required by the State government.

Staff Recommendation

The current zoning map of the Town shows the parcel in question being split zoned with the northern 7 acres ± being zoned Open Space and the remainder zoned TCMX. We can only assume the open space was placed to protect and preserve the natural features of the site including a perennial stream, steep slopes and forest. It is unusual for private parcel to be zoned open space particularly in view of the absence of floodplain and Chesapeake Bay Critical Areas. The specific location of the Open Space zoning boundary line appears to be arbitrary and not based on an environmental study or topographical survey.

With this in mind, the staff recommends the following course of action:

Recommendation: Approval of rezoning of the open space to TCMX (rendering the entire property TCMX) with the following condition(s):

- Based on a topographical survey of the property and environmental analysis by the applicant, and input from DNR, place in a perpetual conservation easement all forest areas, streams and their buffers, and steep slopes, not proposed for development. This will include the northern and perhaps the southern areas of the property.

- Allow a natural buffer to remain along the common property boundary with the Navy Base.
- Comply with the provisions of the Town's Forest Conservation Ordinance with any required reforestation implemented within the Town of Indian Head, if possible.

As an alternative, the "Open Space" zoning could be preserved, but redefined, to include the environmentally sensitive areas only.