



# Pinellas County

## Staff Report

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**File #:** 15-960, **Version:** 1

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**Subject:**

Appeal of Site Plan # 1858.11 (quasi-judicial item) (regular agenda item).

**Recommended Action:**

Deny the appeal, thereby upholding the approval of Site Plan #1858.11.

**Strategic Plan:**

Foster Continual Economic Growth and Vitality

4.3 Catalyze redevelopment through planning and regulatory programs.

Practice Superior Environmental Stewardship

3.3 Protect and improve the quality of our water, air, and other natural resources.

**Summary:**

On September 30, 2015, the Director of the Department of Development Review Services (DRS), as a designee of the County Administrator, approved Site Plan #1858.11 (Project), also known as Turtle Beach. The project consists of 34 acres located in the southeastern portion of the Point Seaside Master Plan, south of the Crystal Beach community. As approved, the Turtle Beach project would result in the development and/or redevelopment of 61 single-family dwellings, i.e. the same density as previously approved in the 1980 Master Plan, to be recorded as a land condominium plat (Attachment 1, Attachment 2). The project also incorporates residential amenities, such as passive and active recreational open space; community amenities, such as sidewalks and public access easements to the lake; and, environmental protections, such as conservation easements, exotic species removal, and stormwater treatment.

On October 20, 2015, the County Administrator received an appeal from Ms. June Barwick (the Appellant) citing four primary concerns about the Project and/or the County's review process. The Appellant's concerns, which can be found in Attachment 3, have been paraphrased below:

1. Improper review of the project as a revision resulting in concerns for the environment, traffic, safety, and water quality
2. Incorrectly applying a Board of Adjustment (BOA) variance for front yard setbacks
3. Improper use of discretionary decisions, such as reducing wetland buffers and waiver of sidewalk requirements
4. Not involving other appropriate State agencies, such as the State Department of Environmental Protection

The following information is in response to the Appellant's position:

1. The project was evaluated in accordance with and meets the requirements established in the Pinellas County Land Development Code (the Code), as follows:
  - a. Environmental and Natural Resource Protection regulations are established in Pinellas County Code Chapter 166. Article II establishes specific development regulations for habitat management and landscaping. This site plan is consistent with the applicable regulations and has remained consistent with County implementation practices. As such, County staff contends the proposed project contains enhancements to the environment that would not have been otherwise implemented

and thus the Appellant's concerns with respect to environmental regulations are not sufficient grounds to deny the project.

Specifically, the resulting site plan modifications incorporate several enhancements beyond the 1980 site plan, and in some instances, the Project has incorporated improvements beyond what the County could have otherwise required. For example, the Project would result in:

- Exotic species, i.e. Brazilian Pepper, removal in both the upland buffer and wetlands,
- Wetland enhancement in the form of additional plantings,
- Betterment swales, i.e. a segmented construction schedule for stormwater swales,
- Exceeds the State's requirements for upland buffers,
- Prioritizes expansion of existing higher quality habitats,
- Addresses protected species, per FWC, such as gopher tortoises, osprey, etc.,
- Mandates a recorded conservation easement, and
- Creates a condominium association wetland management plan.

Furthermore, Pinellas County Code Section 166-46 provides for site plan exemptions for site plans which were accepted for review by the County prior to March 1, 1990 and which have an active status as determined pursuant to Chapter 138 shall not be required to comply with the specific provisions of section 166-50 and section 166-51, provided that:

- (1) Consistency with the comprehensive plan, Ordinance No. 89-69 is maintained.
- (2) When final site plan comments or reports defined pursuant to the zoning ordinance are provided to a site plan applicant, the applicant shall have 90 days in which to revise and resubmit a site plan, in compliance with such comments or reports, to the county for further review. Site plans not revised and received within such 90-day period shall be reviewed for compliance with all the requirements of this article in effect on the date of resubmittal. When the resubmitted site plan is received within such 90 days, the plan shall be reviewed under the requirements of this article with the exception of the specific requirements of section 166-50 and section 166-51.
- (3) The terms and conditions of subsection (2) of this section shall also apply to preliminary site plans except that the referred 90-day time frame shall be 180 days.

The site plans for the Point Seaside Master Plan, as discussed below in the background information section, were submitted and approved before March 1, 1990 and development activity commenced consistent with the site plan requirements established in Pinellas County Code Section 138-180. By developing the project site with roadway improvements, infrastructure, platting the lots, and commencing construction, the site plan is considered active per Section 138-180(a)(2). As a result, site plan #1858.11 complies with subsections (1)-(3) as referenced above.

Lastly, the Pinellas County Code allows for, and anticipates that some site plans may require modifications over the life of the project. Section 138-179 requires that all development shall be constructed in strict compliance with the approved final site plan. However, it goes on further to say, "Any additional site alterations shall require further site plan review. All land or water areas required to remain in a natural condition shall not be altered in any way from such natural condition, except by further site plan review and approval." The aforementioned Code citations both allow and anticipate revisions to site plans, such as were reviewed and approved under site plan #1858.11.

b. With regard to traffic, the approved project is consistent with and does not alter the Land Use, Zoning, and unit count established in the Point Seaside Master Plan approved in 1980. As such, the revised project, as a single family residential community, will not generate any additional projected average daily trips beyond what was previously permitted. Furthermore, in accordance with Pinellas County Code Chapter 150, the Project will be required to pay the applicable Transportation Impact Fee associated with the net new units (i.e. for those units not previously constructed). This money is

used by the County to fund pavement management, signal improvements, roadway signage, etc. As a result, the Project is paying its fair share for the traffic it generates on the roadway network.

c. With regard to safety, although no specific details have been provided as to the specific type of safety concerns, the Project has been designed with sidewalks on all public street frontages. The portion of the Project that is located on a private street, i.e. Seaview Circle, is behind a community gate and has sidewalks internal to the loop roadway. Additionally, there are low-scale pedestrian lights located along Seaview Drive to support safety and visibility.

d. With regard to water quality, the existing Point Seaside Master Plan established a series of water quality retention ponds internal to Seaview Circle. These ponds, as well as overland biological treatment, were designed and constructed to treat the project's stormwater runoff. The Project, as revised, ensures that those existing ponds are maintained to treat the Project's water. It also incorporates the use of drainage swales clustered behind a number of lots to create a net betterment for the water quality of the overall Project. The Project, therefore, complies with the requirements in the Pinellas County Code.

2. In accordance with Chapter 138, Article II, Division 3 of the Pinellas County Code, the Board of Adjustment is responsible for reviewing and approving variance applications. The Applicant followed this procedure and was granted a setback variance in 2013 in BA 12-11-13.

According to Pinellas County Code Section 138-120, Review of the board's decision, "A party seeking judicial review of a decision of the board of adjustment shall have 30 days from the date of the public hearing which resulted in the approval or denial by the board of adjustment to bring the appropriate legal action. The 30-day time period will commence when the decision was finalized at the public hearing, not when the decision was reduced to writing." The 30 day time period for an appeal of the Board of Adjustment's 2013 decision granting the setback variance has expired. Furthermore, the appropriate body to have heard the appeal would have been the court, not the Board of County Commissioners.

Additionally, Pinellas County Code Section 138-122 allows modification and/or revocation of previously granted variance, but again the appropriate hearing body is the Board of Adjustment, not the Board of County Commissioners. Therefore, the Board of County Commissioners lacks jurisdiction to review the setback variance granted in BA 12-11-13.

3. Throughout the development review process, County staff has made repeated efforts to meet, discuss, and clarify the County's regulations and process with members of the community. When requested, access to information has been provided. Furthermore, when reviewing the project, County staff has used the discretion afforded in the Code. For example, the appeal makes reference to the waiver of sidewalk requirements as a case and point of County staff's abuse of discretion; however, Pinellas County Code Section 138-645, subsection (e)(6) states, "Sidewalks shall be required on both sides of all streets and roads where such streets and roads are adjacent to residential uses or recreational uses, and shall be required at all other locations where pedestrian and vehicular traffic may conflict. When determined unnecessary or impractical to accomplish, these requirements may be waived by the county administrator. Request for such waivers shall be submitted in writing to the zoning division." As a designee of the County Administrator for Site Plan review, the Director of DRS approved the request for a sidewalk waiver on the private road portion of the subject property, located behind a controlled gate. Furthermore, a sidewalk was provided internal to the loop road.

4. The County does not have jurisdictional authority over the State of Florida and its agencies to mandate their participation in the County's site plan review process. The County has no authority to require the Applicant to apply for State permits. Furthermore, there are no provisions in the Pinellas County Code requiring coordination with the State Agencies. However, as a matter practice, County staff has informed the Applicant of their need to coordinate with the applicable State agencies for all

necessary State permits.

**Background Information:**

In 1979, the County received a preliminary plan (Attachment 4) for the proposed development of the Point Seaside Master Plan, zoning case Z-2199, requesting a zone change from R-33 and Agricultural Estate to Residential Planned Development (RPD). The applicant then revised the preliminary plan in 1980, under zoning case Z-2287 (Attachment 5). The master plan allowed for up to 110 residential units over four phases on the 145 acre project site.

In 1981, the County approved a site plan (SP #1858) for Point Seaside phases 1, 2, and 3, which in total incorporated the development of 62 single family dwellings (Attachment 6). Phase 1 and phase 2 were constructed along Point Seaside Drive with a total of 49 lots. Phase 3, the remaining 13 lots, where located along Seaview Drive; however, only the two model home units on lots 50 and 51 were constructed.

In 1982, the County received a request for revisions to the site plan for phase 4 of the master plan, also known as Sutherland Crossing, and in 1983 a site plan (Attachment 7) was approved for 48 dwelling units (to be used as timeshare condominiums). Although fully platted as a subdivision, only 33 units of the 48 were constructed, in addition to the clubhouse, tennis courts, and other amenities. In 1985, the County received another request to revise the site plan by adding 3.18 acres to the original 145 acre site, which would allow up to eight additional dwelling units. At the time, this site plan (Attachment 8) was referred to as Sutherland Crossing Unit II. The additional eight units were not developed as part of the Point Seaside Master Plan; rather they were developed as an independent subdivision known now as Osprey Point.

The land associated with the 48 unit timeshare condominiums, known as Sutherland Crossing, and the 13 lots associated with Point Seaside phase 3 was acquired by the Turtle Beach Land Company, LLC (the Applicant). In late 2013, the Applicant submitted plans to revise the previously approved site plans to allow for the construction of 62 single family dwellings, with a revised plat (SP #1858.10) (Attachment 9). As proposed, the revised project needed the approval of a setback variance, which was granted by the Board of Adjustment under BA 12-11-13 (Attachment 10).

After a couple rounds of review by all applicable County departments and associated agencies, and upon the approval of a sidewalk waiver request (Attachment 11), the revised project was approved on July 6, 2015 (Attachment 12). Shortly after the approval was granted, the County received an appeal (from a different appellant). While researching the Project archives, it was determined that the County's original approval exceeded the scope of its authority, and on July 22, 2015, the County rescinded its approval, citing that the County only had authority to approve a project with 61 dwelling units (Attachment 13).

The Applicants agreed to reduce the project by one dwelling unit and the site plan approval was reinstated on July 24, 2015 (Attachment 14). The Applicant and then appellant were able to come to settlement terms pending some Project modifications, i.e. shifting three lots off of Florida Boulevard and incorporating them into the other portions of the site. These revisions to the site plan were approved under site plan #1858.11 on September 30, 2015 (Attachments 1 and 2). As previously stated, the revised project was appealed by Ms. Barwick on October 20, 2015.

**Fiscal Impact:**

N/A

**Staff Member Responsible:**

Blake Lyon, Director, Development Review Services

**Partners:**

N/A

**Attachments:**

Final Administrative Approval (FAA) for SP #1858.11  
Site Plan #1858.11  
October 20, 2015 Appeal Letter  
1979 - Point Seaside Master Plan  
1980 - Point Seaside Master Plan  
1981 - Point Seaside Site Plan (Phases 1,2, and 3)  
1983 - Sutherland Crossing (Phase 4)  
1985 - Sutherland Crossing II  
Site Plan #1858.10  
Variance - BA 12-11-13  
Sidewalk Waiver  
FAA for SP #1858.10  
July 22, 2015 letter rescinding SP #1858.10  
July 24, 2015 letter reinstating SP #1858.10  
Pre-Hearing Packet