

**FINAL MINUTES AND AGENDA
TOWN OF JUPITER
TOWN COUNCIL SPECIAL MEETING
TOWN COUNCIL CHAMBERS
THURSDAY, JULY 20, 2023**

Mayor Kuretski called the meeting to order at 6:00 P.M.

Roll Call: Mayor Jim Kuretski; Vice-Mayor Cheryl Schneider; Councilor Ron Delaney; Councilor Cameron May; Councilor Malise Sundstrom; Town Manager Frank Kitzerow; Town Attorney Thomas J. Baird and Town Clerk Laura Cahill.

REGULAR AGENDA

PUBLIC HEARING

1. An appeal of the Final Order of the Historic Resources Board's Denial of a Certificate to Dig for the properties owned by 961 A1A, LLC and 997 A1A, LLC.

Mayor Kuretski explained the special meetings purpose which was to consider an appeal of the Historic Resources Board's (HRB) decision on an application for a Certificate to Dig (CTD). Mayor Kuretski said there would be no public comment because all the comments were taken at previous HRB proceedings.

Mr. Thomas Baird, Town Attorney, explained that with an appeal proceeding all the facts had been presented and it is up to Council to determine the facts on appeal as interpreted from the prior meetings. He mentioned how the appellate hearing would be conducted; no new evidence or testimony would be presented; the petitioner 961 A1A LLC and 997 A1A LLC had 30 minutes to explain their case and had the right to reserve time for rebuttal; the Town's Planning and Zoning Department would have 30 minutes to present the HRB's position with no rebuttal time; Council would then be able to ask questions of the presenters; then discussions or deliberations where Council could affirm, modify, or reject the HRB's Final Order.

Mayor Kuretski clarified Council was bound by the record and to not ask for new facts.

Mr. Phillippe Jeck, with Jeck, Harris, Raynor, and Jones representing the Applicant Charles Modica, stated the Applicants team that was hired consisted of top Florida Archaeologist Bob Carr, expert Dr. Timothy Parsons, former director of Historical Resources, Emily O'Mahoney and George Gentile of 2 GHO. He explained the owner appealed the HRB's order from March 13, 2023 denying the owner's applications for a CTD. Mr. Jeck mentioned the applicant, Charles Modica's background and that he was a 30-year resident of Jupiter. He explained Mr. Modica's efforts on the property were collaborative to provide public access by striking a balance with preserving the property while still being economically viable. Mr. Jeck explained that Staff recommendations were not economically viable and the Applicant felt that treatment was unfair and unjust.

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Mr. Jeck said there were two grounds to overturn decision and approve the Applicants request for the CTD permit which included no evidence for the HRB to deny permit and how the decision was not made on the merit of law. He noted the HRB did not have the authority to deny but only to approve a CTD with conditions. He said the HRB did not consider the existing development; Comprehensive (COMP) plan; future land use (FLU) designation; zoning designation; Community Redevelopment Agency (CRA) development plan; was not consistent with other developments; value was not considered; did not work with the property owner; and substantially delayed development.

Mr. Jeck stated the Applicant was requesting the Town Council to overrule the HRB decision to deny the CTD permit and accept the owners CTD permit with conditions. He said the Staffs proposal was not economically viable.

Mr. Jeck noted errors or lack of clarity in the response formally filed to the appellate brief by the Town which included the Towns response that implied the study designated 4.07 acres of archeological Midden. He stated there was no representation other than the dotted area of the principal mound shown on the exhibit, which was about an acre and a half. He said on the 50-shovel tests, no human remains had been found. He stated Mr. Carr 's report did not state there were fossilized remains found.

Mr. Jeck explained that the Towns' response refers to ceremonial sites or ritual sites and none had been found in any of the excavations other than the normal rituals that may exist for human occupation which would be the equivalent of items found when sitting around a table and praying before a meal. He noted a statement regarding the Midden and the Celestial Railway being eligible for the National Register was not accurate but instead should read it was potentially eligible. He stated Mr. Chris Davenport, Historic Preservation Officer and Archaeologist with PBC was quoted saying there were three Midden sites but he had left out the Scheurich Midden.

Ms. Stephanie Thoburn, Assistant Director of Planning and Zoning and the Staff Liaison for the HRB, gave a brief overview which included the standards for issuance of a CTD; future land use map; Coastal Management Element of the COMP plan; significant archeological value; Owner's archeological figures for Phase I and II with addendum reports; recent inventory of intact deposits; recommendation for archeological preservation; 10-foot buffer to preserve area; and the Celestial Railroad location.

Ms. Thoburn explained that Mr. Bryan Davis, Principal Site Planner with PBC spoke with HRB regarding the significance of the area related to the critical landform that exist today. She noted Mr. Davenport gave an overview of the Jupiter Inlet complex, importance of the sites and his findings.

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Ms. Thoburn presented the recommendation to approve CTD #1-22 with the conditions of approval. She reviewed the reasoning behind HRB's decision to decline the application which included public comment. The HRB determined the entire property was historically significant and they wanted to preserve the view scape of the mound up to the Indian River Lagoon. The HRB mentioned providing public access through a visitor center.

Mr. Jeck agreed that this was an important site. He suggested balancing interest between the property owner and the cultural resources that exist.

Councilor Delaney asked Staff what the difference between shovel excavation and boring sites. Ms. Thoburn explained that boring is more of a core and smaller in area.

Councilor Sundstrom asked Staff to define "property" and "site" used in the Town code Sec 27. 2443 E1; B2; E3. Ms. Thoburn confirmed that in Section E1 site is referenced to the archeological site.

Councilor Sundstrom asked what the current zoning of the site was. Ms. Thoburn said the land use 8.6 acres of residential high, 1.8 acres of Riverwalk flex, 9.7 acres of R3 Multi-Family, 0.7 acres of C2 Commercial - General.

Councilor Sundstrom and Ms. Thoburn discussed the findings from the shovel test and the 997 parcel setbacks.

Councilor Sundstrom asked for confirmation regarding the Scheurich mound not being intact. Ms. Thoburn confirmed that property was .7 acres and all above ground mounds were found to be redeposited.

Mayor Kuretski stated he was grateful for Staff and the Applicant's efforts to help everyone understand what was on site. He reviewed the record and believed the totality of the evidence was compelling. He agreed the 4.07 acres of the Suni Sands shell Midden site should be protected as a preservation area with a 10-foot-wide buffer to ensure no disturbance during construction or future maintenance activities. He also believed the facts supported the preservation of the entire Celestial Railway site.

Vice-Mayor Schneider stated she believed there was substantial evidence to support the HRB's decision to deny the CTD and preserve the entire 10-acre parcel. She mentioned it was important to recognize that the decision was made by a highly specialized board as set forth in the Town Code. The HRB was charged with the preservation and conservation of historic and archeological resources within the Town and had no authority to balance preservation with development. She also mentioned everything that went to the HRB had to go through a qualified archeologist. She stated the significance of the Suni Sands property, why the whole 10 acres were important, and why no part of the parcel should be segregated out for development.

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Vice-Mayor Schneider also mentioned the testimonies given by the American Indian representatives regarding the cultural significance of the site. She reiterated there was enough evidence in the records to support the HRB's decision.

Councilor Delaney stated he had agreed with Staff's recommendation of the 4.07-acre to preserve the Middens, the buffer around them, and the Celestial Railroad. He added the area between the Staff's boarder from the north looking down from the water and the view from the waterfront to be preserved. He mentioned his reservations regarding certain areas being excavated.

Councilor Sundstrom mentioned she was grateful for all the engagement, comments, and the HRB. She stated she supported the archeological site of 4.07-acre and the Celestial Railway, but had questions regarding the viewpoint and view corridor. She also mentioned she looked at Mr. Davenport's testimony regarding how little was known about the east Okeechobee area and that was an important reason to preserve the site. Councilor Sundstrom added the testimony given by the Native Americans wanted the archeological sites preserved. She felt based on the evidence, the strongest support was to preserve the of 4.07-acre and the Celestial Railway.

Councilor May stated he agreed with the preservation of the Shell Midden and Celestial Railroad but thought it would be a disservice to build anywhere on the site. He stated it would take away the historical significance of those areas. He was supportive of preserving the entire property as historic and not approving any development. He also mentioned they had heard from residents and they wanted the entire property saved.

Vice-Mayor Schneider stated there were comments made that there was not enough evidence to support preserving certain portions of the property. She mentioned the analysis was that the HRB deemed the entire parcel to be significant and there was no evidence to say that any part of it was insignificant.

Mayor Kuretski stated he struggled with saying there might not be findings on other pieces of the property but the 4.07-acre Midden site had overwhelming evidence and he agreed with Staff's 10-foot buffer recommendation. He mentioned the criteria of the CTD. He also said that if Council determined to preserve the whole site then they couldn't put anything on it, he wanted to preserve the two archeological sites, but didn't want to enable the right to develop for a public area.

Mayor Kuretski stated it was Councils position to affirm, modify, or reject the Order.

Vice-Mayor Schneider stated she did not support modification of the HRB's decision. She added the site was very important to a large segment of the Community and needed to be treated that way.

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Councilor May agreed with the HRB and that the Council should affirm their decision to preserve the entire piece of property.

Councilor Sundstrom stated she supported modifying to preserve the 4.07 and the Celestial Railway with the buffer based on the evidence.

Councilor Delaney agreed. He stated he had reservations for other sections of the property but was going to stick with the representation of modification.

Mayor Kuretski stated there was a consensus of three but asked if there would be CTD requirements included in the modification for the rest of the property. Councilor Delaney and Councilor Sundstrom agreed.

Vice-Mayor Schneider reiterated there was no evidence to say any portion of the property was insignificant and should not be preserved.

Mayor Kuretski stated he did not see facts he can support to preserve the whole site from any development.

Mr. Baird mentioned a second meeting was scheduled where he could return with a modification to the Order denying a CTD.

Councilor Sundstrom mentioned Staff's recommendation, the applicants request, and stated she was grateful the HRB did not agree with either of them. She stated the preservation of the 4.07 acre was a 46 percent increase over Staff's recommendation.

Vice-Mayor Schneider stated she was shocked because it had been known for a long time the significance of the property, that Council had the ability to preserve it.

Councilor Delaney moved to adjourn the meeting and have the Town Attorney come back with a modified Final Order at the next meeting on July 25, 2023; seconded by Councilor Sundstrom; motion passed.

Kuretski
Yes

Schneider
No

Delaney
Yes

May
No

Sundstrom
Yes

REPORTS

TOWN ATTORNEY- NONE

TOWN MANAGER-NONE

TOWN COUNCIL – LIAISON REPORTS AND COMMENTS- NONE

ADJOURNMENT- 7:43 P.M.

Laura Cahill, Town Clerk