

OFFICE OF THE COUNCIL AUDITOR
Suite 200, St. James Building



July 18, 2006

#621 Special Report

Councilmember Sharon Copeland
Jacksonville City Council District 6
117 West Duval Street, Suite 425
Jacksonville, Florida 32202

Dear Councilmember Copeland,

In response to your request, we have completed a review of Planned Unit Developments (PUDs), specifically to determine if any prior PUD rezoning was approved subject to conditions requiring the developer to make monetary or non-monetary contributions to the City of Jacksonville and to determine whether the conditions have been met. We are providing this special written report in accordance with Ordinance Code Section 102.102 and our report does not represent an audit or attestation conducted pursuant to Government Auditing Standards. Our universe of 487 PUDs included all PUDs listed on the legislative bill search city web page for 2003, 2004, and 2005. In addition, we included Ordinances 1999-804-E, 2001-13-E, 2001-256-E, and 2002-928-E, which were brought to our attention as PUDs which may have required monetary contributions to the City.

We conducted a review of or performed the following:

- applicable rules, laws and regulations.
- management and internal controls and procedures used in the PUD process, especially in handling a PUD with conditions.
- discussed with appropriate personnel the areas of greatest risk, including how PUD conditions could be overlooked.
- discussed technology needs for efficiency and safeguarding of data.

We also reviewed the "Rezoning Approved Subject to Conditions" section for each of the 487 Planned Unit Development (PUD) ordinances in our universe and compiled a list of 37 PUDs that needed additional testing to determine if the PUD required the developer to make monetary or non-monetary contributions to the City or School Board or required the developer to set aside land for public use.

For 18 PUD files, which are 49% of those selected for further testing, we reviewed 17 files at the Planning and Development Department for completeness according to Ordinance Code Section 656.341 and the application for rezoning to a PUD which lists all exhibits and information required for a PUD rezoning. We were unable to test one file for completeness because the file could not be located during the field review, however the file was later found and we verified the Written

Description and Site Plan. (See finding #3)

For 19 PUDs, which are 51% of those selected for testing, we reviewed the approved written description and the approved site plan at the Planning and Development Department to determine if contribution requirements were included. For the PUDs that have areas set aside for public use, but not donated to the City or a governmental entity, we reviewed the written description to verify that the owner or developer provided documentation for maintenance responsibility for any proposed neighborhood park, pocket park, playfield or recreational structure according to Ordinance Code Section 656.341(g).

For the 14 of 37 PUD files that did not have a site plan or written description in the files at the Planning and Development Department, or did not have a date consistent with the date in the ordinance, we reviewed the site plan and/or written description which were on file with the Legislative Services Division.

For the PUDs that required the developer to make monetary or non-monetary contributions to the City or a governmental entity, we determined if the contributions had been collected, donated, or otherwise made as required.

Ordinance 2005-1293-E

It should be noted that every PUD that we reviewed was approved by City Council prior to Council passage of Ordinance 2005-1293-E, which amended Ordinance Code Section 656.341 to require specific listing of PUD contributions in ordinances adopting PUD rezoning. The ordinance requires that any monetary contribution to the City be a condition listed in the ordinance and that the conditions contain a minimum dollar amount for the contribution. The ordinance also requires that the timing of the payment, the department responsible for accepting the payment, the department who will be assigned the payment, and the account number for the payment be included in the conditions. Any non-monetary contribution, including but not limited to recreation facilities, shall be conditions listed in the ordinance and the ordinance conditions must contain a minimum value of such non-monetary contribution. We believe that the problems which we found having to do with cash contributions would not have occurred had this ordinance been in effect throughout our audit period.

Finding #1 Per Ordinance 2001-13-E, the developer is to fund an Employer-Assisted Downpayment Assistance Fund (EADAF) to the City. Jacksonville is designated an “Alliance Community” by the Freddie Mac Corporation. As a development of regional impact, this development is anticipated to become a designated employer assisted home ownership area which will allow employers within the PUD to match local governmental and/or EADAF downpayment-assistance forgivable loans to qualifying households within the DRI PUD. According to Ordinance 2001-13-E, a cash payment of \$202,000 should be made to the EADAF Fund no later than 30 days after the commencement date. The ordinance does not clearly define “commencement date”, but according to the development’s website, neighborhoods within the development are currently under construction. Within 30 days of the beginning of phases II, III, IV, and V respectively, the developer is to pay \$200,000 to the EADAF fund. As of June 26, 2006, the fund has not been established and the \$202,000 payment has not been deposited with the City.

Recommendation for Finding #1 We recommend that the Current Planning Division set up the EADAF fund and notify the developer that the initial contribution of \$202,000 is due. Since the EADAF fund is for housing, we also recommend that the Current Planning Division notify the Housing and Neighborhoods Department of the pending contributions. We recommend that the Housing and Neighborhoods Department monitor the progress of the development to insure that the developer deposits the additional \$200,000 to the EADAF thirty (30) days after commencement of phases II, III, IV, and V. Future PUD deadline events, such as commencement dates, the beginning of a development phase, or the completion of a development should be clearly defined in the PUD written description. As stated above, had Ordinance 2005-1293-E been in effect, the timing of the payment, the department responsible for accepting the payment, the department who would have been assigned the payment, and the account number for the payment would have been included in the conditions of the PUD ordinance.

Finding #2 Per Ordinance 2004-0521-E, “The applicant shall construct a concrete pathway on the Subject Property leading into Abess Park and shall also contribute \$2,500 toward construction of a pathway on Abess Park prior to final permitting.” As of June 26, 2006, the \$2,500 has not been contributed to the City and the concrete pathway has not been constructed, but permitting is complete.

Recommendation for Finding #2 We recommend that the Current Planning Division notify the developer that construction of the pathway is overdue, as is the \$2,500. The Current Planning Division needs to collect the \$2,500 and deposit it into the appropriate account. As stated above, had Ordinance 2005-1293-E been in effect, the timing of the payment, the department responsible for accepting the payment, the department who would have been assigned the payment, and the account number for the payment would have been included in the conditions of the PUD ordinance.

Finding #3 One file could not be found during the field review so we were unable to test this file to confirm that all required items were documented in accordance with Zoning Code Section 656.340 and to confirm that rezoning applications had required attachments. (2001-256-E). Staff at the Planning and Development Department looked in various places but could not locate the file while we were working on-site. The file was later located.

Recommendation for Finding #3 We recommend that the Planning and Development Department update their technology and automate the tracking of PUD processing to enable planners to process the PUD more efficiently and effectively and to enable the planners to locate files at all times. (See Opportunity for Improvement on page eight.) If the Planning and Development Department does not automate their files, they need to develop some method of safeguarding the PUD files from fire, flood, and theft.

Finding #4 We tested all 37 PUD files to determine if the approved written description and approved site plan in the file at Planning and Development was the same as those approved by City Council in the ordinance. We noted the following exceptions:

1. Three files did not have approved Site Plans in the file. (2005-54-E, 2005-128-E, 2005-740-E)
2. Nine files had Site Plans in the file but they did not have the same date as referenced in the ordinance. (1999-804-E, 2002-928-E, 2003-1041-E, 2004-857-E, 2005-27-E, 2005-294-E, 2005-310-E, 2005-557-E, 2005-752-E)
3. One file did not have an approved Written Description in the file. (2005-294-E)
4. Three files had Written Descriptions in the file which did not have the same date as referenced in the ordinance. (1999-804-E, 2003-843-E, 2003-1041-E)
5. Thirteen files did not have documentation to indicate the ownership/maintenance responsibility for the proposed neighborhood park, pocket park, playfield or recreational structure, as required by Section 656.341 (g) of the City Ordinance/Zoning Code. (1999-804-E, 2003-387-E, 2003-574-E, 2003-843-E, 2004-44-E, 2004-246-E, 2004-350-E, 2005-412-E, 2005-557-E, 2005-638-E, 2005-689-E, 2005-740-E, 2005-838-E)
6. Five files did not have a legend detailing the total percent of gross acreage (not land use), percent of each type of dwelling unit, percent of active recreation/open space, percent of public/private right-of-way, and the maximum coverage for buildings/structures at ground level either on the Site Plan or in the Written Description. (2005-128-E, 2005-54-E, 2005-310-E, 2005-543-E, 2005-638-E)

Recommendation for Finding #4 We recommend that the Planning and Development Department develop a standard checklist for all PUD files that would include all items that are required for a PUD rezoning. We recommend that a Senior Planner sign/initial the checklist when all required documentation is collected. We also recommend that a history/timeline page identifying significant stages of the PUD be kept in the front of each PUD file. As each stage is completed, the planner can sign/date the form to document that the PUD complies with the requirements for that stage. These improvements are needed assuming that the Planning and Development Department continues to use its current hard copy PUD filing system. However, we believe that a better method exists and encourage the Planning and Development Department to consider updating their technology and automating the tracking of PUDs by implementing our recommendation titled “Opportunity for Improvement”, on page eight of our report.

Finding #5 Items that are required per Zoning Code Section 656.340 and required as attachments with rezoning applications were not documented in files that we reviewed at the Planning and Development Department.

For 18 of the 37 PUD files, which are 49% of those selected for further testing, we reviewed 17 files to confirm that the required items were documented in accordance with Zoning Code Section 656.340 and to confirm that rezoning applications had required attachments. We were unable to test one file for completeness because the file could not be located during the field review, however the file was later found and we verified the Written Description and Site Plan. (See Finding #3) We also noted the following exceptions:

1. Six files did not have documentation to support the Verification of Substantial Compliance approval. (2003-1041-E, 2003-1076-E, 2004-555-E, 2005-128-E, 2005-412-E, 2005-740-E)

2. Two files did not contain documentation that the Planning and Development Department approved the PUD application. (2003-574-E & 2003-1041-E) The two applications were initialed and dated by staff planners, but the standard report that is prepared by staff planners, reviewed by senior planners and presented at staff meetings during the application process was not evident in the file.
3. Two files had applications that were not signed off on (initialed/ dated) by the planner. (1999-804-E, 2001-16-E)
4. Two files did not have documentation of a binding letter to bind successors in title to proceed with the PUD according to the Written Description and Site Plan. (1999-804-E, 2002-928-E)
5. One file did not contain the listed species/wildlife survey required by Part 12 of the Zoning Code if a rezoning is more than 50 acres. (2005-740-E)
6. Six files did not contain documentation of the Traffic Engineering Division's review and comments on the PUD rezoning. (1999-804-E, 2001-16-E, 2002-928-E, 2004-245-E, 2004-521-E, 2005-128-E)
7. One file did not contain documentation of public hearings required by Florida Statutes 166.041(3), Zoning Code Section 656.123, and Zoning Code Section 656.124. (1999-8004-E)
8. Eight files were missing a copy of the Comprehensive Planning Division's letter, which recommends to APPROVE/NOT APPROVE the application for rezoning, pursuant to the provision of Zoning Code Section 656.129. This letter is prepared by the Planning and Development Department following the Planning Commission meeting. (2002-928-E, 2003-1041-E, 2003-1076-E, 2004-555-E, 2005-128-E, 2005-412-E, 2005-740-E, 2005-752-E)

Recommendation for Finding #5 Same as Recommendation for Finding #4.

Finding #6 The approved site plan for PUD ordinance 2004-350-E did not contain the quantity of active recreational park area specifically required by the PUD. Section 3(e) of the ordinance says that the required 2.33 acre active recreational park area shall be indicated on the site plan. However, the approved site plan at Development Management Group (Planning and Development's Engineering Division), indicates that only 1.48 acres would be for active recreation.

Recommendation for Finding #6 We recommend that the Planning and Development Department review this deviation to determine how it occurred and what action needs to be taken to prevent such deviations in the future.

Finding #7 Per Ordinance Code Section 656.341(g), the owner or developer must provide documentation and instrumentation to indicate the ownership and maintenance responsibility for any proposed neighborhood park, pocket park, playfield or recreational structure to the Planning and Development Department and the Office of General Counsel for review and approval. This required information was not included in the PUD files in 13 of the 37 files reviewed. (1999-804-E, 2003-387-E, 2003-574-E, 2003-843-E, 2004-44-E, 2004-246-E, 2004-350-E, 2005-412-E, 2005-557-E, 2005-638-E, 2005-689-E, 2005-740-E, 2005-838-E)

Recommendation for Finding #7 We recommend that this requirement be included on the standard Written Description form. (recommended in our Recommendation for Internal Control Weakness #2 below).

Internal Control Weakness #1 We observed files that did not have a date on the Written Description. It was not always clear which Written Description was the City Council approved Written Description.

Recommendation for Internal Control Weakness #1 We recommend that the Planning and Development Department request that the City Council amend the Zoning Code to require that the site plan and written description be attachments to every PUD ordinance and that the ordinance specifically reference them by their date. The Planning and Development Department should file a copy of the approved PUD ordinance with all attachments in every PUD file.

Internal Control Weakness #2 PUD Written Descriptions are important legal documents and yet they contain vague language. Words such as ‘should’, ‘could’, ‘may be’ and ‘encouraged’ are frequently used. Language used to identify possible school and fire/rescue sites is not always clear.

Recommendation for Internal Control Weakness #2 We recommend that Written Descriptions be more detailed and more clearly written. Language like “should” or “encouraged” should be written as “shall” or “must”. “Dedicated” sites should be written as “donated” sites. We also recommend that a standard form for Written Descriptions be created to provide consistency and to make sure that all required information is included.

Internal Control Weakness #3 Following the adoption of a PUD Ordinance, but before the preliminary site plan review, the developer completes an application for Verification of Substantial Compliance. It was difficult to determine whether the developer had provided all required items and whether the application for Verification of Substantial Compliance had been approved when reviewing the PUD files.

Recommendation for Internal Control Weakness #3 We recommend that the approved copy of the Verification of Substantial Compliance application be stamped “approved” by the Planning and Development Department including a date and signatures by the two planners reviewing the PUD. The various documents listed as being in substantial compliance should be attached to the Verification of Substantial Compliance application, stamped, or in some way identified as being those “approved” documents.

Internal Control Weakness #4 Many PUD rezonings require a minimum amount of active recreation space. However, the Zoning Ordinance Code does not define active recreation space. To meet the requirement, a developer might construct a basketball court or simply a grassy area that they call recreation space.

Recommendation for Internal Control Weakness #4 We recommend that the Planning and Development Department propose definitions for active and passive recreation to be added to the Zoning Ordinance Code, so that there is no question about what is required.

Internal Control Weakness #5 PUD Written Descriptions state a total amount of required active recreational acreage, but do not state a minimum acreage size for each location. For example, it is possible to state that a PUD will have multiple acres for active recreation, but this acreage may be spread over many locations, so that the areas are too small to play organized sports.

Recommendation for Internal Control Weakness #5 We recommend that the City either establish a minimum number of acres required in one location (including length & width requirements so that the recreational area is useful), or require a cash contribution be made to the City to be used for a regional park.

Internal Control Weakness #6 Per Ordinance Code Section 656.341(f), an amendment to an approved PUD may be accomplished through either an Administrative Modification, Minor Modification, or by filing an application for rezoning. However, the criteria listed in the ordinance are not clear. Administrative Modifications and Minor Modifications are defined as to what they are not, as opposed to what they are.

Recommendation for Internal Control Weakness #6 We recommend that the Planning and Development Department propose definitions for Administrative Modification and Minor Modifications and present them to the City Council for amendment of the Zoning Ordinance Code.

Internal Control Weakness #7 Regarding School sites within a PUD, we noted the following weaknesses;

1. School site reservation language in PUD ordinances and written descriptions is vague. Sometimes it is not clear if the school site is being donated by the developer to the school board or if the site is simply being reserved for a school, in which case the school board would have to purchase the site from the developer.
2. The amount of land set aside for a school in a PUD may be inadequate. Elementary schools require a minimum of 20 acres, middle schools require 30 acres, and high schools require 70 acres. All of these acres must be suitable for building.
3. If the school board does not accept the land for whatever reason, it receives nothing.
4. We noted a requirement in Ordinance 2004-555-E that the Duval County School Board was to be notified on the availability of up to 25 acres for a school site within the PUD site, but due to the project's proximity to Jacksonville International Airport, this site did not qualify as an acceptable school site. In fact, the entire PUD site is in an Air Installation Compatible Use Zone (AICUZ).

Recommendation for Internal Control Weakness #7 We recommend;

1. School reservation language should be clear. If a school board site is a requirement, then the site should be deeded to the School Board.
2. If a school board site is a requirement, then minimum site sizes should be required depending on the type of school. The language should be clear that the site must be suitable for building a school.
3. If the School Board does not want the site because it has already acquired an alternate site in the area, the School Board should receive a price per acre from the developer, which the School Board can use to fund school construction on its alternate site.

4. If a site does not qualify as an acceptable school site as originally planned, the Developer should be required to pay the School Board the cash value of the site.

Internal Control Weakness #8 Regarding fire station sites within a PUD, we noted the following:

1. Fire station site reservation language in PUD ordinances and written descriptions is vague. Sometimes it is not clear if the fire station site is being donated by the developer to the City or if the site is simply being reserved for a fire station, in which case the City would have to purchase the site from the developer.
2. The amount of land set aside for a fire station may be inadequate. The Fire and Rescue Department needs a minimum of two and one-half acres to construct a fire station.
3. If the Fire and Rescue Department does not accept the land for whatever reason, the City receives nothing.

Recommendation for Internal Control Weakness #8 We recommend;

1. Fire station reservation language should be clear. If a fire station site is a requirement, then the site should be deeded to the City.
2. If a fire station site is a requirement, then the minimum site size of two and one-half acres should be required. The language should be clear that the site must be suitable for building a fire station.
3. If the City does not want the site because it has already acquired an alternate site in the area, the City should receive a price per acre from the developer for the site which the City can use to fund fire station construction on its alternate site.

Opportunity For Improvement:
Observations

1. Currently, developers submit PUD applications, site plans, and associated documents as hard copies, which must be physically delivered or dropped off at the Planning and Development Department offices.
2. The Planning and Development Department makes multiple copies of PUD rezoning documents, which are sent out to the reviewing agencies such as Development Management Group, Current Planning Division, Strategic Planning Division, Transportation Planning Division, Concurrency Management Office, Traffic Engineering Division, Parks, Recreation, Entertainment and Conservation Department, Environmental Quality Division, Fire and Rescue Department, Sheriff's Office, Jacksonville Transportation Authority, Jacksonville Aviation Authority (for Air Installation Compatible Use Zone), JEA, Florida Department of Transportation (if adjacent to a state road), Duval County School Board (if residential) and Jacksonville Naval Air Station (if in the military environment) for their review and comment. The written comments of the reviewing agencies are made on the hard copy PUD documents and sent back to the Current Planning Division. If modifications or corrections are needed, the Developer must submit new hardcopy documents that incorporate the modifications.
3. Current Planning Division frequently copies multiple stacks of PUD documents for the Planning Commission meetings, City Council Land Use and Zoning Committee meetings, and City Council meetings.

4. Hardcopy documents are at risk of loss due to fire, flood, theft, poor filing, and passage of time.
5. The Current Planning Division works off of hard copies including the written description and site plan. Both Development Management Group and the City Building Inspection scan PUD engineering site plans into the computer and dispose of the hard copies.
6. DMG and Building Inspection do not always have a copy of the ordinance, written description, or site plan.
7. The Current Planning Division did not receive any funding for computer replacement for the fiscal year 2003/2004 or 2004/2005.
8. Planners are frequently interrupted by members of the general public who walk in or telephone with questions about PUDs. The Planners have to retrieve the PUD rezoning file to answer the person's questions or show them specific information that is in the file.
9. Developers frequently call or visit the Planning and Development Department with questions about the comments from reviewing agencies.

Recommendation

We recommend that the City adopt a policy requiring that new applications for PUD rezoning be made on-line and that all required and related documents be submitted, stored, and shared electronically. Existing PUD files should be converted to an electronic format as well. Specific policies & procedures should be developed detailing acceptance parameters for electronically submitted information, including but not limited to details such as file format, quality, and organization of information.

Requirements for Implementation of this Recommendation

- The Planning and Development Department would have to work with the Information Technology Division to implement this recommendation. The Planning and Development Department will need to purchase new computer hardware and software and train staff in how to use it.
- All reviewing agencies would have to acquire "markup" software to electronically review and comment on the PUDs.
- PUD applicants might need to go through an electronic pre-application process before submitting their PUD applications (It could be made a part of the pre-application process that is already a requirement).
- Specifications for documents and a common scale for site plans would have to be established.
- The cost would have to be estimated and funded.
- Conversion of existing files would take the time of a Planner to review each file and label the documents for indexing purposes.

Benefits

- Time savings for everyone involved. Instant delivery of documents. No scanning. No copying.
- Instant access to all files by planners, developers and the public.
- Documents protected from loss.

- Long-term cost savings on paper, toner, wear/maintenance on copiers and printers.
- Ability to text-search documents.
- Environmental benefits associated with less trash and recycling.

We would like to thank the Director, the Deputy Director, and the staff of the Planning and Development Department for their cooperation and assistance during the completion of this review.

Respectfully Submitted,

Kirk A. Sherman

Kirk A. Sherman, CPA
Council Auditor



PLANNING AND DEVELOPMENT DEPARTMENT
Office of the Director

MEMORANDUM

TO: Kirk A. Sherman, CPA
Council Auditor

FROM: Michael J. Saylor, AICP
Director of Planning and Development

SUBJECT: **Draft Special Report 2006-01 – Planned Unit Developments (PUDs)**

DATE: July 10, 2006

I have reviewed the referenced document and accept its findings and recommendations.

If more elucidatory comments are needed, feel free to contact me.

MJS/imj