Excerpt from draft minutes from the Planning & Zoning Board meeting held on October 3, 2017

ID 2017-601

2D) **PZ-21-17** CONSIDERATION OF AN ORDINANCE AMENDING CHAPTER 31-PLATTING, SUBDIVISION AND OTHER LAND USE REGULATIONS, ARTICLE 1. – IN GENERAL, SECTION 31.2. UNDERGROUND WIRING REQUIRED; EXCEPTION AND ADDING NEW SECTION, SECTION 31-3 UNDERGROUND UTILITY TRUST FUND – ESTABLISHED; PROVIDING FOR REPEAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

Reddy Chitepu explained that the ordinance was a new Code provision requested by the City Commission that was modeled after Coconut Creek's Code. He said it would be applicable to all the non-residential zoning districts for new developments or any development that was considered substantially redeveloped. He said there was a definition for substantially redeveloped in the City Code and in the Florida Building Code; a property that was redeveloped 50 percent or more was considered substantial improvement. In the residential zoning districts, he said all the new developments would be subject to the new ordinance, as well as redevelopment or reconstruction projects that were above five acres, and existing developments with reconstruction of five units or more. Mr. Chitepu said single family homes would also be subject to the ordinance if 50 percent or more of the home was demolished.

Mr. Chitepu stated that all the overhead utilities such as AT &T, Comcast, FPL, etc., along the public right-of-ways or within private property would have to be underground. Also, he said overhead utilities along the public right-of-ways that extended out onto private property would need to be put underground. If the property was at an intersection, he said the Code required that the underground wiring be extended out to the other side of the intersection. He said the cost for the work would be bore by the developer or the owner of the development. He said the one exception in the Code was that if the electrical transmission and distribution lines were above 27,000 volts, they would be exempt from the Code to avoid undergrounding major transmission lines. He said if the City participated in the program and undergrounded any of the areas, the developers or owners of the affected properties would be subject to reimburse the City for the cost of the project. He said there was a waiver provision for the developers and owners that could be only granted or denied by the City Commission. He said there was a process built into the Code where the applicant would submit the technical justification and staff would make a recommendation to the City Commission; it would be solely up to them to grant or deny the waiver. If the waiver were granted, he said the developer still would be subject to pay the City for the cost to underground the infrastructure. The costs would be deposited into the Underground Utility Trust Fund which he said would be established as a result of the new ordinance. The funds in the Underground Utility Trust Fund would be restricted for use to underground existing above ground utilities. He said expenditures from the Trust Fund would require a specific resolution from the City; the funds could not be used for any other purpose.

Mr. Mangeney commented that the language used on page 7, section (4)(c), with regards to granting a waiver, read …"that the cost of placing the utilities underground, as determined by an estimate established by the relevant utilities and as agreed upon by the City, may be required to be paid into the City's Underground Utility Trust Fund…" was permissive language.

He questioned why it did not say "shall be required" because he interpreted it to mean that the Commission could extend the exception to not require payment into the Trust Fund. He expressed a concern that the City Commission would have to justify not granting an exception to pay into the Trust Fund, similar to what was discussed in the prior item.

Douglas Gonzales, City Attorney, said changing the wording to "shall" would not be a problem, and it could be included with any other amendments that might be made to this ordinance during the discussion.

Mr. Zucchini, under residential exceptions, questioned the rationale used to equate new development of five acres or more to reconstruction of five units or more in terms of the requirement to pay. Mr. Chitepu responded that a limit had to be established. He said it applied to any reconstruction or remodeling in existing residential zoning districts, not for redevelopment. He said, for example, a five-acre development going through substantial redevelopment would be subject to the requirement, or a residential development that was going through substantial development of at least five units would also be subject to the requirement. Mr. Zucchini said it was not analogous to him that a developer that planned to develop four and one-half acres would not be encumbered by the requirement, yet someone remodeling six units would be encumbered.

Attorney Gonzales said when directed by the City Commission to provide for the new development fee, the City chose to piggyback an ordinance currently in place in Coconut Creek which he said was a valid ordinance that had not been legally challenged. Mr. Zucchini commented that it was unfair. Mr. Arserio said the ratio between the entities was not consistent. Attorney Gonzales stated that they could have it brought before the Commission; Mr. Chitepu advised that it could be a recommendation from the Planning and Zoning Board that would appear in the minutes and would be included on the agenda fact sheet.

Mr. Zucchini questioned how many lots required one-acre zoning for a single family house in the City's residential zoning, adding that there were none. Mr. Chitepu responded that their recommendation would be shared with the City Commission and they could change the ordinance. Mr. Zucchini said the requirement for anything over five units needed to change to a much higher number. Mr. Angier commented that the amount of acreage for new developments needed to be reduced. Mr. Chitepu said the requirement was automatic for new developments and that there were no limits. He noted that the discussion was geared mostly toward the redevelopment and reconstruction projects.

Mr. Zucchini referenced the section that read, "For a project parcel located at a roadway intersection, the developer and/or owner shall be responsible to continue the underground conversion across the intersection to the nearest point/points of connection at no cost to the City." He commented that someone remodeling or reconstructing six units located on a corner would have to absorb the cost to dig up the street across the intersection. He said it was the City's responsibility since it owned the land. Attorney Gonzales responded the reason for it was because Florida Power and Light (FPL) had certain facilities that could be tied into when going underground that did not necessarily end at a property border. In the event the tie-in location

by FPL was under the street and across the street, he said the property owner would be required to tie-in to that location. He said FPL did not have tie-ins at every boundary of a residential property, noting that sometimes the tie-ins could be half a block away so FPL would require that the property owner underground the utility cables into their easement. In the event the location of the utility hook-up was beyond the owner's property boundary, the City would not be responsible for doing it or paying for it since it was an FPL requirement; it would be the developer's or owner's responsibility. Mr. Zucchini said he could understand running along residential property lines but not roadways that were City property. Attorney Gonzales said it would be wherever FPL had their tie-ins located. Mr. Zucchini asked if ballpark costs were brought up when the discussion took place. Mr. Chitepu responded that tonight was the first discussion on the ordinance other than the Development Review Committee. Mr. Zucchini asked whether the Engineering Department might know the impact it would make. Mr. Chitepu said they did not have the cost figures because they were based on FPL and they refused to provide generic dollar figures. He said FPL required specific designs and the connection points as explained by Attorney Gonzales before they would provide an estimate. He said that there was language in the Code that allowed the developer and FPL to work together to arrive at a cost figure.

Mr. Arserio said Mr. Zucchini made a good point about the City not being responsible for the tie-in. He commented that FPL was a business that made money off meters, and he asked whether a big developer that wanted to put up a development that required a lot of underground wiring would be allowed to negotiate that cost with FPL. Attorney Gonzales said it was doubtful that FPL being a public utility would negotiate as they set their rates and locations of the tie-ins. Mr. Chitepu said the City got proposals from FPL all the time for its utility work and the City had to pay, even though it was the government.

Mr. Angier asked if the ordinance applied to individual homes where over 50 percent was being remodeled. Mr. Chitepu said it did apply. Mr. Angier gave the scenario of a property owner at the very end of a cul-de-sac where no other owners planned any remodeling, and he asked whether the line would stop at their property, go underground, and then come back up on the other side of their property. Mr. Chitepu said the underground wiring would extend out to the points of connection identified by FPL and not property line to property line.

Mr. Arserio asked if multiple lines could tie into it. He gave a scenario of a developer that had to pay to put in underground wiring half a mile down the street, and then a store opened up across the street. He asked whether the store would also have to run wiring down the street or if it could tie into the line paid by the developer as a means to save money. Mr. Chitepu said the capacity would be calculated by FPL when they undergrounded the wiring and that they would consider all the properties along that line. He said there was a provision in the Code that allowed the City to pay upfront in such instances and then have the developers or property owners along that stretch of the line reimburse the City when they connected instead of one entity paying for it and others using it.

Mr. Angier commented that he found it confusing that an individual homeowner who decided to remodel more than half their house would be required to have underground lines at likely a significant expense, while others in the neighborhood would have above ground lines.

Attorney Gonzales said that it would depend on the location of the end points identified by FPL. He said it could be that the homeowner would be burying the lines across other properties if that was what was needed to reach the end points. It would be benefiting the neighbors but that was the requirement. Mr. Angier asked if the other property owners could also tie in and reduce the cost to the initial homeowner or did the others just benefit from it. Mr. Chitepu responded that there was language in the ordinance that allowed the City to pay the cost upfront for the points of connection. There was also language that required all the adjoining properties to connect within a certain period of time. Mr. Angier said it would not be fair to impose this additional cost on to the adjoining properties just because one homeowner decided to redevelop their home. Mr. Chitepu said the ultimate intent from the City Commission was to underground the utilities.

Attorney Gonzales said the way it would work was that if the tie-in was on another property, the lines of the other residences would be undergrounded and they would not be paying for the cost of it; the homeowner that was redeveloping would pay the cost for it. He said there was discussion at the workshop about removing the redevelopment portion of it. He said they took the Coconut Creek ordinance and made it apply to the Code in Margate. He said if burying the utility lines required crossing over others property lines to get to the FPL end points, then the other property owners on that line would benefit from having their lines buried at the initial homeowner's expense.

Mr. Angier said his understanding from Mr. Chitepu' s explanation was that the City paid into the Underground Utility Trust Fund first and everyone would be required to reimburse the expense. Mr. Chitepu said that provision was allowed in the ordinance. Mr. Angier said Attorney Gonzales had said that the property owner had to pay for everything, but Mr. Chitepu had said that when the bill came in, everyone affected would have to pay for it. Mr. Chitepu said that would be the case only when the City upfronted the money. If the City did not upfront the money, he said the individual homeowner would be responsible. He said it would depend on the position of the City at the time.

There was back and forth discussion about the 50 percent remodeling requirement. Mr. Chitepu explained that the ordinance would be applicable to a property being demolished 50 percent or more. Mr. Zucchini asked it were based on value or square footage. Mr. Chitepu said the language in the ordinance indicated that it would be based on 50 percent of the structure. Mr. Mangeney asked how it would work if someone pulled a permit to demolish 49 percent of their home and then pulled a permit for one or more percent at another time. Mr. Chitepu responded that substantial improvements were always cumulative. Under the Florida Building Code, he said when older structures were being improved, it was cumulative and when the 50 percent point was reached, the home was supposed to be up to Code. Mr. Mangeney asked what would happen if the current homeowner improved 40 percent and sold the home, and the new homeowner did 10 percent. Mr. Chitepu said that in the Florida Building Code it went by the structure not by ownership. Mr. Angier asked if the City kept track of all home renovations. Mr. Chitepu said that software in the Building Department kept track of all permits pulled by address. Mr. Arserio asked if the modeling requirement would be retroactive. Mr. Chitepu

responded that it would not be retroactive. Mr. Hylander asked how it would relate to storm damage and Mr. Mangeney commented that there was an exception for storm damage.

Mr. Hylander commented that there were homes back to back in north Margate where the overhead utility lines ran between the houses in the back along the property lines; he said there was nothing underground so there were no end points. He asked if the ordinance would force FPL to put a box underground and, if FPL did, five out of six parcels would still have wires overhead. Mr. Chitepu said it would work that same way as it did if the utility lines were in the front or on the sides of the homes. He explained that the design would be to remove the utility poles, install the boxes, run conduit between them, and then run the wire within the conduit to the individual homes. Mr. Arserio commented that FPL would have to remove the underground wiring and the City would have to step in and pay for it and then assess the other affected homes because one home made modifications. Mr. Chitepu said it would be up to the City Commission to make that decision at that time.

Mr. Mangeney said it was his opinion that either the redevelopment requirement, or preferably the residential requirement, should be removed.

Mr. Angier said he did not like it and suggested removing the redevelopment requirement.

Mr. Arserio asked if any business or resident would be immediately affected if the Board decided to table the item under next month. Mr. Chitepu responded that the City Commission wanted to review the ordinance as soon as possible. He said if anyone were to come in and submit an application, they would be grandfathered because the ordinance was still in the process.

Mr. Zucchini said it seemed the City was placing an onerous burden on homeowners and small developers to do what FPL had refused to do for many years. He said that at some point in the future FPL would turn around and decide that it needed to put their power grid underground and they would amortize the expense in the cost of the electricity and those that had already paid in advance would be forced to pay additional fees. Mr. Arserio commented that the cost of putting in the underground wiring in a single family home would likely cost more than the modification of the home itself.

Mr. Chitepu remarked that the concerns expressed by the Board members were all valid and that they would be brought forward to the City Commission.

Mr. Angier said that as Margate looked toward the future, it made sense to require new development to put the lines underground. He proposed that the entire redevelopment section be removed from the ordinance as the impact on residential had not been thoroughly reviewed and he suggested the possibility of having studies done. He said he agreed with everything Messrs. Zucchini and Arserio said regarding the major financial impact it would have on the small guys, especially residential. Mr. Mangeney repeated that his preference would be to remove the residential component but not the redevelopment, noting commercial redevelopment would be fine. Mr. Angier commented that there were also questions about it as well such as lot size. He said the whole redevelopment section should be removed until it was

better thought out and it included fiscal impacts. Mr. Arserio said he would be comfortable with that in lieu of tabling the item, and they could address it at a later time once they received all the information.

Mr. Chitepu asked the Board to consider passing the ordinance with an amendment so that the discussion could be brought forth to the City Commission. Attorney Gonzales said the Board needed to decide whether they wanted to remove all development or just residential development. If it were the wish of the Board, he said what would move forward to the City Commission would be that the Board approved the item on the condition that either all development or all residential redevelopment would be removed from it, and that would be the Commission's discussion point.

Mr. Angier made the following amendment, seconded by Mr. Mangeney:

AMENDMENT: TO APPROVE WITH THE CONTINGENCY THAT THE REDEVELOPMENT SECTION FOR COMMERCIAL AND RESIDENTIAL PROPERTIES BE REMOVED; AND TO CHANGE "MAY" TO "SHALL" UNDER SECTION 4(c)

ROLL CALL ON THE AMENDMENT: Mr. Arserio, Yes; Mr. Mangeney, Yes; Mr. Zucchini Yes; Mr. Hylander, Yes; Mr. Angier, Yes. The amendment passed with a 5-0 vote.

Mr. Mangeney made the following motion, seconded by Mr. Arserio:

MOTION ON THE ITEM AS AMENDED: SO MOVE TO APPROVE

ROLL CALL ON THE MOTION AS AMENDED: Mr. Arserio, Yes; Mr. Mangeney, Yes; Mr. Zucchini No; Mr. Hylander, Yes; Mr. Angier, Yes. The motion passed with a 4-1 vote.