

TOWN OF CUTLER BAY

Mayor Paul S. Vrooman
Vice-Mayor Edward P. MacDougall
Councilmember Timothy J. Meerbott
Councilmember Ernest N. Sochin
Councilmember Peggy R. Bell

Town Manager Steve Alexander
Town Attorney Mitchell Bierman
Town Attorney Chad Friedman
Town Clerk Erika Gonzalez-Santamaria

This meeting is open to the public. In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation, a sign language interpreter or hearing impaired to participate in this proceeding should contact the Town Clerk at (305) 234-4262 for assistance no later than four (4) days prior to the meeting.

LOCAL PLANNING AGENCY AGENDA

Wednesday, May 21, 2008, 7:00 PM
South Dade Regional Library
10750 SW 211th ST, 2nd Floor
Cutler Bay, Florida 33189

- I. **CALL TO ORDER, ROLL CALL**
- II. **ADDITIONS, DELETIONS, AND DEFERRALS**
- III. **CONSENT AGENDA**
 - A. Minutes – April 18, 2008
 - B. Minutes – April 28, 2008
- IV. **PUBLIC HEARING: (MOTION RECOMMENDING ADOPTION OF THE FOLLOWING ORDINANCE)**
 - A. **AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PROVIDING FOR A MORATORIUM ON DEVELOPMENT WITHIN THE TOWN; PROVIDING FOR EXEMPTIONS; PROVIDING FOR WAIVERS; PROVIDING FOR SEVERABILITY; PROVIDING PROCEDURES FOR VESTED RIGHTS AND JUDICIAL REVIEW FOR THE SPECIFIC MATTERS ADDRESSED HEREIN; PROVIDING FOR A TERM; PROVIDING FOR A REPEALER; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY, AND AN EFFECTIVE DATE.**
- VI. **ADJOURNMENT.**

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

**TOWN OF CUTLER BAY
LOCAL PLANNING AGENCY MEETING
MINUTES**

Friday, April 18, 2008, 11:00 AM
Town Hall Conference Room
10720 Caribbean Boulevard, Suite 105
Cutler Bay, Florida 33189

I. CALL TO ORDER/ROLL CALL OF MEMBERS: The meeting was called to order by the mayor at 11:15 a.m. Present were the following chartered officials:

Councilmember Peggy R. Bell
Councilmember Timothy J. Meerbott
Councilmember Ernest N. Sochin
Vice Mayor Edward P. MacDougall
Mayor Paul S. Vrooman

Town Manager Steven Alexander
Town Attorney Mitchell Bierman
Town Attorney Chad Friedman
Town Clerk Erika Gonzalez-Santamaria

II. PLEDGE OF ALLEGIANCE: There was no Pledge of Allegiance at this time.

III. ADDITIONS, DELETIONS, AND DEFERRALS: None at this time.

IV. CONSENT AGENDA:

V. PUBLIC HEARING: MOTION RECOMMENDING ADOPTION OF THE FOLLOWING ORDINANCE:

A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA CREATING THE PLANNED UNIT DEVELOPMENT DISTRICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Don O' Donniley provided a brief oral presentation, recommending approval of the ordinance.

There was no public hearing at this time.

Councilmember Meerbott made a motion to adopt staff's recommendation to approve. The motion was seconded by Councilmember Sochin and approved by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

VI. ADJOURNMENT: The meeting was officially adjourned at 11:25 a.m.

Respectfully submitted:

*Erika Gonzalez-Santamaria, CMC
Town Clerk*

*Adopted by the Town Local Planning Agency
on this 21st day of May, 2008.*

Paul S. Vrooman, Mayor

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

**TOWN OF CUTLER BAY
LOCAL PLANNING AGENCY MEETING
MINUTES**

Monday, April 28, 2008, 7:00 PM
South Dade Regional Library
10750 Southwest 211th Street, 2nd Floor
Cutler Bay, Florida 33189

I. CALL TO ORDER/ROLL CALL OF MEMBERS: The meeting was called to order by the mayor at 7:30 p.m. Present were the following chartered officials:

Councilmember Peggy R. Bell
Councilmember Timothy J. Meerbott
Councilmember Ernest N. Sochin
Vice Mayor Edward P. MacDougall
Mayor Paul S. Vrooman

Town Manager Steven Alexander
Town Attorney Nina Boniske
Town Attorney Chad Friedman
Town Clerk Erika Gonzalez-Santamaria

II. PLEDGE OF ALLEGIANCE: There was no Pledge of Allegiance at this time.

III. ADDITIONS, DELETIONS, AND DEFERRALS: None at this time.

IV. CONSENT AGENDA:

V. PUBLIC HEARING: MOTION RECOMMENDING ADOPTION OF THE FOLLOWING ORDINANCE:

- A.** AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING SECTION 33-18 OF TOWN CODE RELATING TO RELIGIOUS FACILITIES AND MISSIONS; PROVIDING FOR CONFLICT, PROVIDING FOR SEVERABILITY, PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

Don O' Donniley provided a brief oral presentation, recommending approval of the ordinance.

There was no public hearing at this time.

Councilmember Sochin made a motion to adopt staff's recommendation to approve. The motion was seconded by Councilmember Meerbott and approved by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

- B.** AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PROVIDING FOR A MORATORIUM ON THE ISSUANCE OF SITE PLANS THAT

INCLUDE NON RESIDENTIAL OR MIXED USE BUILDINGS THAT EXCEED 50,000 GROSS SQUARE FEET; EXEMPTING SITE PLANS THAT COMMIT TO RECEIVING LEED CERTIFICATION; PROVIDING FOR WAIVERS; PROVIDING FOR SEVERABILITY; PROVIDING PROCEDURES FOR VESTED RIGHTS AND JUDICIAL REVIEW FOR THE SPECIFIC MATTERS ADDRESSED HEREIN; PROVIDING FOR A TERM; PROVIDING FOR A REPEALER; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY, AND AN EFFECTIVE DATE.

Don O' Donniley provided a brief oral presentation, recommending approval of the ordinance.

The mayor opened the public hearing. There were no speakers.

Vice Mayor MacDougall made a motion to adopt staff's recommendation to approve. The motion was seconded by Councilmember Bell and approved by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

VI. ADJOURNMENT: The meeting was officially adjourned at 7:35 p.m.

Respectfully submitted:

*Erika Gonzalez-Santamaria, CMC
Town Clerk*

*Adopted by the Town Local Planning Agency
on this 21st day of May, 2008.*

Paul S. Vrooman, Mayor

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY AS FOLLOWS:

Section 1. Findings. The foregoing “Whereas” clauses are hereby ratified and incorporated as the legislative intent of this Ordinance.

Section 2. Moratorium Imposed. During the time that this Ordinance is in effect as specified in Section 7 below, there shall be a moratorium on development. The following categories of development shall be exempt from this moratorium:

1. One (1) to thirteen (13) residential units per acre. Any residential development that consists of one (1) to thirteen (13) residential units per acre, which commits to obtaining a Leadership In Energy and Environmental Design (LEED) Certification or a Certification from the Florida Green Building Coalition. The applicant’s commitment shall be demonstrated as follows:

Prior to the issuance of the first principal building permit, the applicant shall post a performance bond of 2% of the total cost of the building(s) in order to secure performance and fulfillment of the of the applicant’s obligation to obtain a Certification. The Town shall release the bond after: (i) project completion and certificate of occupancy has been issued by the Town; and (ii) the applicant has certified the project with the United States Green Building Council (USGBC) or Florida Green Building Coalition and provides the certification letter to the Town.

If the project fails to meet the criteria required for a Certification within two (2) years after receiving the Town’s certificate of occupancy, the applicant shall forfeit one hundred percent (100%) of the bond. Funds that become available to the Town from the forfeiture of the performance bonds shall be deposited in a Sustainability Fund established by the Town. These funds shall be utilized for improvements such as landscape, open space improvements, traffic calming, pollution mitigation, drainage and sanitary sewer improvements, sustainability improvements to public facilities, or similar improvements as deemed appropriate by the Town Council.

In lieu of the bond required by this section, the Town may accept an irrevocable letter of credit from a financial institution authorized to do business in Florida or provide evidence of cash deposited in an escrow account in a financial institution in the State of Florida in the name of the applicant and the Town. The letter of credit or escrow shall be in the same amount of the bond if it were posted; and

2. Fourteen (14) to thirty (30) residential units per acre. Any residential development that consists of fourteen (14) to thirty (30) residential units per acre, which commits to obtaining a Leadership In Energy and Environmental Design (LEED) Certification of Silver or Certification from the Florida Green Building Coalition. A LEED Certified Silver development shall mean a development that obtains at least 33-38

points of the maximum points on the LEED project checklist. The applicant's commitment shall be demonstrated as follows:

Prior to the issuance of the first principal building permit, the applicant shall post a performance bond of 3% of the total cost of the building(s) in order to secure performance and fulfillment of the applicant's obligation to obtain a LEED Silver Certification or Certification by the Florida Green Building Coalition. The Town shall release the bond after: (i) project completion and certificate of occupancy has been issued by the Town; and (ii) the applicant has certified the project with the United States Green Building Council (USGBC) or the Florida Green Building Coalition and provides the certification letter to the Town.

If the project fails to meet the criteria required for Silver Certification by the United States Green Building Council (USGBC) or a certification by the Florida Green Building Coalition within two (2) years after receiving the Town's certificate of occupancy, the applicant shall forfeit one hundred percent (100%) of the bond. Funds that become available to the Town from the forfeiture of the performance bonds shall be deposited in a Sustainability Fund established by the Town. These funds shall be utilized for improvements such as landscape, open space improvements, traffic calming, pollution mitigation, drainage and sanitary sewer improvements, sustainability improvements to public facilities, or similar improvements as deemed appropriate by the Town Council.

In lieu of the bond required by this section, the Town may accept an irrevocable letter of credit from a financial institution authorized to do business in Florida or provide evidence of cash deposited in an escrow account in a financial institution in the State of Florida in the name of the applicant and the Town. The letter of credit or escrow shall be in the same amount of the bond if it were posted; and

3. Thirty-One (31) units per acre or greater. Any residential development that consists of thirty-one (31) units per acre or greater, which commits to obtaining a Leadership In Energy and Environmental Design (LEED) Certification of Platinum. A LEED Certified Platinum development shall mean a development that obtains at least 52-69 points or >75% of the maximum points on the LEED project checklist. The applicant's commitment shall be demonstrated as follows:

Prior to the issuance of the first principal building permit, the applicant shall post a performance bond of 4% of the total cost of the building(s) in order to secure performance and fulfillment of the of the applicant's obligation to obtain a LEED Platinum Certification. The Town shall release the bond after: (i) project completion and certificate of occupancy has been issued by the Town; and (ii) the applicant has certified the project with the United States Green Building Council (USGBC) and provides the certification letter to the Town.

If the project fails to meet the criteria required for Platinum Certification by the United States Green Building Council (USGBC) within two (2) years after

receiving the Town's Certificate of Occupancy, the applicant shall forfeit one hundred (100) percent of the bond. Funds that become available to the Town from the forfeiture of the performance bonds shall be deposited in a Sustainability Fund established by the Town. These funds shall be utilized for improvements such as landscape, open space improvements, traffic calming, pollution mitigation, drainage and sanitary sewer improvements, sustainability improvements to public facilities, or similar improvements as deemed appropriate by the Town Council.

In lieu of the bond required by this section, the Town may accept an irrevocable letter of credit from a financial institution authorized to do business in Florida or provide evidence of cash deposited in an escrow account in a financial institution in the State of Florida in the name of the applicant and the Town. The letter of credit or escrow shall be in the same amount of the bond if it were posted; and

4. Institutional Uses. Any Institutional use that commits to obtaining a Leadership In Energy and Environmental Design (LEED) Certification of Silver or Certification from the Florida Green Building Coalition. A LEED Certified Silver development shall mean a development that obtains at least 33-38 points of the maximum points on the LEED project checklist. The applicant's commitment shall be demonstrated as follows:

Prior to the issuance of the first principal building permit, the applicant shall post a performance bond of 3% of the total cost of the building(s) in order to secure performance and fulfillment of the applicant's obligation to obtain a LEED Silver Certification or certification by the Florida Green Building Coalition. The Town shall release the bond after: (i) project completion and certificate of occupancy has been issued by the Town; and (ii) the applicant has certified the project with the United States Green Building Council (USGBC) or the Florida Green Building Coalition and provides the certification letter to the Town.

If the project fails to meet the criteria required for Silver Certification by the United States Green Building Council (USGBC) or a Certification by the Florida Green Building Coalition within two (2) years after receiving the Town's certificate of occupancy, the applicant shall forfeit one hundred percent (100%) of the bond. Funds that become available to the Town from the forfeiture of the performance bonds shall be deposited in a Sustainability Fund established by the Town. These funds shall be utilized for improvements such as landscape, open space improvements, traffic calming, pollution mitigation, drainage and sanitary sewer improvements, sustainability improvements to public facilities, or similar improvements as deemed appropriate by the Town Council.

In lieu of the bond required by this section, the Town may accept an irrevocable letter of credit from a financial institution authorized to do business in Florida or provide evidence of cash deposited in an escrow account in a financial institution

in the State of Florida in the name of the applicant and the Town. The letter of credit or escrow shall be in the same amount of the bond if it were posted; and

5. Nonresidential or mixed use buildings consisting of 50,000 gross square feet or less. Any nonresidential or mixed use building that consists of 50,000 gross square feet or less that commits to obtaining a Leadership In Energy and Environmental Design (LEED) Certification of Silver or Certification from the Florida Green Building Coalition. A LEED Certified Silver development shall mean a development that obtains at least 33-38 points of the maximum points on the LEED project checklist. The applicant's commitment shall be demonstrated as follows:

Prior to the issuance of the first principal building permit, the applicant shall post a performance bond of 3% of the total cost of the building(s) in order to secure performance and fulfillment of the applicant's obligation to obtain a LEED Silver Certification or Certification by the Florida Green Building Coalition. The Town shall release the bond after: (i) project completion and certificate of occupancy has been issued by the Town; and (ii) the applicant has certified the project with the United States Green Building Council (USGBC) or the Florida Green Building Coalition and provides the certification letter to the Town.

If the project fails to meet the criteria required for Silver Certification by the United States Green Building Council (USGBC) or a Certification by the Florida Green Building Coalition within two (2) years after receiving the Town's certificate of occupancy, the applicant shall forfeit one hundred percent (100%) of the bond. Funds that become available to the Town from the forfeiture of the performance bonds shall be deposited in a Sustainability Fund established by the Town. These funds shall be utilized for improvements such as landscape, open space improvements, traffic calming, pollution mitigation, drainage and sanitary sewer improvements, sustainability improvements to public facilities, or similar improvements as deemed appropriate by the Town Council.

In lieu of the bond required by this section, the Town may accept an irrevocable letter of credit from a financial institution authorized to do business in Florida or provide evidence of cash deposited in an escrow account in a financial institution in the State of Florida in the name of the applicant and the Town. The letter of credit or escrow shall be in the same amount of the bond if it were posted; and

6. The construction of one (1) single family home; and
7. Any development that has received site plan approval from the Town prior to the enactment of this Ordinance.

Section 3. **Waivers.** Any property owner seeking a waiver under this Section 3 must file an application with the Town Council, for a determination within 30 days after the effective date of this Ordinance. The Town Council, after a public hearing, may grant a waiver to the moratorium provided above and permit development to proceed on a specific parcel where the

Town Council determines, based upon substantial competent evidence, that the proposed site plan requested by the waiver application will not detrimentally affect or be inconsistent with the regulations that will be created and adopted in relation to the Green Plan, will be compatible with surrounding land uses, and will not impair the public health, safety or welfare. The public hearing shall be advertised at least seven days prior to the hearing in a local newspaper. The grant of waiver, if any, shall be by resolution. The applicant shall be responsible for the waiver application fee and any other standard fees and requirements for a public hearing.

Section 4. Determination of Vested Rights or Denial of All Economic Use.

(A) Nothing in this Ordinance shall be construed or applied to abrogate the vested right of a property owner to complete development of a parcel where the property owner can demonstrate by substantial competent evidence each of the following:

- (1) A governmental act of development approval was obtained prior to the effective date of this Ordinance; and
- (2) Upon which the property owner has detrimentally relied, in good faith, by making substantial expenditures; and
- (3) That it would be highly inequitable to deny the property owner the right to complete the development.

(B) Nothing in this Ordinance shall be construed or applied to prevent development of a particular parcel where the property owner can demonstrate by substantial competent evidence that, because of the moratorium, no economic use can be made of the parcel.

(C) Any property owner claiming vested rights or denial of all use under this Section 3 must file an application with the Town Council for a determination within 30 days after the effective date of this Ordinance. The application shall be accompanied by an application fee of \$1,500.00 and contain a sworn statement as to the basis upon which the vested rights or denial of all use are asserted, together with documentation required by the Town and other documentary evidence supporting the claim. The Town Council shall hold a public hearing on the application and, based upon the competent substantial evidence submitted, shall make a determination as to whether the property owner has established vested rights or a lack of economic use for the parcel.

Section 5. Judicial Review. Judicial review of final decisions by the Town Council under Section 3 or Section 4 of this Ordinance shall be by the filing of a Petition for Certiorari in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County in accordance with the Florida Rules of Appellate Procedure for the review of the quasi-judicial decisions of municipalities.

Section 6. Exhaustion of Administrative Remedies. No property owner claiming that this Ordinance, as applied, constitutes or would constitute a temporary or permanent taking of private property or an abrogation of vested rights may pursue such claim in court, unless he or

she has first exhausted the applicable administrative remedies provided in Sections 3 and 4 of this Ordinance.

Section 7. **Conflicts.** All Sections or parts of Sections of the Code of Ordinances, all Ordinances or parts of Ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

Section 8. **Term.** The moratorium imposed by this Ordinance is temporary and shall be effective for a period of nine (9) months from the effective date of this Ordinance, unless dissolved earlier by the Town Council. Further, the moratorium shall automatically dissolve upon the adoption of the Green Plan and implementing land development regulations. The moratorium may be reasonably extended, if necessary, by Ordinance of the Town Council.

Section 9. **Effective Date.** This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this _____ day of _____, 2008.

PASSED AND ADOPTED on second reading this ___ day of _____, 2008.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF THE TOWN OF CUTLER BAY ONLY:

WEISS, SEROTA, HELFMAN, PASTORIZA,
COLE & BONISKE, P.L.
Town Attorney

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____