TOWN OF LONGBOAT KEY

PLANNING AND ZONING BOARD

MINUTES OF REGULAR MEETING

JUNE 18, 2013

The regular meeting of the Planning and Zoning Board was called to order at 9:00 AM.

Members Present: Chair BJ Webb, Vice Chair Jack Daly, Members Andrew Aitken, Leonard Garner, Walter Hackett, Allen Hixon, Ken Schneier, George Symanski, John Wild

Also Present: Maggie Mooney-Portale, Town Attorney; Kelly Fernandez, Town Attorney; Robin Meyer, Planning, Zoning & Building Director; Steve Schield, Planner; Alaina Ray, Planner; Donna Chipman, Office Manager

AGENDA ITEM #1
MAR VISTA RESTAURANT, 760 BROADWAY STREET
AMENDED SPECIAL EXCEPTION

AGENDA ITEM #2
MAR VISTA RESTAURANT, 760 BROADWAY STREET
SITE PLAN AMENDMENT

At the request of the applicant, these items are continued to a date to be determined.

AGENDA ITEM #3
PROPOSED ORDINANCE RELATED TO TELECOMMUNICATIONS
(Continued from the May 21, 2013, meeting

Robin Meyer, Planning, Zoning & Building Director, discussed the resolution that was transmitted to the Department of Economic Opportunity (DEO) for the Telecommunications Comprehensive Plan amendment. He noted this would come back to the Board, after it was submitted to the State, and would run “in tandem” with the regulations that were being drafted. Chair Webb commented that an update was provided to the Town Commission during their June 17, 2013, workshop, and the Town Commission wished to ensure that the hierarchy issue was addressed in the land use regulations and not in the Comprehensive Plan, which was the reason for the language change. Mr. Meyer agreed that the Town Commission still wanted to include the hierarchy and felt that was the direction to go with the Town Code. He would review the proposed language, and in the fall staff will bring back an ordinance for review and adoption, along with the ordinance adopting the Comprehensive Plan amendments.

Mr. Meyer continued with reviewing the proposed language noting:

- Removal of reference to 'adverse visual impact;' it was also pointed out that in 4(e), on page 14 of 16, 'adverse visual impacts' needs to be removed
- It provided clarification for the height
- Reference to cost of facility was removed so utilizing the fact that the facility was too expensive was not a criteria in moving forward
- There was consensus to remove language referring to cost on page 12 of 16 in 2(c)
- Concerning page 7 of 16, Item 7(a), Kelly Fernandez, Town Attorney, noted that one of the board members had commented it did not make sense, so it was recommended to be struck
- Clarification was provided for Item 7 on page 8 of 16
- Addition of Item (gg), which provided clarification for documentation that the criteria listed in subsection 3 would be met, on page 12 of 16

Mr. Hackett questioned the rationale for Item 3(b). Mr. Meyer responded it was based on the TE Connectivity Study. Staff looked at heights that would be needed on those different sites in order to provide optimum service and utilized those heights for the Code. Chair Webb commented that the language indicated that private property owners would get more height, and she did not believe that was in the best interest of the Town. Mr. Hackett suggested striking the language, "the town-owned property."

Mr. Garner referred to Item 'gg' and noted that it was vague and ambiguous, and should be more specific; that there was a variance or waiver process and criteria for making the case for additional height if it was needed (if a technical analysis demonstrated it was needed) with documentation from an engineer. Mr. Symanski did not see it as a variance; how would the applicant prove that it was a hardship if they did not receive another 10 feet and three carriers. **There was consensus to revise language to be more specific.**

Mr. Wild discussed what would happen if the Town purchased, or received, property on the north end; 110 feet should be the limit for both. **There was consensus to change to 110 feet for all properties.**

Discussion ensued on what the height should be to accommodate three carriers; providing a waiver process; that many ordinances have clauses that allowed application for departure; the need to have criteria, otherwise how would someone look at departure process and make a determination; what was the goal of the departure procedure; understanding that the Town's consultant, Mr. Spikowski, was recommending redefining, and even omitting, 'departure' and working with a variance – it was still part of the drafting of the outline development plan process; what was the percentage of people that have other carriers on the island; and, did the TE Connectivity Study include that the height would be optimum for three users

Attorney Fernandez discussed the ODP ordinance noting that the 110 foot height was not stating the applicant had to have three carriers when they submitted an application, but include a note whether it could be accommodated.

Mr. Daly suggested a maximum height of 110 feet, or if necessary, to accommodate three carriers at 120 feet. Mr. Hixon believed if the Town wished to accommodate three carriers, it should state the minimum height to allow three carriers not to exceed 120 feet. Mr. Garner agreed with the thought of the 110 feet, because at the moment it did fulfill the requirement. Mr. Hixon pointed out that during a previous meeting there was technical information provided that stated for three carriers they would need 120 feet. He believed by stating the minimum height necessary to provide for three carriers, not to exceed 120 feet, would meet the goal for three carriers. Mr. Wild believed 110 feet might work for three carriers. Chair Webb commented that the discussion that took place at the Town Commission meeting on June 17, 2013, was attempting to draft legislation that was technical in nature, and there was not a wireless technical expert sitting on the board. She believed the board was attempting to define something that no one knew if it would work.

There was majority consensus to allow up to 120 feet with three carriers.

Maggie Mooney-Portale, Town Attorney, commented that she had forwarded an email to the Town Commission to further clarify a question she had received on height limitations and the allowable amount under law. Attorney Fernandez had sent a memorandum in October 2012 to the Town Manager, which provided a summary of federal and state law, along with recommendations with regard to the Town Code. The intention of her memorandum was to further clarify and expound on that and examples of what had transpired in various courts. In regard to Florida Statute 365.172, there was a problem with the interpretation as they did not use similar "vernacular;" state law used the term "wireless communication facility" versus "provider," "carrier," or "tower-builder." These words had been interpreted by federal courts at great length. The definition of 'wireless communication facility' was defined by the Florida legislature as, *"any equipment or facility used to provide service, and may include, but is not limited to, antenna, towers, equipment enclosures, cabling, antenna brackets and other such equipment."* There was a danger if it included 'tower-builder,' as under state law if the application was not processed within the timeframes, then it would be incumbent upon the town to allow the tower user to have that siting. Discussion ensued on the process for an application; and, that there was a provision in the existing code that the applicant had to show compliance with FCC requirements; however, the state law states the Town could not require it and that the code would need to be revisited.

Discussion ensued on the following:

- If the ordinance needed more expertise than the Board felt they had; if so, the Board could ask the Town Commission to provide expertise
- How was the Town seeking a solution for better telecommunications on the island; the Town Manager was directed to make contact with the carriers and it was known that he had spoken to Verizon

- Belief there was not a need to seek expertise; it was the Board's responsibility to draft a land use ordinance with opportunities, but also including protections
- Did not want to preclude other ideas, such as a war memorial, or something nice that people would like to see, that could also serve as a cell tower
- Page 3, Item (a) Purpose and Legislative Intent, should include the word 'mitigate' versus 'minimize'
- Page 10, Item (4), what was 'camouflaged agent'; also, should change 'blend and harmonize' to 'blend and/**or** harmonize'
- Page 13, Item (f), how could it be camouflaged from view; suggestion to insert the word 'or' after '1,' '2,' and '3'

Mr. Garner left the meeting at this time.

Mr. Meyer noted that staff would go back and review other codes to see how they addressed similar issues. Mr. Symanski suggested it should also include the ability to construct a remembrance monument of some sort.

Mr. Aitken referred to Page 10, Item (iv), and suggested removal of the language concerning 'camouflaged agent' and 'camouflaged' on Page 13, Item (f). Also, with the exception of Item 3, remove the other parts of (f), because he believed it was impossible to do. Mr. Symanski suggested that it be reviewed before being removed. Mr. Aitken also referred to Page 14 and the way to evaluate a tower, Item 4(d), as he was not sure how it would work. Mr. Meyer explained that in the analysis from the Town Attorney, the federal and state laws discussed protecting residential areas. He pointed out that if a cell tower was the only alternative, then some neighborhood would take the visual impact; they needed to determine how to minimize those impacts.

There was continued discussion on the following:

- Page 13, Item (f), when reviewing with the idea of camouflaged, or making the tower look like something else, should consider the examples, such as a tree and ensuring that the choice worked with the language
- Concerning the section that set up the hierarchy (page 3), ensuring that all technologies, both current and future, were covered in the language
- Page 10, Item P(4), that the language should be retained, because the applicant needed to know the importance placed on the camouflage potential and the effectiveness of it
- Page 14, Item (d), should be amended to include language that noted that Longboat Key was an island of mostly single-family homes, so if there was a need for a tower that it was placed in an area with the least impact
- Question if on Page 4, Item (E)4, was common; it was noted that it was common and the language was in the state statute
- Page 5(a) and what was excluded (the areas that were primarily single-family)
- Page 13, Item (e); not sure if historic would be appropriate if no historic neighborhoods existed
- The need to more clearly define where the character of the area needed to be protected

- Page 4, Item (e)(4), concerning timeframes, and whether the 'shock clock' theory was still in existence regarding towers; a new application had a 90 day timeframe, and if it was a co-location, it was 45 days; this was a state mandate
- Page 5, Item 2(a), which discussed where a tower could not be located versus where it could be located, and the need for the ordinance to state where things could be located. **There was consensus to ensure the ordinance delineated where facilities could be located.**

Gene Jaleski, Cedar Street, spoke in opposition to a tower. He presented evidence to the state and the Town that Manatee and Sarasota Counties, including Longboat Key, were certified as being Phase 2, E911 compliant. He also completed a records request and found that fewer than 10 people in the past year had written for a desire to erect cell towers, but there were over 100 responses in opposition to a tower. He suggested the Town seek expertise in the field, and discussed the Board's desire to remove the language concerning 'adverse impact.'

Larry Grossman, St. Judes Drive North, agreed with Mr. Jaleski's comments. He voiced concern with code being written, because once it was set in place, it allowed an applicant to go through the process, and he believed the Town would be "trapped." He also noted there were no service standards included and concern with time constraints. He discussed the Comprehensive Plan, Town regulations, and the need for expertise.

Chair Webb believed the Board would not be able to act on the ordinance at this meeting due to all the issues being raised. Mr. Aitken agreed with the speakers that the Board did not have the technical knowledge, and he would like to see someone, such as a carrier, tower-builder, etc. provide information. Mr. Symanski was not sure what an expert would be able to tell the Town. He believed the ordinance provided a hierarchy that said an applicant would have to prove they could not do other systems before the Town would consider a tower. Mr. Hackett pointed out that a tower had the least economic impact.

Chair Webb asked if it would be possible, between this meeting and the September meeting, to address Mr. Aitken's questions, and address the items that need clarification. Mr. Meyer responded that staff will make every effort to address the concerns, but he could not guarantee the expertise. He commented that when speaking with the experts, they all gave different opinions. He mentioned that part of the reason the cost was included as a criterion was due to statements that DAS, as an alternative, had not been built because it was too expensive. The concern was if the Town did not make it a criterion, then the applicant could state it was technically feasible, but they did not wish to spend the money.

Mr. Daly asked if the Town Commission were to determine a tower was not in the best interest, had there been any discussion for a Town financially-supported DAS system. Mr. Meyer replied that had been noted before, but it was a policy decision of the Town Commission, because it was expenditure of town revenues. Mr. Schneier discussed the objective noting it was not to say they have a cell communication problem on this island and should implement a plan to solve it, but the Board was trying to revise the Zoning Code, which was more reactive to applications. The proposal that was being formulated

was one that would be most permissive for applications the Town believed were desirable and least permissive to those they did not find desirable. Mr. Meyer explained it was the desire of the Town to allow facilities that had the least impact on the surrounding community. Mr. Hackett commented that in the past it had been voiced that the Town participate in a public-private partnership, and he would like to provide that as an option to be considered.

Mr. Wild asked if it was his understanding that DAS could be provided for approximately $1,500. Mr. Meyer commented Mr. Jaleski had discussed the use of microcells during the Town Commission workshop. Mr. Wild suggested the Town should get one for Town Hall to test it. Mr. Aitken commented he would like to hear from AT&T about the microcell. Mr. Meyer noted he would do some research and follow-up.

AGENDA ITEM #4
ELECTION OF OFFICERS
(Continued from the May 21, 2013, meeting)

Chairman

MR. DALY MOVED TO NOMINATE BJ WEBB TO CONTINUE AS CHAIR OF THE P&Z BOARD. MR. WILD SECONDED THE MOTION.

There were no other nominations, and the nominations were closed.

MOTION CARRIED UNANIMOUSLY.

Vice Chairman

CHAIR WEBB MOVED TO NOMINATE JACK DALY TO CONTINUE AS VICE CHAIR OF THE P&Z BOARD. MR. AITKEN SECONDED THE MOTION.

There were no other nominations, and the nominations were closed.

MOTION CARRIED UNANIMOUSLY.

Secretary

CHAIR WEBB MOVED TO NOMINATE JOHN WILD TO CONTINUE AS SECRETARY OF THE P&Z BOARD. MR. HACKETT SECONDED THE MOTION.

MOTION CARRIED UNANIMOUSLY.

AGENDA ITEM #5
CONSENT AGENDA

MR. WILD MOVED APPROVAL OF THE MINUTES OF THE MAY 21, 2013, MEETING AND SETTING THE FUTURE MEETING DATE FOR SEPTEMBER 17, 2013. MR. HIXON SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: AITKEN, AYE; DALY, AYE; HACKETT, AYE; HIXON, AYE; SCHNEIER, AYE; SYMANSKI, AYE; WEBB, AYE; WILD, AYE.

There are no meetings scheduled for July and August.

Chair Webb thanked Mr. Hackett and Mr. Symanski for participating in the ULI Focus Group on behalf of the P&Z Board.

Mr. Aitken noted that the Trailer Parking Subcommittee would be meeting on June 20, 2013, beginning at 2:00 PM in the Planning, Zoning & Building Department conference room.

Mr. Symanski asked if the Town Commission had discussed how they would draft the interviewee list for ULI representatives. Chair Webb responded that the Town Commission wanted to ensure that the island was geographically represented. They also had noted that the committee would continue to work and assist with the compilation of the briefing book.

Mr. Wild believed that the P&Z Board could meet over the summer on items other than land use. He also reiterated that the Town should purchase a microcell system and test it. Attorney Mooney-Portale explained there was a charter provision addressing the meetings. Mr. Hixon pointed out that the reason the P&Z Board, and other boards, did not meet during the summer was not necessarily due to members being away, but that the public was away during this time, and having meetings would deny their opportunity to participate.

Mr. Hackett left the meeting at this time.

Chair Webb requested a letter be sent to the Town Commission requesting funds be expended to test equipment for telecommunications.

ADJOURNMENT

The meeting was adjourned at 10:53 PM

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BJ Webb, Chair
Planning and Zoning Board