

TOWN OF LONGBOAT KEY
PLANNING AND ZONING BOARD
MINUTES OF REGULAR MEETING

FEBRUARY 17, 2015

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

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

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

PUBLIC TO BE HEARD
Opportunity for Public to Address Planning and Zoning Board

No one wished to address the board.

Maggie Mooney-Portale, Town Attorney, reviewed 'conflict law' with the Board. A question was raised at another Board meeting as to when to abstain or not abstain from a hearing. She also reviewed Florida Ethics Code and the definition of a 'conflict.' She would be asking three questions of the Board to be placed on the record at each meeting.

REORDERING OF AGENDA

Chair Hixon informed the Board there would be a need to reorder the agenda as the Comprehensive Plan amendment for Moore's Stone Crab Restaurant would need to be heard prior to their rezoning application.

MR. WILD MOVED THE P&Z BOARD REORDER THE AGENDA TO HEAR AGENDA ITEM 2, MOORE'S STONE CRAB RESTAURANT, COMPREHENSIVE PLAN AMENDMENT, PRIOR TO THE REZONING APPLICATION. MR. SYMANSKI SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: AITKEN, AYE; BISHOP, AYE; DALY, AYE; GARNER, AYE; HACKETT, AYE; HIXON, AYE; SCHNEIER, AYE; SYMANSKI, AYE; WILD, AYE.

AGENDA ITEM 2
MOORE'S STONE CRAB RESTAURANT, 800 BROADWAY STREET,
COMPREHENSIVE PLAN AMENDMENT

Pursuant to published notice, the public hearing was opened.

Alaina Ray, Planning, Zoning & Building Director, reviewed the staff report noting:

- The restaurant has been in existence since 1957
- The land use was changed from commercial to residential in 2009
- Never a desire or intent of the property owner to cease restaurant operation
- Property was one of two historic waterfront restaurants in the Village
- The current restaurant could not be renovated or reconstructed if involuntary destroyed due to existing Future Land Use designation

Ms. Ray continued with reviewing a PowerPoint showing the existing conditions of the site.

Mr. Aitken referred to page 6, which discussed the 185 seats and asked if there was adequate parking. Ms. Ray replied yes. Mr. Aitken asked if there was any indication that the renovation would increase seating. Ms. Ray explained the applicant was not proposing to increase the seating, but they would be improving the parking along the waterfront. Mr. Daly pointed out the staff report indicated the basis for the change in 2009 was due to 'financial considerations,' and at that point in time, Moore's was proposing to change from commercial to residential. He questioned if that type of application was before staff today, would staff recommend approval. Ms. Ray replied staff would recommend denial.

Ms. Bishop noted that the P&Z Board had ruled against the previous request for residential classification. They recognized, at that time, that it would be impossible for someone to continue to maintain that facility as a restaurant and to improve the property once zoned residential, because it would then be a non-conforming use. The Board, at the time, acted appropriately; however, the Town Commission, and the voter referendum, decided to allow the requested change. Mr. Garner believed the application was a correction of what the board believed was an error by the Town, and pointed out 'commercial' was the proper zoning. Mr. Schneier asked if 'restaurant' was included in the Future Land Use category of C-L and the zoning district designation of C-1. Ms. Ray commented 'restaurant' was a special exception use, so it required an additional step of approval.

Mr. Symanski suggested additional 'Whereas' clauses be included as follows:

- 1) Whereas, it was a mistake to change the planning in 2010; and
- 2) Whereas, since the change in planning in 2010, there was a change in circumstances in that the Town Vision Plan was adopted.

Peter Dailey, Dailey Design Group, representing the applicant, reviewed the history of the site and the reason for the previous request. He discussed there were investors

that wished to have assurances that if the current facility was involuntarily destroyed, they would be able to rebuild the restaurant on the site. He noted that the Zoning Board of Adjustment (ZBA) granted variances from the street and waterfront yard setbacks. He continued with reviewing the site plan and illustrative drawings.

Mr. Hackett questioned if the seating area was still cantilevered over the water. Mr. Dailey responded they would be required to bring it back eight feet. Mr. Symanski asked what further procedural items will be needed following this application. Mr. Dailey noted they would need to file applications for a site plan, which will include a request for outdoor dining, along with a request for a Special Exception.

Alan Moore, Moore's Stone Crab Restaurant, commented he had invited the Village residents to a meeting at the restaurant to review and discuss the proposal, and he received no negative response from anyone. He also noted the parking situation was being addressed.

Ms. Bishop asked Mr. Moore how many residents attended the meeting held at the restaurant. Mr. Moore replied about 55 people. Mr. Hackett asked if the trolley stopped by the restaurants. Mr. Moore commented no, but they were hoping to work with the trolley system to have them stop at Broadway and Gulf of Mexico Drive.

Larry Grossman, St. Judes Drive, discussed Ordinance 2009-22, which approved the previous Moore's Stone Crab Restaurant Comprehensive Plan amendment, and pointed out that it stated changing to residential was consistent with the comprehensive plan. He commented that the applicant could not use 'financial need' to drive the request for amendment.

No one else wished to be heard, and the hearing was closed.

Mr. Symanski commented this was an unusual situation where it was amended and now the Town was changing it back. He believed it was important that, if someone was to challenge the approval, the judge be informed they believed a mistake was made. He further commented that even if correcting the mistake was not a valid basis in Florida, that there was a change of circumstances that happened after the original action in that the Town's Vision Plan was adopted, which strongly encouraged this property be rezoned back to commercial.

MR. SYMANSKI MOVED THE P&Z BOARD RECOMMEND THE ADDITION OF TWO 'WHEREAS' CLAUSES AS FOLLOWS: 1) WHEREAS, IT WAS A MISTAKE TO CHANGE THE PLANNING IN 2010; AND 2) WHEREAS, SINCE THE CHANGE IN PLANNING IN 2010, THERE WAS A CHANGE IN CIRCUMSTANCES IN THAT THE TOWN VISION PLAN WAS ADOPTED. MS. BISHOP SECONDED THE MOTION.

Mr. Garner did not see a benefit of including the 'Whereas' clauses. He believed it was an opinion and was irrelevant. He would support a motion to recommend approval if the 'Whereas' clauses were not included. Mr. Wild pointed out that he believed the proper procedure would be to move the ordinance as recommended by staff, and then consider any amendment to the ordinance.

Mr. Symanski and Ms. Bishop withdrew their motion and second.

MR. WILD MOVED THE P&Z BOARD RECOMMEND APPROVAL OF THE COMPREHENSIVE PLAN AMENDMENT FOR THE MOORE'S STONE CRAB RESTAURANT AS WRITTEN. MS. BISHOP SECONDED THE MOTION.

MR. SYMANSKI MOVED TO AMEND THE MOTION TO INCLUDE THE ADDITION OF TWO 'WHEREAS' CLAUSES AS FOLLOWS: 1) WHEREAS, IT WAS A MISTAKE TO CHANGE THE PLANNING IN 2010; AND 2) WHEREAS, SINCE THE CHANGE IN PLANNING IN 2010, THERE WAS A CHANGE IN CIRCUMSTANCES IN THAT THE TOWN VISION PLAN WAS ADOPTED. MS. BISHOP SECONDED THE AMENDMENT.

Mr. Symanski strongly recommended that the ordinance denote a mistake was made by granting the original approval to change to residential. Mr. Garner reiterated his disapproval of including additional 'Whereas' clauses. Attorney Mooney-Portale explained that she believed Mr. Symanski was suggesting there were legal arguments that should be incorporated into the ordinance to allow the Town to defend it against any possible future challenge. She commented that the decision to include or not fell within the purview of the Town Commission, but the board makes recommendations to the Town Commission.

Motion on amendment:

MOTION CARRIED ON ROLL CALL VOTE: AITKEN, NO; BISHOP, AYE; DALY, AYE; GARNER, AYE; HACKETT, AYE; HIXON, AYE; SCHNEIER, AYE; SYMANSKI, AYE; WILD, NO.

Motion on original motion, as amended:

MOTION CARRIED ON ROLL CALL VOTE: AITKEN, AYE; BISHOP, AYE; DALY, AYE; GARNER, AYE; HACKETT, AYE; HIXON, AYE; SCHNEIER, AYE; SYMANSKI, AYE; WILD, AYE.

AGENDA ITEM 1
MOORE'S STONE CRAB RESTAURANT, 800 BROADWAY STREET
REZONING APPLICATION (QUASI-JUDICIAL)

Pursuant to published notice, the public hearing was opened. All those testifying were sworn at this time.

Attorney Mooney-Portale asked if there had been any Ex Parte communications, if anyone had a conflict, or if anyone believed they could not be fair and impartial. None were noted.

Alaina Ray, Planning, Zoning & Building Director, reviewed the staff report noting:

- The restaurant has been in existence since 1957
- The land use was changed from commercial to residential in 2009
- Never a desire or intent of the property owner to cease restaurant operation
- Property was one of two historic waterfront restaurants in the Village
- The current restaurant could not be renovated or reconstructed if involuntarily destroyed due to existing Future Land Use designation
- The current request was consistent with the Comprehensive Plan, in that the Comprehensive Plan requires review of historic uses, review preservation of the historic character of the island, and act to preserve those uses that were valuable to the community
- The change was also consistent with the adopted Vision Plan, which was adopted after the previous land use and Comprehensive Plan change

Peter Dailey, Dailey Design Group, representing the applicant, reviewed the request and provided an overview of the reason for the request. He reiterated they had received variances from the required setbacks from the ZBA. He continued with reviewing the site plan and illustrative drawings.

Larry Grossman, St. Judes Drive, believed Moore's should be rezoned to a restaurant only and not to C-1, because other uses could be on the site.

No one else wished to be heard, and the hearing was closed.

Mr. Wild noted there was some retail in the existing restaurant and asked if there was a particular amount that was allowed. Ms. Ray responded there has been nothing like that done. The variance requested last week was for a restaurant use only; if the use changed, then they would need to comply with all C-1 setbacks, which made development difficult. She commented that the code refers to 'accessory uses', which for most destination restaurants the sale of t-shirts and related items that had their logo on it was typical.

Mr. Symanski believed Mr. Grossman's point was if the board approved the application, that there would be only a restaurant and not a large retail center. He asked if the board could condition the approval on being a restaurant only. Ms. Ray commented this was a straight rezoning. The ZBA variance granted the applicant setbacks that were considerably less than C-1 zoning setbacks, but limited it specifically to a restaurant. At the time the applicant submits a special exception, with their site plan, the board could then condition that special exception to state a certain percentage of the restaurant could be used for retail. Mr. Symanski asked if the Town allowed the rezoning, would the applicant be able to turn the property into something the Town did not want. Ms. Ray explained the current site did not meet the Town Code, so it was a non-conforming building, and changing or increasing the intensity would not be allowed. Chair Hixon believed Mr. Symanski was asking if the applicant could convert the interior to a different commercial use. Ms. Ray replied potentially yes. Mr. Garner asked if there was any classification, or any type of rezoning, that would limit this or add a limitation. Ms. Ray responded the commercial use being proposed was the least intensive of all the commercial zoning districts in the Town, so they would be limited by that.

MS. BISHOP MOVED THE P&Z BOARD RECOMMEND APPROVAL OF THE REZONING APPLICATION FOR MOORE'S STONE CRAB RESTAURANT FROM R-6SF TO C-1. MR. SYMANSKI SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: AITKEN, AYE; BISHOP, AYE; DALY, AYE; GARNER, AYE; HACKETT, AYE; HIXON, AYE; SCHNEIER, AYE; SYMANSKI, AYE; WILD, AYE.

AGENDA ITEM 3
ORDINANCE 2015-03, COMPREHENSIVE PLAN AMENDMENT
CAPITAL IMPROVEMENTS ELEMENT

Pursuant to published notice, the public hearing was opened.

Jerry Murphy, Florida Resilient Communities Initiative, reviewed the Comprehensive Plan Amendment noting:

- This was the annual update to the Capital Improvements Element (CIE) as required by Florida Statute
- There was a legislative version and clean version, along with Data & Analysis (D&A) that provides background for the Goals, Objectives and Policies (GOPs)
- The changes being requested were to remove the Longboat Pass Subaqueous Line Replacement, the Pressure Reducing Stations, and also to eliminate the rehabilitation of Pumping Station E, which all have been completed
- Add the Gulf of Mexico Drive/Broadway Street crossing , SCADA upgrades and the Wastewater Subaqueous Force Main back into the projects so the Comprehensive Plan and the CIE were consistent with the budget that was recently adopted by the Town Commission

Larry Grossman, St. Judes Drive, suggested the Board consider not making the Capital Improvements Element part of the Comprehensive Plan, because it could be a separate document so the Town did not have to go through this constant revision and ordinances, which he believed was unnecessary. He suggested the Board ask staff to look at other jurisdictions and how they handle their Capital Improvement Plans, and whether they were part of their Comprehensive Plans.

No one else wished to be heard, and the hearing was closed.

Ms. Bishop explained that the updating of the Capital Improvements Element was a Florida-statute driven requirement and was required in the Comprehensive Plan. She knew of no other jurisdiction that had not required it in this form.

MS. BISHOP MOVED THE P&Z BOARD RECOMMEND APPROVAL OF ORDINANCE 2015-03 AS WRITTEN. MR. WILD SECONDED THE MOTION.

Mr. Aitken commented this had been referred to as a 'housekeeping' activity, but voiced concern with the approval of spending significant funds. He pointed to the \$19 million being spent on a subaqueous wastewater line, and questioned the current condition of the wastewater line that would require this type of expenditure. Mr. Murphy explained that the expenditures outlined in the document have already been approved by the

Town Commission, and this process was to clean up the previous plan language and update it in the new CIE. The update included removal of projects that had already been completed and updating dates. The projects noted in the attachments were not subject to debate by the Planning & Zoning (P&Z) Board as they were under the purview of the Town Commission. Mr. Aitken referred to Table 7, which denoted amounts in red, and questioned the deficits. Mr. Murphy explained those items were showing as deficits, because the projects were dependent upon a bond issue that has not moved forward at this time.

MOTION CARRIED ON ROLL CALL VOTE: AITKEN, NO; BISHOP, AYE; DALY, AYE; GARNER, AYE; HACKETT, AYE; HIXON, AYE; SCHNEIER, AYE; SYMANSKI, AYE; WILD, AYE.

The Board recessed from 10:17 AM to 10:26 AM.

AGENDA ITEM 4

DISCUSSION REGARDING COMPREHENSIVE PLAN POLICY 1.1.10 AND TABLE 1 AND NONCONFORMING PROVISIONS OF LAND DEVELOPMENT CODE

Jerry Murphy, Florida Resilient Communities Initiative, referred to his report from the University of Florida and noted:

- Have recommended to the Town Commission changes to the Comprehensive Plan, passed on first reading in early February
- Sent revisions to the Department of Economic Opportunity (DEO) for review and were awaiting their response
- Once staff received the report from the DEO, the ordinance would be forwarded to the Town Commission for second reading
- Staff was hoping to bring visualizations to the P&Z Board showing the potential development, or redevelopment, of 'opportunity areas' as well as other areas that might be of interest to the Town

Ms. Ray discussed the need for additional meetings with the Board between now and the summer break, due to the difficult decisions that need to be made and the direction staff would require from the Board. They believed round table workshops were needed in order to discuss issues and allow the Board to do some critical, detailed work. Mr. Murphy commented staff was attempting to get a lot of the work done prior to the summer break.

Mr. Murphy continued with reviewing the possible four approaches for the Planning and Zoning Board to consider including in a revised Policy 1.1.10 and Table 1:

1. New future land use categories that logically group similarly situated commercial tourism properties into reasonably related density ranges, e.g., 1 to 5 units per acre, 6 to 10 units per acre, 11-15 units per acre, etc.
2. New future land use categories that eliminate density ranges for commercial tourism properties in favor of cubic volume ranges that quantify allowable three-

dimensional building envelopes without regard to the number or individual size of commercial tourism accommodations configured within the “box.”

3. Procedural options for legislative changes to the various ranges of properties with potential opt-in and/or opt-out provisions and redevelopment incentives for commercial tourism properties.
4. Commercial tourism destination resort designation(s) for larger destination resort properties that provide numerous resort amenities internal to their properties—resort-type amenities that distinguish them from the smaller properties whose commercial tourism offerings are limited primarily to accommodations.

Chair Hixon believed they should be aware of the increased traffic when reviewing the proposals. Mr. Murphy responded they were trying to identify reasonable ranges of density that would allow certain properties, in those ranges, to probably acquire additional units. Mr. Garner referred to Item 2 and commented that densities on Longboat Key would have a major impact as density issues create traffic; there needed to be guidelines on density.

Mr. Murphy continued with reviewing a PowerPoint presentation.

Mr. Aitken questioned Table 1 noting that Urban Land Institute (ULI) had identified 550 residential units being used as tourism units, and asked if the 250 tourism units were included in that number. Mr. Murphy replied no, and explained he believed ULI suggested the force for that “disfavored” use came from the fact there was a shortage of tourism units to meet the demand. Mr. Aitken believed if it was happening, and the Town was not enforcing the rule to prevent it, the number should be counted. Mr. Hixon commented that when the issue was addressed previously, it was an enforcement issue. Ms. Ray noted that the Town could not amend their tourism regulations, because the state has said if the regulations were revised, the Town ran the possibility of invalidating their entire ordinance and ability to enforce anything. She also pointed out that enforcement was difficult, but the Code Enforcement Officer was stepping up their efforts to educate the public. Attorney Mooney-Portale explained staff has been looking at existing residential and tourism regulations for the Town. She noted that it was not the Code Enforcement Board’s job to enforce the regulation; they hear cases presented to them by the Code Enforcement Officer. She suggested if someone was aware of a problem they should contact Chris Elbon, the Town’s Code Enforcement Officer.

Discussion ensued on:

- Whether taxes were required to be paid on rentals
- The Town’s Business Tax Receipt program
- That it was an extremely complicated situation to enforce
- Suggestion that the Board do something to enhance the control of these issues, or at least express their concerns
- Who was held responsible for any violations of the tourism regulations
- Whether realtors could be held accountable
- Discussion between the Code Enforcement Board and Code Enforcement Officer at their December meeting

- That the Town ran the risk of losing their adopted regulations if they decide to modify the ordinance

Mr. Schneier did not think the Board should take steps to include a number in any draft, because it might give “credence” to the fact those ownerships exist.. Ms. Bishop agreed with Mr. Schneier commenting that if an association, such as Bay Isles, was having issues with this problem, a lot of smaller associations would have more difficulty. She believed they needed to be careful in looking at larger number, because although it might be a reality, it was unlawful.

Mr. Symanski questioned what the 600 loss referred to. Mr. Murphy responded the existing non-conforming tourism units that did not get rebuilt, but were built to a different type of use or torn down. Mr. Symanski asked if a decision had been made to consider establishing ‘pure zones’ and not allow residential in commercial/tourism zones. He asked when the decision would be made to change the Charter. Ms. Ray commented anything the Town did that dealt with density would have to go to referendum. The Town was talking about establishing a Charter Review Committee. Chair Hixon pointed out the Board’s concern with the loss of “good, quality tourist units,” and the impact they have on all the services that were provided on the island. Mr. Murphy continued with discussing rental regulations and private property issues.

Mr. Murphy reviewed an illustration of the non-conforming properties on the island noting staff would need to verify. He commented they had received comments that there were areas that needed to be included. He reviewed a chart of non-conforming properties that Commr. Younger had prepared and presented to staff.

AGENDA ITEM 5 REDUCTION OF PLANNING & ZONING BOARD MEMBERS

Mr. Daly commented that during a recent Town Commission meeting, the Mayor had indicated that at an upcoming workshop he wished to discuss the reduction of members on the Planning and Zoning Board. Mr. Daly believed it would be helpful for the Board to discuss their composition. He explained the suggestion was to reduce the membership down to seven; however, he saw value on the other side of the issue by maximizing the number of members as it provided an avenue for individuals to get involved in town government.

Mr. Schneier commented nine members were more than the traditional makeup of this type of board, but since he has been a member on the board, each member has been committed to their responsibility. He believed it provided a great education for people wanting to get involved with the Town. He mentioned there had been discussion in the past about expanding the role of the P&Z Board in major Town decisions, and believed it would be useful to have the ability to break up the Board into subcommittees to address specific projects.

Ms. Bishop commented this was a policy decision of the Town Commission, and in her past experience, P&Z Board members were appointed by the elected officials. She believed five members would be too small. Mr. Wild commented when he was mayor in

another community, they had ten P&Z Board members and 16 commissioners. He would not be in favor of reducing the board. Mr. Garner believed the comments were well taken pointing out the current board worked well and provided significant contributions. He noted that all the boards he had dealt with in his professional career, approximately 90 percent were seven members or less.

CONSENT AGENDA

MS. BISHOP MOVED APPROVAL OF THE MINUTES OF THE NOVEMBER 18, 2014, AND DECEMBER 16, 2014, MEETINGS AND SETTING THE FUTURE MEETING DATE FOR MARCH 17, 2015. MR. SYMANKSI SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.

STAFF UPDATE

Ms. Ray discussed holding a workshop each month through June in order to focus on specific code issues. She asked if everyone would be available to meet on March 31st at 9:00 AM. Mr. Garner questioned the purpose of the workshop. Ms. Ray explained it would allow the board members to sit in a round table setting and work out policy decisions and density issues. Mr. Murphy commented it would also provide an opportunity for the public to be engaged in the discussions.

Mr. Wild asked staff to provide updates on the various projects within the Town. Ms. Ray provided the following update:

- Aria Condominium – topped out this week and would be starting on the build-out soon
- Infinity Condominium – have received their permits
- Hilton Hotel site – currently preparing the site and working on the interior renovations of the existing tower
- Town Center Overlay – there was a meeting of the Town Center Steering Committee scheduled for February 19th at 1:00 PM
- Bayfront Park – the Town has received finalized plans from the architect, and staff had some comments they were addressing with the architect. Once final, the plans will be forwarded to the Town Commission for final approval.

Mr. Garner left the meeting at this time.

ADJOURNMENT

The meeting was adjourned at 11:31 p.m.

John Wild, Secretary
Planning and Zoning Board