

M E M O R A N D U M

DATE: April 12, 2016

TO: Planning and Zoning Board

FROM: Alaina Ray, Director
Planning, Zoning and Building Department

RE: Ordinance 2016-09: Comprehensive Plan Update

- Implementation Element (Replaces the Capital Improvement Element),
- Governance Element (Replaces the Intergovernmental Coordination Element),
- Housing Element,
- Recreation and Open Space Element,
- Conservation and Coastal Management Element, and
- Infrastructure: Stormwater Sub-Element

At the March 22, 2016, Planning and Zoning Board (P&Z Board) Meeting, Staff introduced draft versions of various revised Comprehensive Plan Elements intended to create a more user-friendly Comprehensive Plan that is easier to read, understand, and apply. Staff has worked to preserve the existing goals, objectives, and policies, while eliminating extraneous content. Most regulatory provisions are directed to the appropriate documents governing such regulations. The revised Elements also delineate strategies for successfully implementing the goals, objectives, and policies. The draft revisions also incorporate language from the Town's adopted Vision Plan and requirements contained in the Community Planning Act (F.S. 163), which was adopted in 2011.

Staff requested comments from the P&Z Board regarding the draft revisions, which would then be brought back to a workshop to discuss. Staff has compiled these comments into the enclosed spreadsheet and provided preliminary responses to some of the comments. There are also comments addressing policy issues and the P&Z Board may wish to discuss these to determine recommended policy direction as we move forward.

A binder is also being provided containing materials that will be useful in evaluating and reviewing the draft revisions.

Element	Goal, Policy, Objective, or Strategy	Comment	Response	Status
ALL		Consider identifying the source(s) of any new provisions that did not originate from the existing 2007 Comprehensive Plan Amendment (ie, Town's Vision Plan, etc.)		
ALL		Change "will's" to "shall's" throughout the proposed text for all		
ALL		Consider writing the document in regular case font. In its current (all capitalized) format, punctuation and other grammatical issues are more difficult to ascertain.		

Element	Goal, Policy, Objective, or Strategy	Comment	Response	Status
IMPLEMENTATION	Sec. 1.1.2.1	Fla. Stat. 163.3202(2) sets forth minimum LDR criteria. Specifically, the following statutory criteria is not listed within proposed Section 1.1.2.1 (which sets forth the Town's LDR contents): "compatibility of adjacent uses", "provide for open space", "safe and convenient onsite traffic flow...needed vehicle parking"		
IMPLEMENTATION	Sec. 1.1.2.10	What are the "vested rights" other than non-conformities?	Numerous. There are many based on previously approved PUDs, ODPs, and development orders.	
IMPLEMENTATION	Sec. 1.1.3	As P and Z is asked to opine on the CIP and CIS, can we get more information on the process?	We will provide additional information when it is time to update the CIP.	
IMPLEMENTATION	Sec. 1.1.3.8	Does the public now have input "prior to and during project development"?	They have always had an opportunity for input and will continue to. Examples: public workshops and public hearings.	
IMPLEMENTATION	Sec. 1.1.7	Is "proportionate share" a recognized term of art for assessing fees?	Yes, it is a term recognized by Florida Statutes.	
IMPLEMENTATION	Secs. 1.1.7 – 1.1.8.4, 1.2, 1.2.2, 1.2.2.1	Change all "will's" to "shall's"		
IMPLEMENTATION	Sec. 1.1.7.3	Consider whether the Town wants to keep options open for another water/wastewater provider and add language denoted below: New development and redevelopment will be required to pay the facility investment fee for water and wastewater capacity requirement by agreements with Manatee County or other providers.		
IMPLEMENTATION	Secs. 1.2-1.2.2.2	Generally, where did the concepts within these sections 1.2 – 1.2.2.2 originate? They do not appear to be from results neutral analysis.	The Comprehensive Plan has never had an implementation schedule or work plan. The proposed work schedule is similar to what the Town's management team currently uses. The policy can be eliminated. PZB should discuss if they feel an implementation schedule is desired for the Comprehensive Plan.	
IMPLEMENTATION	Secs. 1.2, 1.2.2, 1.2.2.1, 1.2.2.2	What is an "administrative work plan" and what is the difference between that and an "administrative work program"? What happens if the Town does not update annually?	See above.	
IMPLEMENTATION	Sec. 1.2.1.3	What does "identify and program implementing actions to be taken over the horizon of the LBKCP" mean?	If we have an implementation schedule, we list actions that need to be taken with a time frame.	
IMPLEMENTATION	Sec. 1.2.2	Second sentence, please change text: Updates of <u>to</u> the		

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GOVERNANCE	Secs. 1.1-1.2.4.5	Generally, not sure where these sections 1.1 – 1.2.4.5 originated from. They do not appear to be from results neutral analysis.	These sections are from the Community Planning Act, which was adopted in 2011. These proposed sections are a requirement of the Act. This was missing from the existing Comprehensive Plan.	
GOVERNANCE	Secs. 1.2	These provisions have no analogs in the "results neutral" revisions at the end of this section.	See above.	
GOVERNANCE	Secs. 1.1-1.1.5.2	Delete all of GOV Goal 1 and all sub-parts. The applicable laws for compliance with the Sunshine law, public records laws and ethics laws are governed by the Florida Constitution and Florida Statutes. They do not need to be included in the Comprehensive Plan.	Removed at Town Attorney request.	
GOVERNANCE	Sec. 1.2.2	There is a stray “,” in the sentence. Delete. The Comprehensive Plan shall provide the principles, guidelines, standards, and strategies for the orderly and balanced economic, social, physical, environmental, and fiscal development of the community that reflect the-- community’s vision and commitments.		
GOVERNANCE	Sec. 1.2.3	Shouldn't the Plan "prescribe" or "facilitate" the regulations rather than "establish"?	Language revised using suggested terms.	
GOVERNANCE	Sec. 1.2.3.1	Please change text as follows: Establish principles that describe how regulations, programs, and actions will be carried out shall be implemented.		
GOVERNANCE	Secs. 1.2.3.1 – 1.2.3.3	Consider whether these subsections are necessary.	Yes, this is a standard section that is required by the Community Planning Act.	
GOVERNANCE	Sec. 1.2.3.2	Delete the word “predictable”	We cannot delete it, as this is required language from the Community Planning Act (163.3177 (1))	
GOVERNANCE	Sec. 1.2.3.3	This provision as currently written could be used adversely against the Town, depending upon the specificity (or lack thereof) ultimately written within the Land Development Code. The principle of detailed land development regulations implementing the comprehensive plan is engrained in Florida Statutes and caselaw. I would recommend deleting in its entirety or, at a minimum, modifying as follows: Establish guidelines for the content of more detailed-land development and land use regulations.	Discuss the Community Planning Act.	
GOVERNANCE	Sec. 1.2.4.1-1.2.4.3	Shouldn't "sole" be "ultimate" as other agencies like PandZ are involved?	Removed. See comments below.	

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GOVERNANCE	Secs. 1.2.4.1, 1.2.4.2	The use of the phrase “sole responsibility” implicates that only the Town Commission has responsibility over comprehensive plan amendments and land development codes. Florida Statutes recognizes the local planning agency’s role in this process for making recommendations. See, Fla. Stat. 163.3174. While the PZB does not have authority to adopt, they do have authority as the local planning agency to provide recommendations on these elements. I suggest deleting the following: and shall be the sole responsibility of the Town Commission.	Removed.	
GOVERNANCE	Sec. 1.2.4.3	The use of the phrase “sole responsibility” implicates that only the Town Commission has responsibility over zoning matters. The PZB hears quasi-judicial zoning matters and makes recommendations on zoning changes to the Town Commission. I suggest deleting the following: and shall be the sole responsibility of the Town Commission.	Removed	
GOVERNANCE	Sec. 1.2.4.4	Change “Administrator” to “Manager”. Art. II, Sec. 20 of the Town Charter references advisory boards. The Town’s advisory boards do have final quasi-judicial decision making authority. Accordingly, please make the following changes: Quasi-judicial and ministerial decisions delegated to the Town Administrator <u>Manager, Town Planning Director, a hearing officer,</u> or to another <u>Town advisory board</u> commission or agency under the Land Development Code shall be presumed be consistent with the Comprehensive Plan if found by the approving authority to be in compliance with the Land Development Codes.	Agreed	
GOVERNANCE	Sec. 1.2.4.5	Delete the reference to the Town Commission. Appeals are directed to appropriate court with jurisdiction. Procedures and criteria shall be established for the appeal of any determination of consistency with this Comprehensive Plan to the Town Commission.	Agreed	

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GOVERNANCE	Sec. 1.3	Including subsections 1.3.1 – 1.3.2: The purpose of these sections is unclear. These sections appear to be inconsistent with the limited delegated authority conferred on certain advisory boards within the Town to handle certain land use matters and issue development orders in quasi-judicial proceedings (ie, PZB and ZBA). Consequently, the Town Commission is not the “ultimate” decision maker when other advisory boards have been delegated certain land use powers to render decisions (ie, variance approval, site plan approval, etc.) These provisions are unnecessary as legal principles apply to legislative determination (cannot be arbitrary/capricious) and caselaw has interpreted quasi-judicial processes for fair decision making (ie, due process, competent substantial evidence, etc.)	Remove 1.3.1 and 1.3.2.	
GOVERNANCE	Sec. 1.3.3	Should Commission fiscal authority for other services like police and fire be mentioned here?	Yes. Suggest language	
GOVERNANCE	Sec. 1.3.3	Delete word “exactions”; exactions are not permitted under Florida law. Add – “user fees” to the list of fees that may be established.	Agreed	
GOVERNANCE	Sec. 1.3.4	Change “Administrator” to “Manager”.	Agreed	
GOVERNANCE	Sec. 1.3.8	Delete the following strikethrough text: Hold public meetings and prepare written recommendations for adoption of amendments to the LBKCP text and map amendments.	Agreed	
GOVERNANCE	Sec. 1.3.8.1	Adding this to the Comp Plan is a Policy shift. The Town Commission must appoint a local planning agency by statute. See, Fla. Stat. 163.3174. The PZB is the designated land planning agency under the Town Code. The Town has never memorialized this designation in the Comp Plan. In so doing, this would make it more difficult to change this designation should the Town Commission ever decide to do so. For example, the Town Commission could choose to designate itself as the local planning agency.	This is a policy change. Disucss pros and cons	
GOVERNANCE	Sec. 1.4.1.1	Delete this section in its entirety. Currently the Town Code, not the Land Development Code, sets forth the procedures for public participation in public meetings and hearings. What is the value in requiring that this criteria be within the LDC?	Agreed	

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GOVERNANCE	Sec. 1.4.2 and subsections 1.4.2.1 – 1.4.2.2.	Delete all of these sections. Currently Town Code governs the public process for all quasi-judicial hearings before the Town Commission, Planning and Zoning Board, and Zoning Board of Adjustments. Currently the Town Code (Chapter 30), not the Land Development Code, sets forth the procedures for public participation in public meetings and hearings. What is the value in requiring that this criteria be within the LDC?	Agreed	
GOVERNANCE	Sec. 2.1.5.1	Add underlined text: Seek mutual aid agreements with Sarasota County, Manatee County, adjacent municipalities, <u>fire districts</u> , and regional and state agencies for the delivery of fire protection	Agreed	
GOVERNANCE	Section 2.3 – and subsections 2.3.1 and 2.3.11	Delete this section and the subsections in its entirety. General law already covers these disputes. Chapter 164, Florida Statutes, governs intergovernmental disputes and establishes a required dispute resolution process that local governments must follow.	Agreed	

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HOUSING		Generally, change all "will's" to "shall's"		
HOUSING	Sec. 1.1.2	Can we "ensure" that a range of housing choice is available?	Language revised	
HOUSING	Sec. 1.1.4.2	This seems broad. I think comp is only required for eminent domain (not, say, evacuation).	Discuss whether to include revised language with eminent domain	
HOUSING	Sec. 1.3.1	Can we "ensure" that new structures are storm resistant?	Revised	
HOUSING	Sec. 1.4.1.2	Should we "allow" not "provide for" group homes etc.?	Must include this language, per Florida law	
RECREATION & OPEN SPACE	Sec. 1.2	These provisions have no analogs in the "results neutral" revisions at the end of this section.	Discuss this component. This was a missing component of the existing comprehensive plan. The Town hasn't had a recreation and open space master plan. Staff felt like it would be a good idea to have a master plan, because it gives us a program to work toward for the next ten years.	
RECREATION & OPEN SPACE	Sec. 1.2	Consider incorporating a strategy that incorporates the exploration of public and private opportunities to develop recreational, open space and cultural facility availability. Encourage public private partnership (P3) opportunities (ie, cultural center operation, concessioners, etc.)	Good idea. Discuss the incorporation of a P3 strategy.	
RECREATION & OPEN SPACE	Sec. 1.2.1.1	12 acres per 1,000 population--how are we doing?	We are very close. Does PZB want to revisit this number?	
RECREATION & OPEN SPACE	Secs. 1.2.3.1 and 1.2.3.2	Is "roughly proportional" and accepted standard, and how does it compare to "proportionate" used elsewhere?	Yes, this is a term accepted by Florida Statutes.	
RECREATION & OPEN SPACE	Secs. 1.2.1.2 through 1.2.3.2	References to "fair share" contributions sounds like an impact fee. Consider whether this should be called an "impact fee."	No, it is directly tied to proportional share, so we cannot call it an impact fee.	
RECREATION & OPEN SPACE	Sec. 1.3.3	Is the 50% rule applicable now throughout the island?	Yes.	
RECREATION & OPEN SPACE	Sec. 1.4.1	Subsections (2) and (4) are missing.	?	
CONSERVATION & COASTAL MANAGEMENT		Generally, the Town is pre-empted from regulating mangroves. The Courts have held that Florida's Mangrove Trimming and Preservation Act (Florida Statutes 403.9321 - 403.9333) expressly preempts local governments from the regulation of mangroves and enforcement unless it had received a delegation of such authority from the FDEP. Town of Jupiter v. Byrd Family Trust, 39 Fla. L. Weekly D237 (Fla. 4th DCA February 7, 2014; Maurer v. Sarasota County, Case No. 2014 CA 4833(Fla. 12th Cir. 2015) The Town does not have such a delegation. Accordingly, caution should be observed in not overstepping Town's authority in these provisions relative to mangroves as the majority of "wetlands" within the Town consist of mangroves.		
CONSERVATION & COASTAL MANAGEMENT	Sec. 1.2.2	"Compelling public interest" is a strict test. Would this force rejection of Floridays, for example?	No. Floridays is not redeveloping in a wetland. Language revised.	

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CONSERVATION & COASTAL MANAGEMENT	Sec. 1.2.2.1 etc	Aren't wetlands regs all handed down from federal or state levels?	Yes, but the Community Planning Act does include requirements to include in the LDC regarding land uses.	
CONSERVATION & COASTAL MANAGEMENT	Sec. 1.2.3.4	Are Sister Keys undeveloped and undevelopable?	Yes. Sister Keys is zoned Open Space Conservation.	
CONSERVATION & COASTAL MANAGEMENT	Sec. 1.2.4.1	Low Impact Development (LID) Techniques appear only applicable and subject to coordination with Sarasota County, not Manatee County. Was that intentional? Does the Town want LID throughout the Town?	Language revised to include Manatee County.	
CONSERVATION & COASTAL MANAGEMENT	Secs. 1.3 (and subsections 1.3.1 - 1.3.1.1)	Note concern about mangroves above. Also, Town Commission recently discussed revisiting current policy on shoreline hardening and the existing prohibition on armoring structures (ie, seawalls). Policies/goals in this element should be consistent with Town Commission objectives.	Policy is still in the place and has not changed.	
CONSERVATION & COASTAL MANAGEMENT	Sec. 1.3.2 etc	Fish and manatees are mentioned. Should turtles be specified as we have turtle rules?	Discuss including turtles in the Comprehensive Plan.	
CONSERVATION & COASTAL MANAGEMENT	Secs. 1.3.3.2 and 1.3.3.3	Should there be a comma after "exotic"? My point is whether both exotic and noxious plants need to be removed or only "exotic noxious" plants. This is significant for, say, Aussie pines, which many people would hope not be required to be removed in all cases.	No, this only refers to exotic plants that are deemed noxious and invasive. The State of Florida has a list.	
CONSERVATION & COASTAL MANAGEMENT	Sec. 1.3.8.1	Consider whether there is such overstepping in the following sections: 1.2.2, 1.2.2.1, 1.2.2.2, 1.2.2.3	Staff does not believe so. We currently collaborate, as do other jurisdictions.	
CONSERVATION & COASTAL MANAGEMENT	Sec. 1.4.1.1	Do we have a Comprehensive Beach Mgmt. Plan in place now?	Yes.	
CONSERVATION & COASTAL MANAGEMENT	Secs 2.2.1.1, 2.2.2.1, 2.2.3.1, 2.2.4.1, 2.3.3.1, 2.3.3.1, 3.1.2.1, 3.1.2.2, 3.3.1.1, 3.3.1.2, 3.3.1.3, 3.3.2.1, 3.3.3.1	Change "will's" to "shall's"	Agreed	
CONSERVATION & COASTAL MANAGEMENT	Sec. 2.3.3.2	Fix "include require". Does this rule prohibit, say, kayak rentals at the Village dock? The improved Bayfront Park?	Revised. This is the currently policiy. PZB should discuss this issue, due to conflicts. Current policy is problematic regarding marina uses, Bayfront Park, etc.	
CONSERVATION & COASTAL MANAGEMENT	Sec. 3.1	Shouldn't our plans encompass the whole island, not just CHHA?	The whole island is in the CHHA.	

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CONSERVATION & COASTAL MANAGEMENT	Sec. 3.1.1.2	Change “unreasonable impede” to “unreasonably impede”	Agreed	
CONSERVATION & COASTAL MANAGEMENT	Sec. 3.3 etc.	Do these rules for rebuilding and certification of nonconformities take into account all the discussions we have had on these topics?	Yes.	
STORMWATER	Secs. 1.1.2, 1.1.2.1, 1.1.3.1, 1.1.4.1, 1.2.2., 1.2.2.1, 1.2.3, 1.2.3.1, 1.2.4.1, 1.3.1.2	Change “will’s” to “shall’s”		
STORMWATER	Sec. 1.2.1.1	Is reference to specific law chapters too specific for a Comp Plan?	This is current policy. Agree. May want to make less specific.	
STORMWATER	Secs. 1.2.2 and 1.2.3	Are the goals to "maintain established water quality standards" in 1.2.2 and to "not degrade the quality of adjacent coastal waters" different tests?	Yes. 1.2.3 directly addresses adjacent coastal waters, whereas 1.2.2 is any property (even if its not on the water). 1.2.2 deals with the treatment of water. 1.2.3 deals with runoff into coastal water.	
STORMWATER	Sec. 1.2.4.1	See concerns above (in Conservation Element) regarding language that “mandate(s) the preservation of wetlands” and potentially may overstep delegated authority.	We can mandate preservation of wetland soil type.	
STORMWATER	Sec. 1.4.1	Do we have aquifer recharge areas?	No.	