

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

MAY 31, 2016

The special meeting of the Planning and Zoning Board was called to order at 9:00 AM by Chair Jim Brown.

Members Present: Chair Jim Brown; Vice Chair BJ Bishop; Secretary Ken Schneier; Members Leonard Garner, Stephen Madva, George Symanski

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

Administration of oath

Donna Chipman, Office Manager and Notary Public, swore reappointed member Leonard Garner.

AGENDA ITEM 1
PUBLIC TO BE HEARD
Opportunity for Public to Address Planning and Zoning Board

No one wished to address the board.

PUBLIC HEARINGS

Agenda Item 3
Ordinance 2016-20, Amending Chapter 150, Buildings

Pursuant to published notice, the public hearing was opened.

Alaina Ray, Director, provided an overview of the ordinance noting:

- Staff have been concerned with the current Building codes and were determining how they can move through the current process efficiently for structures that really need to come down or have serious need for abatement to them
- Reviewed Chapter 150, Buildings, which adopts the Florida Building Code and regulates building permitting, construction activities, unsafe conditions, and public nuisances
- The majority of structures built on Longboat Key were built decades ago

- Most structures have been maintained well, but multiple structures need to be addressed for deteriorating conditions
- When reviewing Section 150.21 and recent court cases from other jurisdictions, they indicate the current provisions may lack adequate authority, notification procedures, due process, and specificity
- There was a standard unsafe building code utilized by a number of jurisdictions
- Staff also wanted to see if any ordinances in the Twelfth Judicial Circuit Court region were being used and had been upheld in court
- The language used was almost verbatim from Sarasota County

Maggie Mooney-Portale, Town Attorney, commented that one of the things summarized was staff had completed a review of the neighboring jurisdictions and others statewide. One of the distinguishing things found was the Sarasota County model had further details and further rights of due process.

Discussion ensued on:

- if the definitions changed, and whether they were part of the same that Sarasota and others were using
- whether the definition of 'structure' fit and was within legal terminology
- concern with the word 'abate,' as it was a type of word that could be challenged; it should include additional descriptive adjectives (abate, correct, or repair)
- page 16, which discussed abatement methods; wherever there was abatement language, there was a menu of options for the abatement
- reference to the 'Notice of Demolition' and suggesting it state 'received'
- PowerPoint slide 6 and the two different methods of demolition – standard and emergency
- What was the practical part of the standard demolition to provide a surety to residents; in a Katrina-type scenario, it would not be standard, but emergency demolition
- The administrative process that was in the code did not provide an opportunity to give due process or to remove the buildings to protect the public
- That the public needed to know what the Town's definition was for 'specified time' and what was reasonable to take care of the abatement issues following a storm, or even a fire; a lot of those specific case-by-case basis would be based on the building official's determination

Mr. Symanski asked if the appeal procedure noted that if an appeal was filed, it would stay the order, and suggested wording be included to address that. Attorney Mooney-Portale responded it could be included in the ordinance, but one of the things staff wished to preserve was to allow the Town to take emergency action, if warranted, that would not be subject to the stay. Mr. Symanski referred to 'interested parties' and believed it was broad. Attorney Mooney-Portale explained that under Florida Law someone that was going to appeal a decision to circuit court had to appear at the lower court such that they have standing to appeal. Ms. Ray noted the definition of 'interested party' was verbatim from Sarasota County. Discussion ensued on 'interested parties' versus 'aggrieved parties' and notification requirements.

Ms. Ray commented that the Town did not determine aggrieved prior to the action. She referred to page 10 of 16, item (j), Emergency Demolition, and suggested the language read, “except in cases of emergency demolition as set forth in Section 150.21(j), appeals may be taken by the owner of record, or interested parties, **or any other party** that has been aggrieved by the following...”.

Mr. Schneier discussed that under the appeal procedures, the words ‘interested parties’ should be removed, and state “*appeals may be taken by the owner of record or any other person with an interest in the property who has been aggrieved.*” Ms. Ray pointed out item I(1)(b) requires that an appeal contain a statement identifying the legal interest of each application. Attorney Mooney-Portale voiced concern that the language would be eliminating the neighbor who might have a vested interest in having some action taken. Mr. Garner pointed out it did not preclude someone from filing an action wherever they were located, but if the action was ‘out of order,’ it was the burden of the court to state they could not do it. Mr. Symanski commented the way it should work was the applicant had to be aggrieved or the Town Commission did not move forward with the appeal. Attorney Mooney-Portale responded staff could modify to state ‘a statement identifying the nature of the legal grievance and legal interest of each appellant.’ Mr. Schneier did not believe it should be limited by the definition of ‘interested parties,’ and ‘interested parties’ should be stricken from the appeal procedure. Ms. Ray noted that ‘interested parties’ was defined in part because that was who would receive notification, but to appeal, instead of ‘interested party,’ it could include ‘other party who has been aggrieved.’ Mr. Schneier believed a ten-year tenant, who was not aware they had to file a notice with the Building Official to receive notice of demolition, should be allowed to file an appeal from an action like this. Attorney Mooney-Portale explained the tenant would have recourse under landlord-tenant laws for damages. Ms. Ray noted that if the property was occupied at the time a placard was placed on the property, the tenant had fourteen days to move out.

Attorney Mooney-Portale informed the Board that as currently written, the ordinance narrowly defined as to who could file an appeal to the Town Commission. They would have to have an interest in the property and aggrieved. Ms. Ray explained the appeal has to be received within ten days of receipt of the notice, and if it was not received, they might not know they had to file an appeal. She pointed out that if ‘interested parties’ was removed from the language, then the only person who would be noticed would be the property owner of record.

Darin Cushing, Building Official, discussed the reason for the definition was they might need to state financial interest. Ms. Ray commented if ‘interested’ was removed and replaced with, ‘or other parties who have been aggrieved,’ they would still have to appeal within the same timeframe, and would still need to provide a statement of what was their grievance. The Town Commission would make a determination as to whether the grievance met the threshold for a grievance.

There was consensus to modify the language to remove ‘interested’ in the appeal procedure, and replace with, ‘or other parties who have been aggrieved.’

The Board recessed from 10:19 am to 10:30 am.

Ms. Ray provided the major differences between the two processes. The emergency demolition would only be used when we have something that constitutes imminent danger to nearby properties. She noted it not only requires the building official's statement, but also the fire marshal must state there was imminent danger. She commented it did require notice; however, the Building Official did not have to wait any given period of time to move forward and demolish. Any appeal that took place after the demolition would go to circuit court, and was based on, rather than when the notice was received, but when the notice was mailed. Ms. Ray explained that staff had found in the court cases that it was 'extremely important' to have two different notification and due processes for a standard demolition and emergency demolition.

Mr. Symanski referred to page 8 of 16, Extension, Item (G), and asked if those were 'terms of art.' Attorney Mooney-Portale responded they were not; the language was extracted from the Sarasota County code. It was a concept they had within their provisions which staff thought was good, as it made people explain what was their hardship, unusual difficulty, or unique problem. Mr. Symanski asked if it had to be structural, as exemplified by the historical example, or could it be personal. Ms. Ray explained the Building Official would be the one who has the authority to make the extension up to 30 days, and also, when making their determination, it would be based on health, safety, and welfare of the public, and financial considerations were not typically part of that consideration. Under this code, they have the ability to contract to abate these procedures, and the Town has the ability to lien the property.

Mr. Symanski discussed the appeals process, and the notation about filing, commenting that the way it was written it sounded like someone would have to file on the tenth day. Ms. Ray suggested 'within ten calendar days.' Attorney Mooney-Portale responded staff wished to include criteria that justified why the Town Commission would not agree with the building official's determination. Chair Brown questioned the impact if someone wished to appeal to the Town Commission, and the timeframe fell within the two months they did not meet over the summer. Attorney Mooney-Portale explained there was a provision in (i)(2), page 10 of 16, that the appeal would be heard 'within 30 days of the date of appeal or as soon thereafter.' She also pointed out a typographical error on page 2 in the third 'Whereas' clause, where it should state, 'the Town may have a need...'

MS. BISHOP MADE A MOTION THE P&Z BOARD RECOMMEND APPROVAL OF ORDINANCE 2016-20 SUBJECT TO THE MODIFICATIONS DISCUSSED. MR. GARNER SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: BISHOP, AYE; BROWN, AYE; GARNER, AYE; MADVA, AYE; SCHNEIER, AYE; SYMANSKI, AYE.

Lynn Larson, Yardarm Lane, addressed the Board commenting her neighborhood has been dealing with this issue for over 14 years. She voiced her support for the ordinance, because it will help all neighborhoods with unsafe buildings.

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

NEW BUSINESS

There was no new business.

STAFF UPDATE

Ms. Ray reminded the Board the next regular meeting was scheduled for June 21st, and staff anticipated the meeting would run past lunch due to the number of items and potential discussion. She pointed out that staff will be providing lunch for the Board.

ADJOURNMENT

The meeting was adjourned at 10:48 AM

Ken Schneier, Secretary
Planning and Zoning Board