

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

FEBRUARY 21, 2012

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

Members Present: Chair BJ Webb, Vice Chair Allen Hixon, Secretary John Wild, Members Phineas Alpers, Jack Daly, Leonard Garner, Laurin Goldner, Walter Hackett, George Symanski

Also Present: David Persson, Town Attorney; Steve Schield, Planner; Ric Hartman, Planner; Donna Chipman, Office Manager

All those testifying were sworn at this time.

AGENDA ITEM #1
PARCEL B-2, BAY ISLES (TOWN PLAZA II), 545 BAY ISLES PARKWAY
SITE PLAN AMENDMENT

Pursuant to published notice, the public hearing was opened.

Steve Schield, Planner, reviewed the staff report noting the applicant was requesting a site plan amendment to maintain the existing restaurant with off-street parking on the site. He explained there had been a slight modification to the resolution concerning Parcel 'C' and commented that it would remain an independent parcel and would not be absorbed by Parcel B-2. Chair Webb indicated that included the restaurant building. Mr. Schield confirmed it included the restaurant building and the property it sits upon. Staff had recently discovered that it was under separate ownership. He explained that the site plan was asking for approval of the existing site with some minor modification where the existing parking lot connected into the Publix parking lot. The existing restaurant building was located on Parcel 'C' and there were 89 off-street parking spots and a 6,206 square foot restaurant building, which included both Parcels B-2 and C. The existing seat restaurant would only require 53 parking spaces. The remaining parcel would maintain the existing point of ingress/egress along Bay Isles Road, and there was an additional secondary access that connected into the Publix parking lot, which would remain. He reiterated that Parcel 'C' was an existing independent parcel. He referred to the resolution noting the conditions were standard, but staff had included Condition 10 in Exhibit 'A', which added a condition consistent with the berm requirement for Parcel 'A,' that the berm be continued on for this parcel as well.

Mr. Garner questioned Condition 10 and the language referencing the landscape berm of 2.5 feet high and six feet in height for vegetation. Mr. Schield responded the six feet was measured from the 2.5 feet. Mr. Garner suggested the condition be expanded to make it clear that the six feet in height was from the berm. Chair Webb asked if the language mirrored the language that was in the recent approvals for that property. Mr. Schield replied yes. Chair Webb pointed out that if the language in Condition 10 was revised, it would not be consistent with the language that was previously approved in the ordinances for those sites. Mr. Hackett questioned the six foot height on top of the berm. Mr. Schield noted that it was a request from the P&Z Board.

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

MR. WILD MOVED THE P&Z BOARD RECOMMEND APPROVAL OF RESOLUTION 2012-06 AS REVISED. MR. ALPERS SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: ALPERS, AYE; DALY, AYE; GARNER, AYE; GOLDNER, AYE; HACKETT, AYE; HIXON, AYE; SYMANSKI, AYE; WEBB, AYE; WILD, AYE.

AGENDA ITEM #2
ORDINANCE 2012-05, COMPREHENSIVE PLAN AMENDMENT
CAPITAL IMPROVEMENTS ELEMENT

Pursuant to published notice, the public hearing was opened.

Ric Hartman, Planner, reviewed the ordinance noting the Florida Department of Economic Opportunity (DEO), formerly known as the Department of Community Affairs, had no comments or objections from their agency or other state/local agencies. He pointed out that the ordinance was being presented for adoption and included the same language that was previously reviewed by the Planning & Zoning (P&Z) Board and approved for transmittal by the Town Commission.

Mr. Wild questioned how this impacted the process since it was being done differently. Mr. Hartman explained that the process was quicker and noted if there was to be a review, then there was a process for small-scale amendments referred to as an 'expedited review' which shortened the review from 60 days to 30 days. He pointed out that what was now allowed for the Capital Improvements Element (CIE), rather than adopting each year with minor revisions, was when the Town updated the schedule and the year reference, the Town could approve those minor revisions in-house and provide a copy to the state.

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

MR. GARNER MOVED THE P&Z BOARD RECOMMEND APPROVAL OF ORDINANCE 2012-05 AS WRITTEN. MS. GOLDNER SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: ALPERS, AYE; DALY, AYE; GARNER, AYE; GOLDNER, AYE; HACKETT, AYE; HIXON, AYE; SYMANSKI, AYE; WEBB, AYE; WILD, AYE.

AGENDA ITEM #3
ORDINANCE 2012-06, COMPREHENSIVE PLAN AMENDMENTS

Pursuant to published notice, the public hearing was opened.

Ric Hartman, Planner, noted the amendments were those that were previously approved by the P&Z Board and Town Commission for transmittal to the Florida Department of Economic Opportunity (DEO). The DEO had only provided one comment concerning consistency with the language in Policy 1.1.7.1(2) (Transportation Element) which was now making a declaratory statement, where previously the language had indicated 'may,' but the DEO requested it be revised to make it clear that the Town 'may,' if the monies were available, consider assessing a mobility fee. Chair Webb believed the P&Z Board had spent most of the summer reviewing this section of the Comprehensive Plan and had moved it forward to the Town Commission, who reviewed it and forwarded on to the state. Mr. Hartman replied yes.

Mr. Hixon referred to Policy 1.1.7.1(1) and commented that there previously was an economic feasibility test for various government actions so whatever was decided it had to be economically feasible. He noted it had been removed through the various changes, and he voiced concern that the Town no longer felt the government had to be responsible economically in its actions, and wondered if the phrase should be inserted, specifically in relation to action 1. Chair Webb asked if Mr. Hixon was requesting an amended change. Mr. Hixon replied yes. Mr. Hartman explained that the point of the Transportation Element was that these were proposed mobility fees and that was part of the language added if the fees were sufficient to fund a portion, or all, the needed improvements. He noted that it not only addressed the concern of the cost of the item, but had to be feasible under the Capital Improvement Element (CIE). Mr. Hixon asked if he was stating there was an overall umbrella that covered that aspect and this was just one of the elements under it, and that all the elements would have to be assessed in terms of economic feasibility. Mr. Hartman replied yes. Mr. Hixon commented that clarified his concern.

Gene Jaleski, 671 Cedar Street, commented on general land development planning noting that residents would like to be included in the process as a neighborhood. He explained that residents on the north end of the island were concerned about dog beaches and assigning tourist density on land where there was none and placing a tourist designation on that property. They were not interested in having another Bradenton Beach, or Pine Street on Anna Maria Island. He was asking that the Town reach out to the community and include them in the discussions. Chair Webb pointed out there was no language in the Future Land Use Element (FLUE) that mentioned dog beaches or a seven-story hotel.

Henry Laraia, 3240 Gulf of Mexico Drive, mentioned he had read all the articles about the Longboat Key Club improvements and the north end proposals, but none of the articles addressed the traffic that would be added and the impacts. He questioned if that was a consideration of the plan, because if the Longboat Key Club moved forward with their plans, he believed it would add to the traffic impact. Chair Webb informed Mr.

Larai that at the time the Longboat Key Club application was being discussed before the board and Town Commission, they were required to include a traffic study. She requested that staff provide Mr. Laraia with copies of the transportation studies.

Charlie Bailey, attorney, commented there were a number of changes related to the Comprehensive Plan, including making amendments to the FLUE. He referred to Policy 1.1.10, which related to height, and discussed that this was language that he did not believe was contained in the proposed amendments when it was first reviewed by the P&Z Board as part of the transmittal phase. He pointed out that on November 17, 2011, it was first presented to the Town Commission where they approved the amendments for transmittal to the state for review. He noted the issue related to cellular towers, and on November 15, 2011, the Town Commission discussed whether they would consider changes related to the Town Code and telecommunications. The Town had issued a Request for Proposal (RFQ) to solicit consultant services, and staff advised at that time that it would be premature to take any action with regard to the town regulations on cell towers until such time that the consultant provided their report. He understood Policy 1.1.10 was reactive, and the language was recommended as a result of some discussions that arose during the application process for the Longboat Island Chapel. He believed this ordinance was an attempt to close that loophole. He asked that as the board made their recommendation to the Town Commission, that they recommend to not adopt the changes to Policy 1.1.10, because to make this change at this time would be premature, inconsistent, and possibly in direct conflict with whatever the study comes back with from the Town's consultant. Mr. Bailey discussed that the language as reflected in Nancy Stroud's memorandum of October 31, 2011, was intended to defer to whatever height restrictions were in the Land Development Regulations (LDRs). He read the language for the board, noting that it read "*house of worship spires, or towers*" (the punctuation does not refer to house of worship for towers, but referred to stand alone towers); his concern with addressing it was due to unintended consequences. He urged the board to wait until they received the telecommunications report.

Mr. Bailey referred to Policy 1.6.4, which was a policy they supported; however, he questioned whether it related to Objective 1.6. He believed the policy, if read in conjunction with Policy 1.1.10, might suggest that cell towers were the preferred form of wireless communication and that cell towers be provided in order to meet the policy; they believed it would be inconsistent with Policy 1.1.2(3) and Policy 1.1.7 of the FLUE.

Mr. Symanski asked if this was a change, or clarification, of the pre-existing situation. He recalled when they discussed the Longboat Island Chapel cell tower, the attorneys in opposition made an argument that the height was not allowed, but Monica Simpson, former Planning, Zoning & Building Director, responded that was not correct and pointed out the various code sections that should be reviewed against their argument. He had made a note at that time that the board needed to change it to make it less obscure. David Persson, Town Attorney, commented that Mr. Bailey raised a good point, as he and Mr. Furen had made the argument that under the existing Comprehensive Plan the height was limited to 30 feet in the Institutional (INS) District, and that was not how the plan had been interpreted over the years, but it was thought that clarification would be good. The Town Commission had inserted the proposed provision concerning the regulation of the heights shall be addressed in the LDRs.

Attorney Persson noted the plan was that the consultant would be able to provide staff with sufficient information, and it was hoped that staff would be able to bring a draft of the LDRs, which implemented the Comprehensive Plan, at the board's March meeting. Subsequent to that it was anticipated that the Comprehensive Plan amendments would be presented to the Town Commission at their April regular meeting, with the LDRs following at a special meeting in April, so both items were scheduled for a May meeting. He pointed out that the Comprehensive Plan amendments had to be adopted by June 28, 2012. He commented if the board wished to push the item back, there was time to do it; or the board could move the amendments forward to the Town Commission with the understanding that the LDRs would be reviewed by the P&Z Board in March. He noted if there was a problem with the schedule for the LDRs, then he would recommend to the Town Commission to not enact the amendments until they received the LDRs.

Mr. Garner asked if the board had to make modifications to the policy would it have to go back to the state for review. Nancy Stroud, special counsel for the Town, explained it would be considered a minor modification by the state and would not be required to be resubmitted. Mr. Garner believed what had been raised was not questioning the intent of the policy, or the LDRs, but the manner in which it might be interpreted. He commented if the board could revise the language in a way that it would not have to be resubmitted to the state, then he saw no reason to not try to pursue the process outlined by Attorney Persson. Attorney Persson commented he agreed with Mr. Bailey that this policy was intended to regulate the height of cell towers, and the LDRs would regulate the height. The intent was to eliminate the inconsistencies.

Mr. Garner suggested that the board identify towers, or separate it from house of worship. Attorney Persson commented that the word could be located to another part of the sentence, but Mr. Bailey's interpretation was correct that towers were not modified by house of worship. He reiterated they could relocate the word 'towers' to somewhere else in the sentence to make it clearer. Mr. Symanski asked if this would follow the way it was always interpreted, or was it a change. Attorney Persson responded it was a change that would make it more restrictive. The previous way of interpretation was that the height of towers was determined by setback and no number; this revision would change it to set a number. Mr. Wild referred to Policy 1.1.10, which referenced house of worship spires, and asked if they could include carillon.

Mr. Hixon asked if the issue could be resolved if, within the LDRs, they provided a definition of tower, which include the other items, such as carillon, etc.; was that not the correct place to insert it so the ordinance could move forward. Mr. Hartman replied that was how it was done in the past and that was how it was proposed in the future.

Chair Webb asked if the board wished to wait until they received the telecommunications consultant's report. Mr. Schield believed staff should have the preliminary report by the end of March, but he was not sure if it would be a definitive report by March 27th. He believed the final report would be submitted in April.

MR. DALY MOVED THE P&Z BOARD CONTINUE THEIR DISCUSSION ON ORDINANCE 2012-06 UNTIL THE MARCH 27, 2012, MEETING IN ORDER TO OBTAIN THE CONSULTANT REPORT. MS. GOLDNER SECONDED THE MOTION.

Mr. Garner discussed that this would subsequently be determined by the LDRs, which the board would review in the future. He believed deferring the language of Policy 1.1.10 to a future date seemed to be unnecessary, because all the board was attempting to determine was the intent of the policy and the interpretation by Mr. Bailey. He suggested if they need to make minor modifications then they should make those modifications and move forward as the detailed information would be provided when the board received the LDRs. Mr. Symanski agreed and asked what they would gather from the consultant. Mr. Garner commented the board should discuss, at some time, what they would like to hear from the consultant.

Mr. Bailey agreed that the details would occur when the board reviewed the LDRs, but he noted they had to be consistent with the Comprehensive Plan. He believed it was vital that the Comprehensive Plan state what the Town decided. He pointed out that during the transmittal hearing, Attorney Michael Furen had commented that the P&Z Board had not "vetted" the language, and Attorney Persson noted it needed to be vetted by the P&Z Board when it came back for adoption, which was this hearing. He agreed the board should defer adopting Policy 1.1.10 until they received the study. He respectfully requested the board not take any action on Policy 1.1.10, unless the action was to recommend the Town Commission not adopt any changes to that policy. Mr. Symanski questioned what the consultant would tell the board that would change anything. Attorney Persson explained the consultant would provide how it would be implemented. Mr. Hixon asked if the consultant's report was not provided to the board until a date in April, then how it would occur. Attorney Persson responded the schedule would have to be moved back, but they had to have the second reading by June 28, 2012.

MOTION CARRIED ON ROLL CALL VOTE: ALPERS, NO; DALY, AYE; GARNER, NO; GOLDNER, AYE; HACKETT, AYE; HIXON, NO; SYMANSKI, NO; WEBB, AYE; WILD, AYE.

Chair Webb commented it would be helpful if the board members provided staff suggestions, or recommendations, of those items they wished to be addressed by the consultant. Mr. Garner suggested that the board be allowed a week to submit email, or in writing, to staff for them to accumulate and forward to the consultants.

Chair Webb commented that the Town Commission had extensive discussion about rewriting the Comprehensive Plan at their January meeting, and as the discussion moved forward, they decided to hire a comprehensive plan consultant, which she thought was Attorney Stroud who had been working on the plan. Attorney Persson commented there was discussion of a more comprehensive look into the Comprehensive Plan for the Town; the Town was still operating under the 1984 Comprehensive Plan. He noted that one of the concerns that had been voiced was if there was a time for a community-wide discussion of what direction the Town should be moving. He believed the Town Commission was thinking there should be someone who was not affiliated with the town to review the issues and discuss. The Town Commission was in the process of discussing it with the Town Manager, who has provided them information to make a decision. He noted that whatever the Town

Commission decided, it would be provided to the P&Z Board for their review and recommendation. Chair Webb commented that Mr. Bullock had specifically recommended the hiring of an outside consultant, and she questioned the status of that discussion. Mr. Schield responded it was requested that the Town Manager move forward and draft a proposal to hire a consultant. He could ask Mr. Bullock that the draft proposal be forwarded to the P&Z Board, as well as the Town Commission and staff, to request their input as to what they wanted and what outcome they wanted.

Mr. Hackett believed the outside resource was for a land use practice for the island versus the comprehensive plan. Attorney Persson explained this was a conceptual review versus a mechanical review. He believed the Town Commission was trying to foster a community discussion on the direction of the town.

Mr. Garner commented he was talking about the cell tower consultant, who had been retained, and was currently developing information to submit to the town. He noted his comment was for the information that was being developed that the board has an opportunity to submit a series of questions prior to the report. He suggested that same philosophy be used for the comprehensive plan consultant, but it was not being considered at this time. He requested that the board, within the next week, submit their questions to staff for the cell tower consultant. Attorney Persson requested that staff provide the board with a copy of the scope of work in order to assist them in formulation of their questions. He informed the board his only concern with the questions was a legal issue with the Sunshine Law, and the need to maintain independent thoughts; there should be no comments on other board member's submissions.

Mr. Daly commented at the January Town Commission meeting, Attorney Persson and Town Manager Bullock discussed a "two-prong approach." Attorney Persson explained the ruling in the Longboat Key Club application was adverse on all points to the position taken by the Town, which was currently under appeal, and the judge outlined in his order the issues that should be addressed in the LDRs. The decision was reached by the Town Commission to review the items comprehensively. He discussed the issue with delineation of the PUDs, and that this would provide an opportunity to make it clear how the PUDs worked. He believed that once there was a draft of the change to the LDRs, then it would be vetted with staff, the public, and the board on multiple occasions.

Discussion ensued on the quasi-judicial process, concerns with the Sunshine Law, and the possibility of intermediate project discussions with staff.

Chair Webb informed the board that Town Manager Bullock had a notebook of all candidate applications for the Planning, Zoning & Building Director position located in the commission office. The board was welcome to review the applications and provide their comments. She mentioned that she had been asked by Mr. Bullock to participate in the discussions when the candidates had been narrowed down to five. There would also be a reception and opportunity for everyone to meet and have discussions with the applicants.

Mr. Daly asked if the P&Z Board could hold workshops on items, similar to the Town Commission. Attorney Persson responded the board could not hold workshops on

items that were considered quasi-judicial. He pointed out that when an application was submitted all quasi-judicial rules were in effect. Mr. Hixon commented that prior to the Publix application being filed, there was a suggestion to have an open meeting of the property owners in the area of the town center, and the public, to explore the options and potential of that area; however, that idea was turned down. He asked if there was any way to implement those types of meetings prior to any applications. Attorney Persson responded that the issue of the Whitney Beach Overlay would be an example of where that scenario might work. He believed when there were no set determinations as to what was going to happen, it was a good idea and should be encouraged. Chair Webb commented when the LDRs and Comprehensive Plan documents were clear, and if an individual could refer to those documents and understood what they could accomplish, then the board did their job.

Mr. Wild voiced concern that unless the board was tasked with something specifically by the Town Commission, and unless the board was able to discuss an item, then it was a problem. The board did not have standing to discuss items that were appropriate. Mr. Garner questioned the process if the board wished to initiate discussion on an item. Attorney Persson explained that according to the Town Code the board would need to make a request to the Town Commission to hold public hearings on an item.

Chair Webb reiterated Mr. Garner's suggestion to forward questions to the wireless consultant, prior to their report, to Mr. Schield via email. She requested that the questions only be forwarded to staff and to not send to the entire P&Z Board.

AGENDA ITEM #4
CONSENT AGENDA

MR. GARNER MOVED APPROVAL OF THE MINUTES OF THE DECEMBER 13, 2011, MEETING AND SETTING THE FUTURE MEETING DATE FOR MARCH 27, 2012. MR. SYMANSKI SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: ALPERS, AYE; DALY, AYE; GARNER, AYE; GOLDNER, AYE; HACKETT, AYE; HIXON, AYE; SYMANSKI, AYE; WEBB, AYE; WILD, AYE.

Chair Webb noted the March meeting date was changed due to the election. Mr. Schield commented that the Town Clerk had indicated both rooms would be in use and there would be parking problems. Chair Webb noted that she might not be able to be in attendance at the March meeting due to a prior commitment.

AGENDA ITEM #5
PUBLIC TO BE HEARD

Barbara Woods, 7135 Gulf of Mexico Drive, addressed the board regarding the Whitney Beach Overlay, which she believed was going to be discussed at this meeting. She heard rumors there was going to be a 150 room hotel located on the property that was formerly a bank and the adjacent vacant lot. Chair Webb responded she was aware of the rumor of a hotel being constructed on the property; however, there was no application, and there had been no discussion with the P&Z Board and Town

Commission concerning any hotel. Ms. Woods believed someone from the Town should address the rumors.

Mr. Hixon explained that if the public was concerned with something happening within the government, or if they heard something that concerned them, they should contact Town staff to obtain the facts. Chair Webb also pointed out that if there was any rezoning, or an application, then public notices would be published in the local newspapers. Ms. Goldner noted that adjacent residents within 500 feet would also be notified by certified mail.

ADJOURNMENT

The meeting was adjourned at 10:51 am.

John Wild, Secretary
Planning and Zoning Board