

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

OCTOBER 18, 2011

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; Monica Simpson, Planning, Zoning & Building Director; Steve Schield, Planner; Ric Hartman, Planner; Donna Chipman, Office Manager

AGENDA ITEM #1
RESOLUTION 2011-28
COMPREHENSIVE PLAN AMENDMENT, CAPITAL IMPROVEMENTS ELEMENT

Pursuant to published notice, the public hearing was opened.

Ric Hartman, Planner, reviewed the staff report noting there was a major change to the Florida Growth Management Act where they had revised the rules for the annual adoption of the Capital Improvements Element (CIE). It now allowed local jurisdictions to take more responsibility and no longer have to process, as a comprehensive plan amendment, the annual update if all that was changing was the schedule and the figures. Staff had revised the CIE and the supporting data & analysis (D&A) to remove some of the procedural requirements that were copied from the Florida Statutes that would have still mandated that the Town follow the full comprehensive plan amendment process for what was basically an annual changing of the dates and figures. Staff had also removed language regarding financial feasibility, which was statutorily defined, and on the advice from the Town Attorney it was deleted in some sections. It did not mean the Town was no longer required to balance the books, but the term itself was removed in several places. He pointed out that because they were still doing a text amendment, in the future, it would still be required to go to the state for review. He mentioned that the Department of Community Affairs (DCA) name was changed to State Land Planning Agency.

Mr. Garner commented he was trying to understand the reason for removing the words 'financial feasibility,' and asked what harm would it be to maintain it in the document. Mr. Hartman responded that 'financial feasibility' was maintained and referred to page

22 of the D&A. He pointed out the definition was no longer statutorily required, and staff still used the term financial feasibility, but it was no longer used in quotes under the methodology that was mandated by the state. Mr. Hixon voiced his concern with the term and did not understand why it was being removed anywhere. Chair Webb explained that in the previous DCA documents, the term was required to be in quotes; the quotes were removed because it was no longer a DCA requirement, but financial feasibility, as a jurisdiction, remained in the document.

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

MR. WILD MOVED TO RECOMMEND APPROVAL OF RESOLUTION 2011-28 AS WRITTEN. MS. GOLDNER SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: ALPERS, AYE; DALY, AYE; GARNER, AYE; GOLDNER, AYE; HACKETT, AYE; HIXON, NO; SYMANSKI, AYE; WEBB, AYE; WILD, AYE.

AGENDA ITEM #2
LONGBOAT ISLAND CHAPEL, 6200 GULF OF MEXICO DRIVE
OUTLINE DEVELOPMENT PLAN AMENDMENT

Pursuant to published notice, the public hearing was opened.

David Persson, Town Attorney, explained there was an appeal filed challenging the completeness determination for the special exception and site plan amendment applications. The effect of the appeal was to stay this action, and move the appeal to the Zoning Board of Adjustment (ZBA). The remaining issue was the Outline Development Plan (ODP) amendment, but it was his opinion that the applicant, at their election, could proceed with the ODP at this hearing.

Mr. Hixon commented that he, along with his band, had played at the Longboat Island Chapel on occasion over the past 18 years, to which he received no payment. He voiced concern there might be a perception of conflict of interest, and if so, he would excuse himself from the meeting. Attorney Persson asked if Mr. Hixon believed he could base his opinion on the testimony and be fair and just in his decision. Mr. Hixon replied he could. Attorney Persson asked if he derived any economic benefit from his performances at Longboat Island Chapel. Mr. Hixon replied no. Attorney Persson asked if anyone had any objection to Mr. Hixon participating, to which no one voiced any objections.

Mr. Symanski commented that he had donated goods in the past to the Lord's Warehouse Thrift Store. Mr. Wild noted that he too donated to the Lord's Warehouse. David Persson, Town Attorney, asked if there were any objections to Mr. Symanski and Mr. Wild participating in the discussion. No objections were noted.

Attorney Persson explained Third Party Status, which were those people who were affected by the application, and which granted those people status to address the application. He noted that requests had been received from Attorney Michael Furen, who represented Doreen Erickson and Accursio Sclafani, and Attorney Charlie Bailey,

who represented the owners of the Grand Mariner. He requested those parties be granted status to address the applications. There were no objections noted to granting the stated parties status in these applications.

Mr. Furen noted that the Sclafanis were directly impacted by the applications as they lived adjacent to the proposed site. He noted his disagreement with Attorney Persson as they viewed the appeal that was filed would stay all proceedings, which included the Outline Development Plan (ODP), site plan amendment, and the request for Special Exception. He did not believe the board had authority to consider any of the applications pending the outcome of the administrative appeal before the Zoning Board of Adjustment (ZBA). The Comprehensive Plan, as amended recently (Ordinance 2011-28), in Table 1, had a non-residential intensity chart, which noted a maximum height in stories and feet of two stories or 30 feet. He believed the Comprehensive Plan would not permit the Town to approve a cell tower at this height in the Institutional (INS) district. Attorney Persson noted that was an appropriate argument for the ZBA, but did not believe it was under the jurisdiction of the P&Z Board.

Charlie Bailey, attorney representing Grand Mariner on Dream Island LLC, noted that in the appeal filed, it embraced the sufficiency or completeness of each of the three applications. He read a portion of Section 158.027(A), Appeals, to the board. Attorney Persson noted that Mr. Bailey raised a good point, and he would like to hear from the applicant's attorney on the issue of whether the board was precluded from moving forward. Mr. Bailey responded yes, because the appeal filed related to the sufficiency and completeness of the three applications. Attorney Persson commented that if Mr. Bailey was right and he was wrong, then the applicant had to proceed "at their own risk and peril."

Mary Solik, attorney representing Ridan Industries, commented that it appeared that the code required that the appeal contain supporting facts and data, and there was a need to state in detail what was incomplete about the application. She noted that when she reviewed the attachment to the letter, there were several notes about alleged insufficiencies for the site plan and special exception applications; the only complaint about the ODP was the code required the department to make findings related to the site plan application. Those items were typically addressed in a staff report or at the public hearing on the ODP, and not in the completeness letter. She believed the assertions made that the application was incomplete for the ODP were without merit and agreed with Attorney Persson they could proceed with the ODP, but the other applications were stayed.

Mr. Furen commented the reason the board was not provided the appeal documents was not relevant. The determination as to whether or not the application was complete was not the jurisdiction of the P&Z Board, but was the jurisdiction of the ZBA. Mr. Bailey reiterated the reason the board did not have a copy was because the ZBA hears the appeal. Attorney Persson agreed with Mr. Furen. The only issue before the P&Z Board was whether they wished to hear the ODP application, and he believed they could proceed; however, the risk was upon the applicant if they wished to proceed. Chair Webb questioned the risk if the board proceeded. Ms. Solik explained that the

risk was that the board would have to hear the application again; however, her client wished to proceed at their risk.

Mr. Garner commented the three applications were so inter-related, that the facts and discussion would apply to all three applications, if the board could not hear and comment on two of them, then why should the board move forward and discuss the one. Attorney Persson explained that his role was to inform the board what they could and could not do, and in his view, he believed they had the legal right to move forward.

Chair Webb commented the cell tower issue was not a surprise, and the public have taken the time to attend this hearing. The application had been on file with the town for some time, and she voiced concern with the last minute filing of the appeal. She noted that if the applicant was willing to take a risk, then she believed the board should hear the public input. Attorney Persson explained that the appellants had 30 days to file and this was a timely appeal. Ms. Solik commented that if Mr. Furen and Mr. Bailey were correct, then the ruling would be that the P&Z Board did not have jurisdiction to hear the application and the proceedings would be nullified. They would be required to re-hear the application when the board had jurisdiction. She reviewed the schedule with the board noting that the ZBA was to hear the appeal at their November meeting. Mr. Symanski asked if the ZBA ruling was in the applicant's favor, would the appellant not be allowed to appeal to the court; would that stay the proceeding. Ms. Solik commented it probably could.

Chair Webb questioned the preference of the board members to move forward through a roll call vote: Alpers, aye; Daly, aye; Garner, aye; Goldner, aye; Hackett, aye; Hixon, aye; Symanski, aye; Webb, aye; Wild, aye.

Attorney Persson discussed a letter from Mr. Furen regarding interested party status; Mr. Bailey also submitted on behalf of his client.

Attorney Persson explained there was an established policy within the Town, which was embodied in the Comprehensive Plan and the Zoning Code, and an applicant had made application based on that policy. The Board and the Town Commission were now required to hear evidence, sworn testimony, and written documentation and make a determination as to whether the application met the policy established by the town. He continued reviewing the process for a quasi-judicial hearing. He reviewed a letter outlining the federal and state laws on telecommunications, noting there were timelines that they were required to follow, and what the Town could and could not do.

Mr. Hackett questioned the effect the appeal had on the timeline. Attorney Persson responded the request was timely in terms of stopping the clock, but at this time, it looked as if they would not matter, because if they were correct in terms of how the hearing proceeds, the appeal would not have an effect on the timing of the consideration by the town. Ms. Solik explained that the clock was a result of a Federal Communications Commission (FCC) ruling, which was still up for debate and was under appeal. They were proceeding under the timeframes outlined in Chapter 365.172 of the Florida Statutes, and there were certain timeframes in that statute related to

completeness of an application and then action on an application once it was deemed complete. She agreed with Attorney Persson that the appeal would stay the clock on the two applications, but did not agree that it would stay the ODP application.

Steve Schield, Planner, discussed the process for the three applications and reviewed the ODP staff report noting the request was to allow a personal wireless service facility at the Longboat Island Chapel property. He provided a brief background of the site and its facilities, noting that approximately four acres of the 4.73 acres was Institutional (INS) zoning. The proposed facility would have a 150 foot unipole tower and a 2,044 square foot equipment compound located on the northeast corner of the property. The unipole would be considered a camouflaged tower and was allowed in the INS district by special exception and site plan review. He discussed those items that were allowed to exceed the height restrictions, including church steeples, and also discussed the request for the special exception extension requested from 12 to 24 months from date of approval, noting it was due to the timeframe for obtaining outside agency permits; and another departure requesting reduction in the collapse zone setback from adjoining residential properties from 300 feet to 117 feet. The 117 feet was based on the location of the tower on the property, and a reduction in the height would not reduce the departure. Mr. Schield noted the applicant stated in their materials that the 150 foot unipole tower was the minimum needed to provide services to the six wireless providers that presently served the island. The Town Code required towers between 101 and 160 feet in height to have at least two users; the applicant stated the lowest minimum height for the antenna was 95 feet, and the five remaining antennas were located every ten feet, which resulted in a 150 foot tower.

Mr. Alpers asked what a 'fall radius' meant. Mr. Schield explained that a fall radius meant if the pole collapsed, it would fall within a 30 foot radius of the facility. Mr. Alpers questioned what would be the height of the tower on a full collapse. Mr. Schield noted it depended on how much it collapsed and the pieces remaining; it would be around 30-50 feet. Mr. Alpers asked if the pole fully collapsed, why it would need 300 feet. Mr. Schield pointed out that was required by town code. Mr. Wild commented there was a stress point in the towers, and if it was going to collapse, it would break where it was intended to break, and he was curious to learn why the Town Commission decided on 300 feet. Attorney Persson explained in 1997, when the ordinance became effective, that was the state of the art at the time, and it was subsequently considered by the Town Commission, but no decision had been made. Mr. Symanski asked if he believed it was the proper subject of a departure if they saw that the technology has changed so twice the height was not necessary for a collapse zone. Attorney Persson noted that was one of the elements the board could consider in order to grant the departure. Mr. Symanski pointed out that in the staff report it discussed the 24 months to complete; however, in the Findings of Fact or Exhibit 'B', it noted all they had to do was start. Mr. Schield discussed that the special exception had to be in place within 12 months of granting the approval.

Mr. Symanski noted that the Town's consultant suggested reducing the height, and he believed the word was 'adequate;' why would they want to build a higher tower if 120 feet was sufficient. He asked what would happen if the technology changed and the

tower was vacated. Mr. Schield responded there were provisions in the Town Code related to abandonment.

Mr. Garner asked if the board approved the ODP without discussing the special exception application, how the approval was going to include all the elements of the ODP that shows a tower that required a special exception. Mr. Schield commented the Town Attorney had discussed that the applications were interrelated, but the ODP could stand on its own.

Mr. Schield finalized his staff report by discussing the radio frequency report from 3Z Telecom, telecommunications consultant for the Town. He mentioned that the consultant had determined the minimum height for six carriers would be 120 feet. He pointed out that if the applicant left the tower in the proposed location, the 117 foot departure would not change. Mr. Hackett commented that the last sentence referenced that the 117 feet was the closest residential property, but the previous page noted that the Grand Mariner was the closest property at 213 feet. Mr. Schield responded the Town Code read 'adjoining property line,' not the actual structure; the closest property line was the 117 feet and the closest structure was 213 feet.

Mr. Symanski asked if the tower would be limited to 120 feet, if the board recommended the Town Commission adopt the proposal. Mr. Schield noted the board was only reviewing and making a recommendation on the ODP application with the two requested departures: the collapse zone would be reduced to 117 feet, and the extension of the special exception approval from 12 to 24 months. The 120 feet height was correct. Mr. Hackett referred to page 2 of 4, and that the 150 foot unipole would be considered a camouflaged tower. He questioned the definition of 'camouflaged.' Mr. Schield explained that the code referenced that a unipole would be considered 'camouflaged,' and that could mean several different things, including a tree, lighthouse, church steeple, etc. The Town Commission had made the change that a unipole would fall into one of these categories, but no antennas could be exposed; they were required to be internal. Mr. Alpers questioned the diameter of the pole at the top. Mr. Schield replied it varied from 42 inches on the top to 72 inches at the base.

Chair Webb left the room at this time.

Mr. Furen asked if there was a provision in the Comprehensive Plan that specifically permitted personal wireless towers to exceed the height limit in Table 1 of the Comprehensive Plan. Mr. Schield replied no. Mr. Furen questioned the maximum height allowed in an INS district. Mr. Schield replied 30 feet. Mr. Furen referred to Sheet Z-2 of the applicant's submission and asked if it was correct that the sheet accurately reflected the area in the ODP application. Mr. Schield responded yes.

Mr. Hackett left the room at this time.

Mr. Furen questioned the zoning on the southerly portion of the property. Mr. Schield noted it was zoned R-3SF. Mr. Furen asked if he was aware they could not seek ODP approval for a mixed use planned unit development (PUD) under the Town Zoning

Code. Mr. Schield responded no, he was not aware, and pointed out that the Centre Shops property was an example of both residential and commercial zoned property within its PUD. Mr. Furen requested that Mr. Schield read Section 158.071 of the Town Code to which Mr. Schield read for the board.

Chair Webb returned to the meeting at this time.

Mr. Furen asked if Mr. Schield was aware that the Schedule of Use Regulations for the INS district did not allow a PUD overlay as a permitted use, permitted use with site plan, accessory use, or a special exception use. Mr. Schield replied he was not aware of that. Mr. Furen asked Mr. Schield to check that item and respond.

Mr. Hackett returned to the meeting at this time.

The board recessed from 10:18 am to 10:27 am to allow staff time to review the code section.

Mr. Furen commented his questioned was whether the Schedule of Use regulations outlined in Section 158.125 allowed PUD overlays as a permitted use, permitted use with site plan, accessory use, or special exception. Mr. Schield explained it was not specifically listed in that table, it was listed in a number of residential zones, and was not listed in any of the commercial zones (C-1, C-2, INS), but was specifically allowed by Section 158.168, Minimum Area, which stated non-residential uses were allowed a PUD overlay as long as they had at least two acres. Mr. Furen requested he read Section 158.157(C). He asked Mr. Schield if he agreed that the current tract included a parcel that was zoned R-3SF. Mr. Schield pointed out the proposed tower location was on the INS-zoned property. Mr. Furen asked if the parcel included the part that was residentially zoned. Mr. Schield replied yes.

Charlie Bailey, attorney representing Grand Mariner, pointed out that the subject property did embrace lands that had two different zoning districts. Mr. Schield replied yes. Mr. Bailey noted that in an R-3SF zoned district, a tower was not a permitted principle use. Mr. Schield commented it was not permitted as a special exception use. Mr. Bailey asked if in Section 158.157 they could have residentially-zoned property embraced by a non-residential PUD under the code. Mr. Schield replied yes. Mr. Bailey referred to the Comprehensive Plan (FLU) Table 1, which provided the maximum height in the zoning districts noting the maximum height in that district was 30 feet. Mr. Schield pointed out that was for structures. Mr. Bailey asked if the application for the ODP sought a departure for height. Mr. Schield responded no; they were requesting it for the collapse zone setback. Mr. Bailey asked if the application before the board was not seeking a departure in order to get additional height even if allowed. Mr. Schield responded no, they did not request a departure, nor was it deemed necessary.

Attorney Persson asked if the property noted in the ODP application did or did not include the residential property. Mr. Schield replied it included the residential property. Mr. Symanski asked how they allowed the 150 feet since no departure was requested for that or the 30 feet. Mr. Schield noted the supplemental conditions in the land

development regulations (LDRs) allowed the height as long as it was a permitted use by the special exception.

Jim Eatrides, Alpha Omega Communications, noted he was working with Ridan Industries on this application. He provided an overview of his background, and reviewed a PowerPoint presentation showing the conditions of the site and illustrations of the tower imposed on the photographs. He pointed out there was an extreme need for wireless service on the key and noted the issues on the north end of Longboat Key. He reviewed an illustration of a unipole (tower and compound elevations) explaining there would be ten feet per section, and the spacing between the antennas was from 6.5 feet to eight feet tall. There were two possible sites on the north end to site a facility: Longboat Island Chapel and the Town Public Works facility. Mr. Eatrides pointed out the Longboat Island Chapel site was sufficient to minimize the impacts. The closest building was 213 feet to the Grand Mariner condominiums. They had attempted to find the best location with the least impacts. He explained there would be a large vegetative buffer along with medium and lower vegetation so the facility would not be seen from the street or other areas. He referred to the Pallardy Study, which noted it would not have major negative impacts on property values. He also discussed radio frequency (RF) emission impacts on health, and the community support, noting they had over 850 support forms signed by residents, with 500 from the Manatee County portion.

Mr. Symanski asked for Mr. Eatrides opinion on the 120 feet versus the 150 feet in height. Mr. Eatrides explained he did not disagree with the methodology, but was in disagreement in design standards to achieve coverage. Ms. Goldner asked if the equipment facility was at ground level or did it have to be raised due to FEMA regulations, and how they would buffer the sound. Mr. Eatrides commented the facility had to be raised based on the local Zoning Code and had to be above base flood elevation (BFE). In terms of sound, he explained there was no sound except for once a month to test generators, but they were not very loud. He pointed out they would be buffering with thick vegetation.

Mr. Alpers noticed on the map it showed infill of the voids between the present towers on the high buildings and asked if it overlapped; there was a statement in the information that the tower would cover the north side as well as most of the south side. He asked if other towers would be necessary. Mr. Eatrides referred to the Verizon representatives to answer those questions, but he noted there was a misstatement that the coverage would extend into the south end of the island. They were looking for reasonable outdoor and indoor coverage, but they would actually want overlap to have "soft hand-offs."

Kevin Barile, president of Ridan Industries, reviewed a PowerPoint presentation that showed why they met the requirement for granting an ODP. He noted that the possible parcels for location were the Longboat Island Chapel and the Town Public Works facility, but neither had sufficient area to meet tower setbacks. He noted the engineered collapse zone would be at 30 feet, so if the tower failed no part of the tower would leave the compound and impact the proposed site or adjacent parcels. The proposed collapse

zone would be 183 feet from the Grand Mariner and 348 feet from the nearest single-family residence. With those distances, he noted the requested departure for the reduction in the required collapse zone would not impact the safety of the residents. He mentioned they were also requesting a departure for the development schedule, so they would not have need to come back with another request for extension of time. He pointed out they were required to obtain an environmental assessment from the FCC, which was a four- to five-month process, and was one reason for the requested departure.

Mr. Symanski asked if the collapse zone took into effect the impacts from a hurricane. Mr. Barile explained that they were required to design the tower to withstand 130 mph wind load, and they could design a failure point into the structure. Ms. Solik pointed out that the Florida Building Code incorporated national standards, because towers were unique structures with unique wind loading issues.

Mr. Wild commented regarding the residential zoning adjacent to the church asking if this was the property known as the Lord's Warehouse. He asked if the Longboat Island Chapel could sell the adjoining property and have it rezoned so it was not an issue. Mr. Schield explained that the Lord's Warehouse was located on INS-zoned property; there was a vacant residential lot zoned R-3SF on the south side of the property. Ms. Solik pointed out that the church property was 4.73 acres, and the residential setbacks were measured from the tower to the residential property. Mr. Alpers asked if the tower location were moved to the small parcel of residentially-zoned property whether or not there would be any need for any departures, assuming it was rezoned to INS. Ms. Solik replied no, because they still would not be able to meet the setbacks.

Mr. Furen asked if the entity that was the applicant was a single purpose entity for the purpose of building this one tower. Mr. Barile responded no, they were the tower owner/developer. Mr. Furen commented that Mr. Eatrides had discussed a coverage gap, and he assumed he was not implying there was no coverage within that area. Mr. Eatrides explained there were substandard signal levels so that they could not maintain any reliable availability on their device.

Thomas Giacomo, manager of performance and design engineering for Verizon Wireless, noted he was a licensed professional engineer with a bachelor's degree in electrical engineering. He had been in the communications field for over 21 years. He reviewed a PowerPoint presentation showing locations for Verizon and the proposed location of the tower. He mentioned that coverage issues have been raised and service was not reliable. The proposed location would provide in-building service for most residents along Gulf of Mexico Drive. He reviewed the height of the current antennas on Longboat Key and the surrounding areas. He found it interesting of all the customers complaining about service, it included the Town's police, fire and public works facilities. They were asking for in-building systems, but the tower would also serve to improve their service.

Chair Webb requested clarification if 110 feet would be the minimum height for the Verizon antenna for sufficient coverage. Mr. Giacomo responded that the 110 feet was

a centerline; their antennas were approximately eight feet long and 110 feet would provide reliable service. Chair Webb commented if there were six carriers that want to be on the pole, what was the reasonable maximum height that could accommodate. Mr. Giacomo explained when they looked at other carriers, the Town's consultant took into account a high loss (the higher the frequency, the higher the loss), but did not consider foliage and drive test data. He noted that the lowest point was 65 feet, which would not work. One of the other solutions looked at was utilizing the concrete poles along the road and installing Microsystems, and they were still reviewing those proposals.

Mr. Symanski asked if Verizon needed 110 feet, then why it would be alright for someone else to be lower than that. Mr. Giacomo commented they were not in the same grid as Verizon. Mr. Eatrdes explained in terms of tower height, Verizon had determined 110 feet was sufficient for them. They had determined they would need at least 95 feet for the other carriers in order for them to achieve reasonable indoor design standards. Chair Webb asked why 120 feet was not acceptable as opposed to 150 feet. Mr. Eatrdes commented if 95 feet was the centerline, and they added 6 carriers (at 10 feet each), it would result in the 150 feet. Ms. Goldner questioned if there were any visuals for the different heights. Mr. Eatrdes reviewed a photo of the proposed tower and the different heights. Mr. Giacomo noted they could not consolidate multiple carriers at the same centerline; they had to have vertical separation on the antennas.

Mr. Garner asked if there was an absolute choice of location on Longboat Key, was there anywhere better than this location that would serve more adequately. Mr. Giacomo responded this was the best location. Mr. Symanski asked if there was any technology forthcoming that would make this obsolete. Mr. Giacomo replied no; there was other technology, but nothing to replace this technology within the next ten years.

Enzo Dimazzo, representative with 3Z Telecom, provided an overview of their study noting the objective of the study was to determine what the minimum height of the tower could potentially be with the coverage objective of in-vehicle coverage. They had studied for in-vehicle coverage, which could be achieved at 120 feet and coverage at 100 percent and within building coverage would be at 70 percent. He pointed out that at 150 feet, they could cover 100 percent in-vehicle coverage and 90 percent in building.

Mr. Bailey referred to the graphic that showed cell phone coverage and asked if that was Verizon coverage. Mr. Giacomo replied yes. Mr. Bailey asked if antennas (wireless service) were placed in church steeples. Mr. Giacomo replied yes. Mr. Bailey asked if it was possible to install within the chapel's steeple. Mr. Giacomo commented probably, but the height would make it out of scale.

The board recessed from 12:00 pm - 12:11 pm.

Mr. Bailey discussed the interested parties for the Grand Mariner, noting the ownership entity was Grand Mariner on Dream Island LLC. He explained that the only issue before the board at this hearing was whether a cell tower was consistent with the Comprehensive Plan and complied with Town Code. He reviewed the Town Code section addressing 'essential services.' He noted the collapse zone required by the

Town Code, with regard to the tower, was 200 feet from the property line, or twice the height of the proposed tower. He pointed out that the base of the tower was only 188 feet from his client's property and 213 feet from the building. The application also included some information related to a balloon test, and he provided photographs taken from Grand Mariner units showing the impact. He continued with discussing the departures being requested.

Mr. Freedman mentioned that he had reviewed the application to determine if it was consistent with the Comprehensive Plan. Concerning the chart that was shown earlier in regard to the Future Land Use (FLU) Table 1, the INS district could not exceed 30 feet in height for a structure. He believed the applicant was proposing an ODP to get around the setback limitations. He read the provision in the Town Code, which noted no departure for maximum height; under the current code, they could not exceed the maximum height in an INS district.

Mr. Bailey reviewed the height regulations pointing out that the INS district did not allow structures over 30 feet. There was no provision under the Town Code or Comprehensive Plan which would allow any structure over 30 feet in height, unless it was a church spire. He reviewed Section 158.065 and the purpose of the Town Code. He had not heard from a land planner related to the development of the PUD. He knew the applicants had taken steps to provide a buffer; however, in doing so, they placed the facility in the view of the Grand Mariner. His clients had 14 units at the Grand Mariner, and of those, they had seven reservations for units, but in the short time they became aware of the filing of the application, they received letters noting the potential buyers would not be purchasing the units due to the proposed cell tower. In the applications filed, there was an appraisal report, but the units reviewed were not comparable with the units at Grand Mariner. He read a letter from realtor, Reed Murphy, who believed the value of the units at the Grand Mariner would decrease in value by at least 25 percent. Mr. Bailey noted the ODP was inconsistent with the Comprehensive Plan and the requirements of the Town zoning ordinance and recommended the board deny the application. Chair Webb pointed out that Mr. Bailey had noted his client was not aware of the application. Mr. Bailey explained they had become aware of the applications in June 2011, after purchasing the property in April 2011. Ms. Solik asked if Mr. Murphy was the Trine's broker when they purchased the property. Mr. Bailey was not sure.

Sheri Trine, owner of Grand Mariner, was sworn and commented that Mr. Murphy had informed them that the property was for sale and they had three days to decide, because there were a number of people considering it for purchase. They proceeded with the sale, and their neighbor, Mr. Sclafani, contacted them about the applications. Ms. Solik questioned if Mr. Murphy was commissioned with the sale of the property to the Trines. Ms. Trine responded he was provided a stipend for his real estate company, but it was not a full brokerage, because it was a direct sale from Bank of America, who also had not informed the Trines of the proposal.

Mr. Garner asked if Attorney Persson could comment on the questions raised by Mr. Bailey as to the conformity of the application. Monica Simpson, Planning, Zoning & Building Director, was sworn. She referred to Section 158.145 of the Zoning Code,

which has specifics for mass, height, and bulk of structures, and commented that the section noted there were other sections of the code that might control certain types of construction, development, and structures, which would then refer to Section 158.200, which was the telecommunications section, and had very explicit height regulations. With regard to Table 1, she noted that the Town has consistently used that table to reflect the maximum allowable stories and height in feet for buildings. There was always opportunity to amend that table in the Comprehensive Plan to very specifically address items that were not prescribed in that table. Mr. Garner asked if she was stating a variance was necessary for the application. Ms. Simpson replied a variance was not necessary.

Ronald Platt, 6211 Gulf of Mexico Drive, reviewed a PowerPoint presentation in opposition to the proposed tower. He reviewed a letter from a personal friend, who was a former vice-president of AT&T, and had reviewed the letter from Verizon Wireless. He believed the proposal would damage property values, and he discussed that Verizon used 40 foot towers in other areas and also considered 3- and 4- story buildings to place sender units on them.

David Carter, Emerald Harbor, spoke in opposition to the tower. He recently put his home on the market, and received two emails from Michael Saunders and Company about the need to disclose if something was being constructed. He also had a potential buyer that decided to look at Bird Key after finding out that a possible cell tower was possibly being constructed. He believed Verizon could cover the key with smaller units. He also believed there would be negative impact to property values.

Gene Jaleski, 671 Cedar Street, noted he had not seen any studies to assess the needs of the community. He expected the board to conduct thorough professional studies, and he had 665 signatures from the north end of the island that were not opposed to cell towers as long as they were not over 35 feet. The Town should demand small antennas. He mentioned there would be an issue with insurance and loss coverage if there was a collapse. He understood there needed to be a solution to the problem, but the Town should consider smaller antennas.

Jeremy Whatmough, 6171 Gulf of Mexico Drive, spoke in opposition to the tower application believing it would negatively impact neighboring properties, and commented that he did not believe there was a safety issue.

Linda Gardner, 595 Dream Island Road (Grand Mariner), spoke in opposition to the application.

Don Gardner, 595 Dream Island Road (Grand Mariner), spoke in opposition to the application. He had visited sites in St. Petersburg, Florida, that had a similar tower. He believed the tower should be located on town-owned property, and the applicant should consider the church steeple as a location.

Ms. Solik asked Mr. Gardner if he rented or owned his unit. Mr. Gardner responded they were renting, but would be closing on May 1, 2012. Ms. Solik questioned when he first learned of the proposed cell tower. Mr. Gardner replied around July 1, 2011.

John Summers, 5961 Emerald Harbor Drive, commented there should be an independent expert, who had no financial gain in any proposal, to develop an overall plan. He discussed the impact to property values.

Ralph Trine, 5060 Gulf of Mexico Drive, spoke in opposition and informed the board they should be addressing how the tower affected the Town's Comprehensive Plan.

Sherri Trine, 5060 Gulf of Mexico Drive, spoke in opposition to the application.

Terry Griffin, 615 Dream Island Road, noted he was a member of the board of directors for Harbor Villa Club, and at the direction of their board, he was opposing the application. He acknowledged that cell service was not good on the north end, but believed the tower would add to visual blight on the key.

Mike Hodges, Dream Island Road, commented that he lived several homes away from the Grand Mariner and voiced concern that the Town was not the applicant, as he believed it was a safety issue and infrastructure issue.

Lenny Landau, 3518 Fair Oaks Lane, representing PIC, provided their support and encouraged approval of the proposal.

Pam Eatrides, 696 Marbury Lane, was sworn. She spoke in support of the application.

Larry Grossman, 736-A St. Judes Drive North, was sworn. He provided his background as a land use planner and believed the Town should look for the most appropriate location. He believed cell service was a utility and a necessity on the island.

George Spoll, 1900 Harbourside Drive, commented he was representing the Revitalization Task Force. He explained that one of the very first issues their group addressed was improvement of cell service on the key as they believed it was a vital part of the Town's future.

Gregory Gallagher, 7632 Arrington Lane, Bradenton, FL, was sworn. He noted he was a retired scientist and spoke about other possible solutions to a cell tower. He did not believe the Town needed to construct a 150 foot tower. Mr. Hackett questioned of the communities where he attended hearings, and who rejected a tower, what solutions did they find. Mr. Gallagher responded that one of the communities was under a federal appeal (River Club). He commented the rejections were for various reasons.

The Board recessed from 2:07 pm – 2:21 pm.

Ms. Solik discussed that the approval of the facilities implicated a "very unique confluence of federal, state, and local law" and continued with reviewing those laws.

She noted there were only two properties on the north end zoned INS, but they could not meet the 200 foot minimum setback on either property. She discussed why they would not meet the standard for applying for a variance. The ODP allowed departures from the code, and she requested that the board evaluate the criteria under the ODP section, agree they demonstrated hardship, and approve the departures as requested.

Mr. Bailey reiterated an appeal on completeness was pending and believed this matter should be stayed. The procedural issue raised related to the zoning of the property and the R-3SF property. The PUD use proposed must comply with underlying districts, and perhaps, could be remedied and must be legal. He noted that all the testimony acknowledged that cell coverage was not good and needed to be improved, but after listening to the testimony, the board had to determine whether it was consistent with the Town's Comprehensive Plan and whether it was compliant with the zoning regulations. He discussed the height regulations and noted they were seeking to avoid those regulations by requesting a departure from the code; this was inconsistent with the Town's Comprehensive Plan and Town Code.

Mr. Symanski questioned what harm would be suffered by his client by not moving forward with the ODP application. Mr. Bailey responded that they did not believe the board had jurisdiction due to the filing of the appeal. Mr. Schield respectfully disagreed with Mr. Bailey as he believed it was consistent with the Town's Comprehensive Plan and Zoning Code. He noted that the conditions of the ordinance did refer to a 240 foot setback, which was based on a 120 foot high tower, but it should be amended to reflect the 300 feet for a 150 foot high tower. The departure would still remain at 117 feet if the facility remained in its present location. He requested that the change be reflected in the ordinance title block and condition 2 in Exhibit 'B'. Mr. Wild commented that one of the departures dealt with the smaller parcel on the property. Mr. Schield reviewed the departures, which were the collapse zone setback and the extension of time for the special exception.

Attorney Persson commented there was a question of 120 feet versus 150 feet being raised by the applicant, and the ordinance referred to 120 feet. Ms. Solik responded that rather than making any assumptions, she suggested they state the distance from the tower to the residential property lines and the setback; the location was not moving, so the distance would not move; however, the height might change. Mr. Schield did not object to the suggestion, but noted the minimum setback would be 117 feet. He recommended deletion in the title block and the conditions referring to the minimum setback, and only notate the departure requested for 117 feet. Attorney Persson noted staff was recommending 120 feet, and if they wished to allow flexibility in height, then proceed with the modification as suggested by Ms. Solik. Mr. Bailey pointed out that the height was not a consideration until they heard the special exception application. He suggested the issue be continued until such time that the special exception application was before the P&Z Board. Mr. Symanski noted that he would like to leave the option to go to 150 feet.

Mr. Garner referred back to the question of why the board was discussing the application. He commented that after hearing all the testimony of all the components, he

considered whatever action was taken at this hearing to be unnecessary. He believed the issue should be continued until the board was aware of the decision of the ZBA.

MR. GARNER MOVED THE P&Z BOARD CONTINUE THE HEARING ON THE OUTLINE DEVELOPMENT APPLICATION UNTIL SUCH TIME THE SPECIAL EXCEPTION AND SITE PLAN AMENDMENT APPLICATIONS WERE BEFORE THE P&Z BOARD. MR. HACKETT SECONDED THE MOTION.

Attorney Persson asked if he was moving to continue the hearing in order for additional material to be provided. Mr. Garner explained he was requesting continuance until the remaining two parts of the application were ready to be heard. Mr. Symanski commented that it was his understanding that the applicant would have to agree to the continuance due to the time constraints. Attorney Persson responded he would like to hear from the applicant as to whether they objected to the continuance. Chair Webb asked if the appeal was being heard in a timely fashion. Attorney Persson was hoping that the appeal would be heard at the November ZBA meeting.

MR. SYMANSKI AMENDED THE MOTION TO DEFER THE DECISION FOR: 1) STAFF AND THE TOWN ATTORNEY TO CONSIDER AMENDMENTS TO THE 'ESSENTIAL SERVICES' DEFINITION TO ADD WIRELESS SERVICE; 2) ADDRESS THE HEIGHT ISSUES WHICH WERE NOT CLEAR; 3) ADDRESS THE COLLAPSE ZONE LANGUAGE; 4) AMEND THE APPLICATION TO REMOVE THE RESIDENTIAL PORTION; AND, 5) RE-ADVERTISE AND HOLD THE PUBLIC HEARING AGAIN.

MR. GARNER AND MR. HACKETT ACCEPTED THE AMENDMENT.

Ms. Solik asked if he was discussing Comprehensive Plan and code amendments. Mr. Symanski noted it referred it back to staff to determine whether any of those items were a good idea. Attorney Persson commented that any modifications to the Comprehensive Plan could be included with the current amendments that were currently under review by the Town Commission.

The Board recessed from 2:53 pm – 2:57 pm.

Ms. Solik commented there were other land use experts on staff that spoke, and it was her opinion that inclusion of the residential property in the ODP application was not an issue. She spoke with her clients, and they did not agree to the continuance.

Attorney Persson explained the board was under two time clocks. One was a federal clock and the other, through the state, noted that if they were the provider, and if the Town did not act on the application, then it was automatically approved. He suggested the safest thing would be to recommend approval or denial at this hearing. He commented there was a "huge degree of logic to postpone this," but the applicant was requesting to move forward. He believed by postponing the decision, there would be an issue with the timing. Mr. Garner asked if there was any question, as far as challenges of the application, whether this application with the other two components should be

considered one application or three applications. Attorney Persson responded he would consider it three applications. The ODP had to be approved by two votes of the Town Commission, and if the appeal was resolved, then all three applications would meet up at the end so no time was lost. Mr. Hackett questioned the impact of the appeal on the timing. Attorney Persson noted it would depend on whether the ZBA could hear the appeal at their November meeting.

MR. SYMANSKI WITHDREW HIS AMENDMENT TO THE MOTION. MR. GARNER AND MR. HACKETT WITHDREW THEIR MOTION AND SECOND.

MR. WILD MOVED TO RECOMMEND APPROVAL OF ORDINANCE 2011-25 APPROVING THE OUTLINE DEVELOPMENT PLAN APPLICATION FOR LONGBOAT ISLAND CHAPEL PERSONAL WIRELESS SERVICE FACILITY AS RECOMMENDED BY STAFF. MR. HIXON SECONDED THE MOTION.

MR. SYMANSKI MOVED TO AMEND THE MOTION TO ALLOW THE TOWN THE DISCRETION TO NOT EXCEED 150 FEET. MR. WILD AND MR. HIXON ACCEPTED THE AMENDMENT.

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

AGENDA ITEM #3
LONGBOAT ISLAND CHAPEL, 6200 GULF OF MEXICO DRIVE
SPECIAL EXCEPTION
QUASI-JUDICIAL

Due to the filing of the appeal, this application was not heard at this meeting.

AGENDA ITEM #4
LONGBOAT ISLAND CHAPEL, 6200 GULF OF MEXICO DRIVE
SITE PLAN AMENDMENT
QUASI-JUDICIAL

Due to the filing of the appeal, this application was not heard at this meeting.

AGENDA ITEM #5
ORDINANCE 2011-16
COMMERCIAL SITE PLAN REVIEW STANDARDS FOR LANDSCAPE BUFFERS

AGENDA ITEM #6
ORDINANCE 2011-21
LANDSCAPING CODE ENFORCEMENT CLAUSE

The above items were continued until the November 15, 2011, P&Z Board meeting.

AGENDA ITEM #7
TELECOMMUNICATIONS

MR. WILD MOVED THE P&Z BOARD CONTINUE THE PUBLIC HEARINGS FOR ORDINANCE 2011-16 AND ORDINANCE 2011-21 AND DISCUSSION OF AGENDA ITEM 7, TELECOMMUNICATIONS, UNTIL THE NOVEMBER 15, 2011, MEETING. 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 #5
CONSENT AGENDA

Chair Webb noted the next regular meeting was scheduled for Tuesday, November 15, 2011.

There was consensus to move approval of the Consent Agenda, Approval of Minutes, to the November 15, 2011, meeting.

ADJOURNMENT

The meeting was adjourned at 3:09 pm.

John Wild, Secretary
Planning and Zoning Board