

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

\*\*\*SEPTEMBER 1, 2011\*\*\*

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

Members Present: Chair BJ Webb, Secretary John Wild, Members Laurin Goldner, Walter Hackett, Leonard Garner, George Symanski

Absent: Vice Chair Allen Hixon, Members Phineas Alpers, Jack Daly

Also Present: Nancy Stroud, Special Counsel; Kelly Martinson, Assistant Town Attorney; Monica Simpson, Planning, Zoning & Building Director; Steve Schield, Planner; Ric Hartman, Planner; Donna Chipman, Office Manager

PRESENTATION REGARDING TELECOMMUNICATIONS

Nancy Stroud, Special Counsel, introduced Gary Resnick, attorney with Gray Robinson Attorneys at Law, who would be providing a presentation on telecommunications.

Mr. Resnick noted he was a communications lawyer, but he did not represent the wireless communication industries. He represented local governments and property owners, and had been involved with drafting local codes and ordinances, as well as negotiating leases with wireless providers. He explained that in 2005, the Florida legislature amended the statute governing how local governments control and regulate the provision of wireless communications and the siting of wireless facilities. He reviewed federal law pointing out that the wireless companies were constantly arguing to the Federal Communications Commission (FCC) that local governments were making it too difficult to locate towers and asking for the FCC or Congress to pre-empt local zoning codes. He explained that the Telecommunication Act of 1996 had four components that affected the Town's actions with respect to wireless communication and continued with reviewing those four points (Section 704 of the Act). He mentioned that he also served on the FCC Governmental Advisory Committee, which was not a committee governed under the Sunshine Law, so they were able to meet privately and have interaction with senior staff of the federal government. He continued with reviewing a PowerPoint presentation (see attached).

Mr. Wild asked if there was anything in the law that states they could not withhold comments. Attorney Resnick responded the staff would have 20 business days to inform the applicant they were missing information. He reviewed the application timeframes, commenting that if they notify within 20 days that there was missing information, depending on how long it took for the applicant to respond, if an application for tower, the town would have 90 days to process the application following receipt of the new information.

He noted the timeframes of 45 days for co-location or 90 days for review and processing; however, there could be separate reviews and processing (i.e. zoning review and/or building review). He continued with reviewing the PowerPoint presentation.

Mr. Garner asked if a municipality could limit the height of a tower by ordinance. Attorney Resnick replied yes, as long as the municipality was not denying provision of service. He noted if they denied service and were in conflict with the federal law, the provider could sue the municipality. Mr. Wild commented if an ordinance was set to limit a tower to no more than 90 feet, and it created an economic issue, could that be fought by the original provider who might state the municipality was denying the right to a tower because of the limitation. Attorney Resnick responded that the economic effect on the regulations would not be grounds to sue the Town under the Telecommunication Act of 1996; they could only sue the Town if there was actual denial or prohibition of service.

Mr. Symanski asked if they restricted the height, might there be a need for additional towers to get the coverage. Attorney Resnick replied yes. Mr. Symanski asked if he foresaw a time when towers would not be needed in the future. Attorney Resnick commented that satellites were not replacing personal communication services, and a larger percentage of people do not have land line service. The need for towers was expected to grow significantly in the next few years. Mr. Symanski asked if the "whip-like" antennas on the telephone poles would replace towers. Attorney Resnick explained there were requirements in the statute to address that, because they did not want the rights-of-way (ROWs) to become used for antennas. The problem with ROWs was not only the antenna on the pole, but the need for the space for the equipment.

Mr. Symanski asked if the Town needed to erect towers in order to have good cell phone service on Longboat Key. Attorney Resnick responded that, depending upon the height, there was probably need for one tower of 120 feet, which would allow co-location of five carriers; or two towers of 80-90 feet, which would allow three carriers on each.

Mr. Symanski asked about collapse zones, their size and safety. Attorney Resnick explained that most towers were made to collapse within themselves. There were distance separation requirements so they were 'x' number of feet from the adjacent structures. Mr. Wild questioned if the rule was still ten feet between providers in terms of the distance. Attorney Resnick replied no, because they did not use the same megahertz.

Attorney Resnick continued with his PowerPoint presentation.

Mr. Wild asked about a Distributive Antenna System (DAS). Attorney Resnick explained that a DAS was the building of a lot of antennas at a low height and linking them up to a central point that would then provide access to a wireless facility. He noted it was a very expensive technology, and was not geared towards general service from a spread out community, but geared towards a very dense area, such as a stadium, college campus, etc.

Bruce St. Denis, Town Manager, discussed information on the Town's website and the reason the contact information was included was to provide residents the correct contact for complaints. He mentioned that the calls would go to the engineers, and when they receive numerous calls for one location, they review and address the problem. He also addressed the issue of emergency calls from cell phones and providing addresses, noting the beach accesses had signs noting their address. He pointed out that all 911 calls from Longboat Key went through Manatee County.

The board recessed from 9:57 am – 10:05 am.

Concerning the telescopic towers, Mr. Hackett asked what was the minimum area required for that versus a non-collapsible. Attorney Resnick responded he would have to review what the Florida Building Code required for that item. Ms. Simpson pointed out the current telecommunication ordinance allowed for a zero collapse zone engineered product; however, the Town Commission chose to keep the setback as twice the height of the tower. Attorney Resnick noted there were specific FCC requirements regulating HAM operating towers and those were made to collapse. He mentioned that cities were not allowed to have setback requirements for HAM operating towers.

Attorney Stroud informed the board that she and Ms. Simpson had discussed the possibility of getting policy direction from the board at this meeting regarding telecommunications, or if the board preferred, Attorney Resnick could come back. Chair Webb believed the board should address at this meeting. She commented that as the board drafted this section of the Comprehensive Plan, the board needed to be cognizant of creating legislation that allowed tower facilities in places where the Town was underserved. She strongly believed that government owned properties needed to be the first choice for sites, not only for the control standpoint, but for the community. She did not understand why the Town would hand utility revenues to private entities. Chair Webb also commented there was a need to amend the zoning ordinance to eliminate the antiquated drop zones, and they need to ensure they include in the legislation the issues relative to small antennas to address those areas mostly residential and heavily wooded that still created 'dead zones' that would not be addressed by a tower. There also needed to be legislation that allowed adequate height for towers, but did not have antiquated language regarding co-location. Mr. Symanski, Ms. Goldner, and Mr. Wild agreed.

Ms. Simpson commented with regard to the earliest implementation comment, there were items that could be currently addressed with the Zoning Code, but staff would want draft policies written and included in the Comprehensive Plan. She noted that if the board wished to move forward and request permission from the Town Commission for formal public hearings on this issue, then she would require a motion.

Mr. Symanski commented he was unsure if language was needed, but it might be helpful to be able to combine the purpose of the flagpole with the veterans or something else. Mr. Wild asked if he was suggesting the Town get 'naming rights' for the tower. Mr. Symanski responded no; he was suggesting it in order to allow it, or take it into account. Ms. Simpson noted the current code required all towers to be camouflaged, in which the unipole was considered a camouflaged tower, which takes into consideration the aesthetic issues that went along with a tower. She asked for the board's proposed direction for the Town Commission to entertain, if the board wished to strengthen that item. Chair Webb asked if a camouflaged tower in any way eliminated the ability to be effective in terms of the service provided. Ms. Simpson replied no. Chair Webb saw no reason why they should eliminate something that might be more "aesthetically palatable" to people. Mr. Garner asked if there was a definition of 'camouflage' in the code. Ms. Simpson responded there was not a specific definition of 'camouflage.' Mr. Garner noted that with no definition, the word 'camouflage' was an ambiguous word, which could be interpreted by anyone who wished to interpret what was 'camouflage,' so it should be left up to the current boards to make the decision.

Attorney Stroud commented it was not clear as to whether the board was suggesting there was a need for a policy in the Comprehensive Plan or whether the Zoning Code could handle it. Chair Webb believed it was critical to have a section in the Comprehensive Plan.

Mr. Garner noted the Comprehensive Plan was just an underlying document to guide the board in the Zoning Code; the Zoning Code would be the one that had specificity. Chair Webb requested discussion be placed on the next meeting agenda to act on with a motion and move forward.

AGENDA ITEM #1  
COMPREHENSIVE PLAN AMENDMENTS

Transportation Element:

Attorney Stroud reviewed Policy 1.1.3 noting that language was added so it was clearer when the Town reviewed development permits they would require that new development provide safe and adequate access to the development site, and “*will not impermissibly degrade the operation of supporting transportation infrastructure,...*”. She pointed out that this was included to address Mr. Symanski’s concern that the Town be able to deny projects if the impacts were unacceptable. Mr. Symanski suggested it state, “In the sole discretion of the Town Commission.” Mr. Garner believed the language, as written, fully expressed the intent of the Town, and believed including Mr. Symanski’s suggestion would make it subject to a lawsuit. Attorney Stroud commented that the words ‘sole discretion’ went too far, because under the standard of review, the court would have to uphold the decision of the Town if it was based on substantial, competent evidence.

Attorney Stroud continued with reviewing Policy 1.1.6 and the addition of a specific reference in paragraph three to require connectivity to outside areas. Concerning Policy 1.1.7(4), she mentioned initially the proposal was that the study would look at Future Land Use designations around the site, but the zoning designations were also important, so zoning was included. Attorney Stroud reviewed Policy 1.1.7.1, where language was added to strengthen it so the Town could have the ability to deny a project if it was unacceptable.

Attorney Stroud commented there were other changes in the Future Land Use (FLU) Element, Capital Improvement Element (CIE), and Intergovernmental Coordination (IC) Element, and staff looked to ensure where language had to be parallel that it was, and she believed there was one policy that was inadvertently left out in the CIE, Policy 1.5.7. She noted that policy should delete paragraph four and references that were outdated to Chapter 163, but the remainder was left as written. Mr. Symanski referred to Policy 1.3.2 in the CIE, Item 1, and asked if it could state, “Would be detrimental to the public health, safety and welfare,...” in place of “Contribute to a detriment to the public health, safety and welfare.” Ms. Simpson noted that staff would review the policy to ensure it reads correctly.

Attorney Stroud informed the board staff would be bringing materials that incorporated all the amendments made through the summer at the next meeting. Chair Webb noted the meeting was scheduled for September 13, 2011, but there were no issues to be heard at the regular meeting on September 20<sup>th</sup>. However, she mentioned to staff if it appeared there were still outstanding issues to resolve on the Comprehensive Plan, the September 20<sup>th</sup> meeting should remain scheduled. Ms. Simpson noted that she, along with Attorney Stroud, would not be available for the September 20<sup>th</sup> meeting.

**There was consensus to officially cancel the meeting scheduled for Tuesday, September 20, 2011.**

Ms. Simpson noted that in addition to bringing forward a resolution for recommendation, Bill Oliver, Tindale Oliver, would be present to discuss the way the transportation review would take place in the Zoning Code.

ADJOURNMENT

The meeting was adjourned at 10:41 am.

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John Wild, Secretary  
Planning and Zoning Board