

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

MAY 17, 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, Laurin Goldner, Walter Hackett, George Symanski

Members Absent: Leonard Garner

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

ADMINISTRATION OF OATH

Jo Ann Mixon, Deputy Town Clerk, swore new member Jack Daly and reappointed members Walter Hackett and Allen Hixon.

REQUEST TO ADDRESS BOARD

Jim Brown, Mayor, commented that he had conversations with several board members and citizens regarding the role of the Revitalization Committee. Some people were concerned they were given authority that was taken from the Planning & Zoning (P&Z) Board, but while the Town Commission supported their effort, it was not an "arm of the commission" or has authority from the commission. The committee was a group of concerned citizens who have come together to try to benefit the Town. He mentioned that when they had approached the Town Commission they had requested, and received, their support, but were not given any authority from the Town Commission. He wished to note that the P&Z Board was not being "usurped" by this committee.

ELECTION OF OFFICERS

Vice-Chairman

MR. HACKETT MOVED TO NOMINATE ALLEN HIXON AS VICE-CHAIRMAN. MR. SYMANSKI SECONDED THE MOTION.

There were no other nominations, and the nominations were closed.

MOTION CARRIED ON ROLL CALL VOTE: ALPERS, AYE; DALY, AYE; GOLDNER, AYE; HACKETT, AYE; HIXON, AYE; SYMANSKI, AYE; WEBB, AYE; WILD, AYE.

Chairman

MS. GOLDNER MOVED TO NOMINATE BJ WEBB AS CHAIRMAN. MR. ALPERS SECONDED THE MOTION.

There were no other nominations, and the nominations were closed.

MOTION CARRIED ON ROLL CALL VOTE: ALPERS, AYE; DALY, AYE; GOLDNER, AYE; HACKETT, AYE; HIXON, AYE; SYMANSKI, AYE; WEBB, AYE; WILD, AYE.

Secretary

MS. GOLDNER MOVED TO NOMINATE JOHN WILD AS SECRETARY. MR. SYMANSKI SECONDED THE MOTION.

There were no other nominations, and the nominations were closed.

MOTION CARRIED ON ROLL CALL VOTE: ALPERS, AYE; DALY, AYE; GOLDNER, AYE; HACKETT, AYE; HIXON, AYE; SYMANSKI, AYE; WEBB, AYE; WILD, AYE.

AGENDA ITEM #1

BLEU CLAIRE CONDOMINIUM, 4765 GULF OF MEXICO DRIVE
SITE PLAN AMENDMENT

Pursuant to published notice, the public hearing was opened. Ms. Chipman swore all those testifying.

Ric Hartman, Planner, reviewed the staff report noting the original site plan was approved through PZB Site Plan Order 2005-01. Since that time several extensions have been granted to the site plan, with the last extension being granted based on economic conditions. He noted that during research on that issue, staff realized there was an omission in the Zoning Code of the actual language in Section 158.009(F), which pointed out that economic conditions, or financial conditions, shall not form the basis for an extension. He commented this would be the fourth extension request, and they were asking for five years to obtain the permit. He commented that it had taken a year to obtain the building permit, and they have an active permit at this time, but minimal site work had been completed. He reviewed a slide showing the timeline for the project, mentioning that the applicant was unable to obtain final certificates of occupancy (COs) by the deadline provided in PZB Site Plan Order 2008-01 (which amended PZB Site Plan Order 2005-01). Staff was recommending denial due to the amount of time being requested for the extension, and the reason provided for the extension. The applicant was made aware that economic conditions were not a reason to request an extension. Staff requested a timeline for obtaining the outside agency permits, and he pointed out that the Florida Department of Environmental Protection (FDEP) provided an extension, but noted they would not grant another; the applicant would be required to go back to the FDEP for review. Mr. Hartman pointed out that the proposed deadline for obtaining final COs would be allowed to occur eight years after the original deadline. Staff has never been asked to present a request for such a substantial extension; it was far in excess of the 12 month extension usually granted. He discussed the material benefit to the Town for not granting, which would provide the Town a chance to look at new conditions and see if the site plan was the best use for the property.

Mr. Symanski asked if procedurally the site plan would go before the Town Commission. Mr. Hartman replied yes. Mr. Symanski read the code section and commented they were making a recommendation to the Town Commission. He commented that if it was the board's decision, there was no basis in law for the board to grant the extension; however, the code states the Town Commission could extend if they saw a material benefit. He believed the Town Commission had the sole authority to grant regardless of the economic hardship proviso. Mr. Hartman explained that the Zoning Code was clear that the Town did not want applicants to submit a request due to economic conditions, but if the Town Commission finds the Town would not materially benefit from review, then they had the discretion to grant the extension. Mr. Symanski pointed out that the code read as if the Town Commission may override the economic proviso and gave the Town Commission total discretion if they found no material benefit. He asked what the P&Z Board were to base their decision on. Mr. Hartman responded where they found the application was solely based on economic conditions, and if they found a material benefit from the applicant resubmitting the site plan for review.

Mr. Wild discussed the previous tourism units noting the applicant could have received "cash flow" from the units had they not been torn down. He believed if the units were left, if viable, they would have brought people to the island, which was the goal of the town. He also commented that the market was saturated with equivalent single-family homes with the same square footage. He noted that the site plan from 2007 might not still be viable.

Mr. Hackett disclosed to the board that he was a licensed real estate agent with Michael Saunders and Company, who was the listing agent for the Bleu Claire project. He noted that he was not influenced by this association. Kelly Martinson, Assistant Town Attorney, pointed out that his employer, Michael Saunders, could still receive a special benefit and believed Mr. Hackett had a voting conflict. As a result, Mr. Hackett recused himself from the hearing and left the dais. Mr. Hixon informed the board that he had visited the site and was aware of the new items that were installed to continue the construction process.

Randy Moore, Crossgate Partners, developer and owner of the project, reviewed the history of the site noting that it was originally approved for 15 units, but they were only intending to construct 11 units. He explained that two years ago they had demolished four of the buildings, and retained one building for a sales office. He reviewed the approved site plan with the board, which included a gated entrance, along with an illustration of how the building would be viewed from Gulf of Mexico Drive. They wished to proceed with the project as originally developed as it was difficult to find someone to develop transient units at this time. He noted that if the additional extension was not granted, they would have to take the project off the market, which furthered the timeline they had to complete the project. He reviewed the condition that refers to no extension could be granted due to economics and commented that he had developed property in many communities, and this was the first time he had ever seen that condition in any code. He was unsure what would be accomplished by going through the process again that had not been accomplished with the plan that was previously approved. He pointed out the site plan was due to expire the end of this year, and they were asking for an extension until 1-18-2014, which would allow them two years from the end of the existing site plan approval to resubmit their building permit plans and secure the permit.

Mr. Wild noted that he did not see a reference to Atlas Street on the plans and pointed out that it was a public street.

He was concerned because there was a two mile gap between beach accesses, and there were places in between that did not have a public beach access. Mr. Moore responded it was not marked on the site plan as a public right-of-way as the drawings were just renderings, and the site plan illustrated what was located on their site. He pointed out the grass area on the side was the entrance to Atlas Street. Mr. Wild again questioned why the units were demolished as they could have provided funding. Mr. Moore explained that approximately three years ago the group representing their company was able to keep the units occupied; however, the property began to decay. They had two companies visit the site to provide them bids for maintenance of the units, and they were looking at \$1 million to repair the units. ResortQuest informed them they could not continue to market the project, because there was not enough activity to support a full-time manager on site. Mr. Wild discussed the traffic reduction due to other projects. Mr. Moore noted the original site plan required them to provide a traffic impact study. Mr. Wild asked if they would still present the same plan at this time. Mr. Moore replied yes.

Mr. Hixon agreed with Mr. Wild that the "bird's eye view" was misleading in that it did show a 'green lawn' area, and there had been a lot of discussion about the public access. He asked if the board and/or Town Commission granted the extension would they agree to comply with the new parking and sign code regulations that might have changed in the interim. Mr. Moore replied yes. Mr. Hixon asked if Mr. Moore could provide reasons for the request other than economics. Mr. Moore pointed out that the market had a lot to do with their request, along with the current commodity and building material costs. He reviewed a timeline with the board. Ms. Goldner asked how Mr. Moore could be confident with the market to proceed with the timeline. Mr. Moore believed two years would be a sufficient amount of time. He commented that if they did not have the site plan in place, they could not market the units, because to go through that process would take time. Mr. Alpers asked if anyone had a contract for the units. Mr. Moore responded they had three in the past, but they expired; they did not have any contracts at this time. Discussion ensued on the amount of time since the original approval and the outside agency permits. Ms. Goldner asked if the applicant believed there would be any issues with the FDEP or Southwest Florida Water Management District (SWFWMD) permits. Mr. Moore commented that he did not anticipate any issues; FDEP might require them to submit, but he believed SWFWMD will renew their existing permit.

Ms. Simpson informed the board that, for clarification, Atlas Street was a beach access point with parking and a dune walkover. She noted that any deviation from that would require a Comprehensive Plan amendment. The depiction shown by Mr. Moore was a bit misleading, because the grass area would be used for parking for the beach access. Concerning the reduction in units, the reason at the time was mostly due to the Floor Area Ratio (FAR) and maximum allowable square footage; they were wishing to have larger units and they only had a maximum number of square feet to build. She also noted that the traffic counts were not applicable because the Holiday Beach Resort (previous land use) was a hotel. She explained that if a change in parking resulted in something that could not be administratively approved, then the applicant would be required to come back for a site plan amendment (if the change was more than 10 percent, then they would need to come back). Concerning the existing building permit for the clubhouse, it was her understanding that the interim building official, if an extension was granted, will no longer grant an extension on that building permit, because the building codes have changed. The permit was extended because staff understood that the applicant would begin construction. Staff wished to ensure that the buildings were built under the most current codes and were safe structures.

She pointed out that staff included a development timeline in the staff report, if the extension were granted, which was based on the February 2015 date, and was contrary to the date being asked of 12-18-2016. Staff did not understand the need for the additional length of time. Mr. Moore could come back in 2014 if they felt they would not meet the 2015 target date.

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

MR. SYMANSKI MADE A MOTION TO ACCEPT STAFF'S RECOMMENDATION OF DENIAL OF THE EXTENSION REQUEST. MS. GOLDNER SECONDED THE MOTION.

Mr. Symanski sympathized with the situation, but one of the purposes of the time restriction was due to things changing and the need for another review. He commented that if it turned out there was no benefit to the Town to review the project, then it was the Town Commission who had the authority to say there was no material benefit and grant the extension.

Mr. Daly asked if it was the intent to recommend to the Town Commission or was the board restricted as to recommendations. Mr. Symanski questioned whether the board should recommend that the Town Commission exercise their sole discretion, which the board did not have, as the board's authority was based on economics. Mr. Wild asked if there was such a position that the board could take that would not recommend either way, but pass on to the Town Commission. Attorney Martinson explained that it was a recommendation, and if the board stated there was not materially benefit and their decision was based on economic conditions, the Town Commission could review and make the decision to grant the extension. Chair Webb believed, based on the continued timelines, the board could not send the project forward with anything other than a recommendation of denial. Mr. Hixon commented that he tried to find other reasons, other than financial, to justify moving the extension forward, but Mr. Moore was unable to provide that information. He believed it was a "black and white" case, because the code states the P&Z Board was restricted from considering financial reasons. Attorney Martinson responded that she believed the board could make a recommendation as to the material benefit aspect of the question; even though it was the Town Commission's decision; the board could still make a recommendation as to whether they believed there was, or was not, a material benefit.

MOTION CARRIED ON ROLL CALL VOTE: ALPERS, AYE; DALY, AYE; GOLDNER, AYE; HIXON, AYE; SYMANSKI, AYE; WEBB, AYE; WILD, AYE.

The Board recessed from 10:08 am – 10:14 am.

Mr. Hackett returned to the dais at this time.

AGENDA ITEM #2

ORDINANCE 2011-16, AMENDING SECTION 158.150, YARD REGULATIONS

Pursuant to published notice, the public hearing was opened.

Ric Hartman, Planner, reviewed the ordinance noting it provided for flexibility to the mandatory 10-foot landscape buffer for transition yards between residential and nonresidential properties, and between multifamily and single-family properties, including allowing for structural screening as an option to a landscaped buffer.

He noted that one of the items the ordinance provided for was to provide the Town Commission with the power to approve some other form of screening or no screening as part of the site plan review. Staff was requesting that the board reconsider that issue. Chair Webb asked if staff had suggested language for the ordinance. Ms. Simpson responded that the board could set objective standards for the Town Commission to review.

Mr. Symanski explained that the original intent was to provide the Town Commission authority to review a situation and determine that the standard that existed could be met another way, or could be delayed. He believed the ordinance now provided the right to build a fence, instead of having the Town Commission review the proposal and determine that it would work better than what was provided for in the ordinance. Mr. Hartman commented there were no standards in the proposed ordinance for the Town Commission consideration at this time, but there were standards for height and 80 percent opacity for screening and buffering; however, if there were other objective determinations (i.e., visual, height, and location) for the Town Commission to consider when reviewing a proposal, that was what they would like to include in the ordinance. He pointed out the ordinance did not negate the fact that non-residential property was still responsible for installing the landscape buffer, or a fence, between their property and the residential use with a conforming lot. Mr. Symanski commented that staff recommended changing the plan to residential, but now it would be their burden to do the buffering. Ms. Simpson pointed out that this had nothing to do with the Comprehensive Plan, and Moores and Mar Vista were not the only scenarios on the island. The discussion and direction the board gave staff was if the Mar Vista completely redeveloped, with Moore's as a restaurant, and they have the buffer, or exemption from the buffer, and if Moore's decides to change to residential, why should Mar Vista be required to change their site plan again and install the buffer.

Mr. Symanski believed the Comprehensive Plan could have relevance, because if there was a Comprehensive Plan amendment and it noted residential, then they were stating as public policy there should be residential. He commented that to require them to now install the buffering was contrary to policy. He did not see how, under vested rights, if someone had an existing use, and there was a change next door, they were forced to install a buffer. He believed there should be discretion for the Town Commission to determine whether the buffer should be installed. Ms. Simpson pointed out that staff was doing exactly what the board had requested. The problem with giving the Town Commission discretion without objective standards was if the site plan met the code, then it was difficult to deny; however, if a site plan was proposed and then told to include a buffer, it changed the entire site plan. She believed the board was asking for development of a waiver system from the buffering requirements, and then once the waiver was granted, the applicant would develop their site plan.

Mr. Hixon stated that the last applicant to file was the one that triggered the requirement for the buffer and it would be built on their property. Ms. Simpson pointed out that was as currently drafted. Mr. Symanski questioned why the board would write it as a requirement. Mr. Hixon reiterated if they were the last applicant, then they should not put that obligation on the neighbor to install; they should be responsible as it was their decision to make the change. Mr. Hartman explained that it was the last property that changed, but if it was changing to residential; it was at their option.

Discussion ensued on the language in the ordinance and criteria. Ms. Simpson commented that staff would need to rewrite the ordinance, develop a waiver system, and provide criteria. Chair Webb commented that staff should revise the ordinance and bring back at a later date.

AGENDA ITEM #4
CONSENT AGENDA

MR. WILD MOVED APPROVAL OF THE MINUTES OF THE APRIL 19, 2011, REGULAR MEETING AND SETTING THE FUTURE MEETING DATE FOR JUNE 21, 2011. MS. GOLDNER SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.

AGENDA ITEM #3
COMPREHENSIVE PLAN AMENDMENTS

Nancy Stroud, special counsel, discussed the Recreation and Open Space element. She reviewed the Level of Service (LOS) in the element (Policy 1.1.1 and 1.1.10), which was 12 acres per 1,000 peak seasonal population. She discussed policy issues that the board should consider, including, whether the board wished to raise the LOS. She also explained that there was a question of whether the standard referred to Town-owned land, and she pointed out that the Town had always interpreted the standard to mean "Town-owned" land. The plan was not explicit, and it was her suggestion that the language be "tweaked" to ensure it was clear it was Town-owned land.

Chair Webb asked if an increase in the acreage was a realistic goal for an island that was essentially built-out and zoned. Attorney Stroud responded that the plan recognized there were fewer acres for purchase. She asked whether the Town should move away from the concept of land acquisition as the priority to public facilities, since the Town had the land, and switch the LOS from a land-based to activity based (public facilities). She continued with reviewing a PowerPoint presentation reviewing the population figures and Town-owned land for LOS. Chair Webb asked if the document differentiated between passive and active parks. Attorney Stroud responded no; the plan, in its LOS, did not differentiate either. It was just land and could be used for either passive or active. Attorney Stroud explained they were guidelines, not actual LOS, but suggestions for standards for passive or active.

Mr. Hackett questioned if the Town Charter had a requirement for active recreational use. Ms. Simpson explained there were specific requirements for the recreation center, but there was nothing in the Comprehensive Plan that required anything or was state-mandated. She understood, through the memorandums and letters written by David Persson, Town Attorney, that there was something within one of the Town's approval documents that might be the charter that required the Town to have a ball field. Mr. Hackett believed the state statute allowed the Town to set its own LOS, and if there was a deficiency, then it was an internal matter. Attorney Stroud agreed it was a Town concern and not a state concern. Ms. Simpson commented if there was a deficiency, then the Town could continue to collect revenue from undeveloped land, but if there was not a deficiency, then they would not be able to collect those funds. Attorney Stroud noted this was important if the board was considering increasing the LOS.

Mr. Wild asked where the number came from for the functional population for 2020. Attorney Stroud responded it came from the most recent staff work in calculating functional population using the Bureau of Economic & Business Research (BEBR) figures.

Staff felt comfortable with that figure, because DCA had been questioning the population, and staff checked the most recent data (2010 census), and compared the methodology to what Sarasota / Manatee counties were doing. Attorney Stroud continued with reviewing the facilities based LOS, discussed impact fees versus land acquisition fees and platting fees, and reviewed what would be needed for facilities based LOS. She pointed out that impact fees were only allowed in Florida to be assessed against new development. If there was an addition, or tear down, an impact fee could be assessed on the “margin of difference,” but they would have to grant the existing development a credit, because the existing square footage had not created the impact.

Mr. Hixon commented that beachfront property value was in the land and not in the new construction. He believed they should deduct the existing value of the land, and it could only be on the improved value. Attorney Stroud replied that was not typically how the methodology worked, or was upheld in court, but if the board was concerned as policy, then it was an issue to consider regarding whether to move away from a land acquisition system to an impact fee system. Mr. Wild did not wish to go to impact fees. Chair Webb disagreed the Town had miniscule deficiencies. She commented that from a land-based fee, it was not significant, but from a facilities-based it was significant. Mr. Wild commented that the private sector also had recreational facilities available to their residents, and asked if it was the obligation of the Town to duplicate the demand solely in the public sector as opposed to allowing a public/private partnership. Mr. Symanski agreed with Chair Webb. Chair Webb noted that the board needed to provide a consensus on the impact fees and land acquisition. Attorney Stroud commented that the board could provide the direction that they would like to see more facilities, but it did not necessarily have to be through impact fees. She noted the easy answer, from a methodology standpoint, was the impact fees, but if that was not acceptable, they could research other ways.

There was consensus to direct staff to draft other language that was more facilities based as opposed to land acquisition fees.

Ms. Goldner questioned what other options might be available if they decided to change from impact fees. Attorney Stroud replied they would need to research them.

There was a consensus from the board that they were interested in looking at facilities based as opposed to the current policy of land acquisition for parks and recreation.

Staff update

Comprehensive Plan Amendment for Bayfront Park and Recreation Center

Ms. Simpson explained that staff had transmitted the comprehensive plan amendments to DCA for the Bayfront Park and Recreation Center, and DCA had responded with a Letter of No Objection. The Town needed to continue with the formal adoption process, which would include a recommendation from the P&Z Board. She noted the last amendment where the board did not go through the adoption process was during the Capital Improvements Element (CIE) amendment. She asked if the board wished to schedule another hearing for this item, or would they authorize staff to bring it directly to the Town Commission.

There was consensus to forward the item directly to the Town Commission.

Planning and Zoning Board Training

Ms. Simpson informed the board that due to lack of interest, the training that was scheduled for May 24, 2011, would be canceled. The Florida League of Cities was providing the presentation, and they need at least 30 people to attend.

Comprehensive Plan Discussions

Ms. Simpson commented that staff was anticipating presenting the comprehensive plan amendments to the Town Commission sometime in the fall, before the end of the year. There are several subjects remaining for the board to consider, and she asked if the board would like to schedule a special meeting in June.

Following discussion, there was consensus to schedule a special meeting to continue discussion of the Comprehensive Plan amendments on June 14, 2011, beginning at 9:00 am.

Ms. Simpson discussed a memorandum regarding the comprehensive plan amendments related to the Longboat Key Club-Islandside project. The amendments were transmitted to DCA, and staff was awaiting the Objections, Recommendations, and Comments (ORC) Report on May 20, 2011. She noted the importance to possibly schedule meetings in July and August to further discuss the Comprehensive Plan. Five board members indicated their availability for July and August.

Public to be Heard

Dr. Murray Klauber, Colony Beach and Tennis Resort, addressed the board concerning his condominium units and the possible sale of those units. He discussed his request of the Town for a letter from the Town noting that he can use his units 365 days per year.

Bruce St. Denis, Town Manager, explained that Dr. Klauber was trying to get an answer on the ownership issue, and the zoning issue was another item. He noted that Dr. Klauber had met with Ms. Simpson, who provided her opinion, to which Dr. Klauber disagrees. Ms. Simpson pointed out that there was nothing in the Town Code that provided the board the authority to address the concerns raised by Dr. Klauber; it was a matter of legal interpretation of the codes, and staff was currently working with Dr. Klauber on those issues.

ADJOURNMENT

The meeting was adjourned at 11:30 am.

John Wild, Secretary
Planning and Zoning Board