

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

DECEMBER 21, 2010

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

Members Present: Chair BJ Webb, Secretary John Wild, Members Phineas Alpers, Laurin Goldner, Bradford Saivetz, George Symanski, Patricia Zunz

Members Absent: Vice-Chair Allen Hixon, Member Walter Hackett

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

AGENDA ITEM #1
RESOLUTION 2011-01, COMPREHENSIVE PLAN AMENDMENT

Nancy Stroud, special counsel for the Town, provided an overview of the proposed Comprehensive Plan amendments and the process for review. She explained that the major changes were within Policy 1.1.9, planned development policy. She mentioned that it was important to state that under the Planned Unit Development (PUD) process, the Town had the ability to provide more flexibility on height and lot coverage, but not density; they can cluster density, but cannot change density.

Chair Webb commented that with the exception of those areas clarifying language she believed the only in-depth discussion should be about substantive changes. Attorney Stroud responded that clearly it was a clarification, because it was a process used to review the zoning code and to remove the 'core' issues and restrictions in the code and put them in the Comprehensive Plan. She referred to Policy 1.1.10 and noted it was where most of the new language was located, but was a reduced version of the Zoning Code. She pointed out the first change was a description of the Island Preserve (IP) category; each of the categories required density and intensity measures. She noted that for residential categories density was a major issue. The changes also included height and lot coverage, because they are usually measures of intensity and not necessary in residential categories, but necessary in non-residential categories. Ms. Stroud believed that although lot coverage and height was included in all residential categories and for all residential units, it might be something they want to remove from the strictly residential, but leave in for tourism units.

Ms. Stroud continued with discussion of 'mixed use communities,' which were previously the 'PD' categories. She pointed out they were proposing to more clearly name the categories as 'mixed use' communities, because even though the code made it clear these categories were encouraged, the Comprehensive Plan did not. She noted that the state statute required some description of the allocation of uses within the mixed use category.

Staff went through the three mixed use districts and calculated what type of uses covered what amount of acreage, and as a result, the uses were classified and included a maximum percent of the acreage in the category that would be allowed for those uses. She discussed the transfer of density between the Water Club site and Joan M. Durante Park.

Ms. Stroud reviewed Table 1 on page 10 of the materials. Mr. Symanski referred to page 6, Mixed Use Community, and commented there was a sentence that concerned him, which stated, "*Redevelopment may occur up to the maximum density as designated herein consistent with best quality design...*" He believed it sounded like it was a right rather than a review and asked if there was other language that could be used, such as "if it is in furtherance of the general health, safety, and welfare." Ms. Stroud replied yes. Mr. Wild proposed using the language "may be proposed." Ms. Stroud voiced concern with that language, because they were suppose to show the maximum. Mr. Wild commented that he agreed with Mr. Symanski's concerns. Ms. Stroud suggested, "*Redevelopment may occur up to the maximum density as designated herein and consistent with the public health, safety and welfare...*"

There was consensus to agree with the language as suggested by Ms. Stroud.

Mr. Saivetz voiced concern with mixed use communities, asking, in the case of Harbourside, if there was a number of how many units could be built under what was drafted. Ms. Stroud responded there was a maximum number. Chair Webb asked if the density remained that was already prescribed. Ms. Stroud replied yes, it was the maximum that was currently in the code. Chair Webb explained that what the board was reviewing clarified what was in the existing zoning code; the Comprehensive Plan was not updated at the time the code was updated to include those items. She pointed out that the board would begin reviewing the entire Comprehensive Plan in January for revisions moving forward.

Ms. Stroud referred to Policy 1.1.11, which was a clarification of the maximum intensity allowed for the additional 250 tourism units. She noted they had added the last sentence, which stated, "*The maximum lot coverage and height of the Future Land Use category of the tourism units apply.*" Chair Webb asked if that would only appear in the part of the code where it referred to properties that were tourism/residential. Ms. Stroud replied correct; there were only specific properties where tourism was allowed.

Ms. Stroud reviewed Table 1 and noted the map was changed to reflect the new names and also to correct any mistakes in the asterisks. She noted they had received some comments from Attorneys John Patterson and Brenda Patten concerning changes they would like included.

Mr. Saivetz commented that in the allocation of the tourism units, they were careful to avoid placing them in the PD units, and the Zoning Code, in Section 158.180(B)(4), noted if the PUD units went into a PD, "*all property owners within the PUD shall join in the ODP amendment application in order for the application to be processed by the town.*" He asked if similar language could be included in order to protect the existing land owners in the event of redevelopment of the PUD. Ms. Stroud commented that Policy 1.1.11 stated that the additional 250 tourism units were limited to certain categories, and the PD categories (PD, GPD, NPD) were not included.

Mr. Saivetz asked if the language was provided by the Department of Community Affairs (DCA), or was it the Town's suggestion to include obtaining approval from all the owners within the PUD. Ms. Stroud commented it was something that was included in the code and that DCA did not review the Town Code, except if there was a challenge.

Bob White, president of Islandside Property Owners Coalition (IPOC), voiced concern that the proposal would allow any future Town Commission unlimited ability to approve any height or lot coverage for any commercial project that went through the PUD process, which would render the restrictions meaningless. He commented there should be limits, and they should be part of the Comprehensive Plan.

John Patterson, attorney representing Longboat Key Club, commented they had an opportunity to briefly review the proposal. He distributed a 'red-line' version of the proposal notating the items he wished to address. He believed this was a Comprehensive Plan amendment, which was a "very targeted" amendment that was designed to address the intent of the existing comprehensive plan. He believed the intent was not to make a substantive change in the plan, but to clarify the existing intent in the plan. He explained this amendment was brought about by the DCA's determination of the challenges filed by IPOC, where the DCA found two items that were questioned. He discussed that the DCA found that the existing Comprehensive Plan was inconsistent because it did not technically incorporate by reference the Zoning Code, as intended, in the Gulf Planned Development (GPD) and PD districts. Another issue that was brought forth in the DCA proceeding was how the Town dealt with clustering.

Mr. Patterson referred to Page 5, Item 7, and noted the problem with the wording was that it was intended to address what was already done in the past. He suggested deletion of the words 'existing established,' and strike the word 'develop' and insert the word 'approved,' to make it clear that what was approved under the existing code was what the Town intended. He believed those two changes would suffice. Mr. Patterson also commented on how the calculations were done within the GPD and open space, noting that in the proposal, the town was creating a zoning category of 'open space,' but questioned what 'open space' meant. He believed it should be defined as it was in the code. His other suggestion was to make it clear how the calculation was done in regards to the open space. Mr. Schield clarified the densities within the MUC-1 and MUC-2 proposed categories were maximums (i.e., the maximum percentage that could be developed), but when discussing Open Space, it was the minimum (it could be more than 50 percent, but could not be less than 50 percent). He commented that under the residential in the MUC category, the maximum residential they could have was 37 percent.

Mr. Symanski asked if they qualified by having 50 percent open space, which was legal, but the remaining parts did not add up to 50 percent, was the remainder of the percentage the roads. Mr. Schield explained that part of the PDs were individual tracts (some were residential, some were tourism, some were commercial, and some were open space/recreation). Ms. Stroud responded that the other area was recreational. She pointed out that when reviewing the various PDs, and adding everything including the recreation and open space, would result in 100 percent. Mr. Symanski asked if there was a requirement percentage for recreation. Ms. Stroud replied no there was not a minimum or a maximum. Mr. Schield explained that within the Zoning Code there were minimum standards for recreation per site. There was not a minimum recreation for the overall PD, but individual sites, such as L'Ambiance, had a minimum recreational element they had to include on their site.

Ms. Stroud commented staff could review and bring back a minimum for recreation. Mr. Wild asked if it was something that concerned DCA. Ms. Stroud replied no. Mr. Symanski asked if, to explain why the figure did not add up to 100 percent, they could not say there was a certain percentage of recreation required, but somehow it was required on a site-by-site basis. He understood the missing percentage was recreation. Ms. Stroud replied that was her understanding and it could state that. Mr. Schield commented it also included open space. Mr. Symanski commented he was not concerned if it stated that, but when the question was asked it was explained that it was not required by the Comprehensive Plan, but somehow it was required at review. Ms. Stroud explained that through the PUD process (an ODP), most of those requirements were considered when looking at a site plan and proposal by the board and Town Commission which had always required recreation. Mr. Patterson suggested if the board just included a use of recreational, and rather than include in the column for maximum percent, they could note 'none' or 'unlimited,' and then they could add up to 100 percent, because they would know the combined uses would result in open space, residential, tourism, commercial, etc.

Attorney Persson explained it would be easy to establish a minimum required recreational component for each. He believed it was unwise to establish a maximum, but it would be wise to establish a minimum. He commented it could be done through reviewing the past approvals and those requirements; for example, there was a requirement that the golf course amenity be in existence, and there was a 50 percent rule for recreational amenities within the PUD, which could be encapsulated there. He noted the same process could be done for density; they could take the density that was established and use that as the maximum density that would be allowed. Mr. Saivetz asked if 'resort' was defined in the Zoning Code. Mr. Schield replied no. Mr. Saivetz suggested if it was not, then the language 'associated resort amenities' should be revised to not refer to 'resort.' Chair Webb suggested the word be changed to 'tourism.' Ms. Stroud commented it could be revised to state "associated tourism amenities." Mr. Patterson suggested where it stated "minimum of 50 percent of the total property within the MUC..." should be a clarifying change to state "*a minimum of 50 percent of all properties located within the MUC,*" to ensure they were looking at it as a whole, and not on a parcel-by-parcel basis.

Brenda Patten, attorney representing Longboat Key Club, commented that when Mr. Patterson and she discussed the percentages allowed in the MUC districts, they did not understand why they did not add up to 100 percent, but now that Ms. Stroud had provided an explanation, she believed it was best to leave the language as is, because when reviewing the Zoning Code, there was not a minimum or maximum for recreational, and she was also concerned they might have acreage included for roads and so forth that were not reflected in the percentages. She believed it was best to allow the flexibility of the PUD process to address those issues.

Ms. Stroud reviewed the suggested changes noting that for the revision concerning the mixed use community, she did not have a problem with changing the language to strike '*existing established and developed*' and add the word 'approved.' Concerning the new phrase, "*as being consistent with the respective comprehensive plan,*" she believed it was necessary. She did not agree with changing the language 'total property' to "all properties," as she did not believe it made it clearer; it could be interpreted to say any smaller project that came in had to have 50 percent open space, even if it was not residential. She proposed adopting the language "total property." The data & analysis could be expanded to address what was intended.

She addressed the item, "*open space means an area comprised of permeable open surfaces,*" and commented it was a good clarification. Concerning the language, "*excluding principal structures and impermeable surfaces,*" the Town Attorney had suggested removal of the word 'principal.' She also agreed with the suggested change to 'associated tourism amenities.'

Mr. Saivetz asked if staff was considering roads and driveways as not part of the open space. Mr. Schield responded that according to the definition, a structure or road was not part of the open space, which gave more reason why there should be flexibility in the percentages.

Ms. Stroud commented in the proposal there was lot coverage and height restrictions for residential categories, which would cover dwelling units and tourism units. She pointed out it was exactly what the code provided for, and she believed it was not necessary for dwelling units to put lot coverage and height restrictions in the Comprehensive Plan. She requested, as a policy matter, whether the board wished to keep all the lot coverage and height restrictions in the plan for residential categories. She suggested removing lot coverage and height restrictions in the "purely" residential categories.

Ms. Zunz asked if by removing the word 'resort' would it allow someone to raise the issue that a resort did not fit within the tourism category. Chair Webb believed no, because it was clear in the Comprehensive Plan what was meant by tourism units. Mr. Patterson discussed the meeting center at Islandside noting there was a lot of discussion as to what it was and the ultimate decision was that the Comprehensive Plan and Zoning Code allowed the meeting center as approved. He voiced concern with changing the language regarding the percentages as it might mean the meeting center was not approved by the Comprehensive Plan. Ms. Stroud did not believe there was a difference between 'resort' and 'tourism.' She believed it would be understood in the context of the approvals. Mr. Wild asked if she was suggesting resort or tourism as a word choice. Ms. Stroud believed 'tourism' was a sufficient choice. Mr. Symanski suggested the words "tourism and associated amenities." Ms. Stroud commented that when speaking of tourism in Longboat Key, it was often considered tourism units, and she wished to be clear that it was more than just a tourism unit. Mr. Symanski asked if they were concerned with a meeting center, and the argument that a meeting center was a tourism amenity if they thought of tourism as units. Ms. Stroud explained that it was associated with the hotel, which made sense; accessory uses, for example, were always considered within the same structure, and that was the reason she was stating 'associated' uses. She believed the word 'tourism' was fine, but 'tourism and resort' would also be fine.

There was consensus to state 'tourism and resort.'

Ms. Patten wished to make clear for the record that on the bottom of page 5 of Mr. Patterson's handout, where they had referenced the language for the MUC categories, they were agreeing to insertion of a period after the word 'affirmed' (top of page 6), with the deletion of the words "*as being consistent with respect to the comprehensive plan in effect on the dates such resolutions and ordinances were adopted,*" as she believed it was implied in what Ms. Stroud drafted and it was redundant. Mr. Wild asked if she was stating they would retain the language, "*open space means an area comprised of permeable open surfaces, excluding structures and impermeable surfaces,*" deleting the word 'principal' before structures. Ms. Patten replied yes.

MR. SYMANSKI MOVED THAT THE P&Z BOARD FIND THAT THE CHANGES WERE SIMPLY CLARIFICATION OF WHAT THEY UNDERSTOOD THE PRE-EXISTING PLAN ALREADY MEANT. MR. WILD SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: ALPERS, AYE; GOLDNER, AYE; SAIVETZ, NO; SYMANSKI, AYE; WEBB, AYE; WILD, AYE; ZUNZ, AYE.

MR. SYMANSKI MOVED THAT THE P&Z BOARD RECOMMEND APPROVAL TO THE TOWN COMMISSION OF RESOLUTION 2011-01 AS AMENDED, INCLUDING THE LANGUAGE REVISION TO THE DEFINITION OF 'MIXED USE COMMUNITY' AND THE CHANGES AS AGREED TO BY ATTORNEY STROUD. MR. ALPERS SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: ALPERS, AYE; GOLDNER, AYE; SAIVETZ, NO; SYMANSKI, AYE; WEBB, AYE; WILD, AYE; ZUNZ, AYE.

The board recessed from 10:16 – 10:25 am.

AGENDA ITEM #2
DISCUSSION OF FENCE HEIGHT REGULATIONS

Steve Schield, Planner, provided an overview of the request noting that at their November regular meeting, the Town Commission heard a request from Mr. Henry Wahl, 1050 Bogey Lane, concerning fence height located within required street yard areas, and referred the issue to the Planning and Zoning Board to consider possible changes to the existing Zoning Code. He explained that currently in Section 158.152(A), Street Yard, it limited the height of walls and fences to three feet in the required street yard. He pointed out that the required street yard was required along any state, county, or town street right-of-way, and had been in the code since at least 1977. Mr. Schield noted that Mr. Wahl wished to address street yards that had double-frontage lots. He reviewed a PowerPoint presentation showing photographs of various sites on the island.

Chair Webb asked what would be the difference if a fence was placed inside the hedge along Gulf of Mexico Drive (GMD). Mr. Schield responded that would be staff's recommendation, if the board moved forward, to request a vegetative cover so they did not see the walls. Chair Webb questioned the setback that would be required. Mr. Schield suggested at least a five foot setback should be required to allow the vegetation to be planted and maintained. Ms. Zunz asked if Mr. Schield was discussing a fence or a wall. Mr. Schield commented that Mr. Wahl was requesting, and staff concurred, to allow an open fence. Ms. Zunz asked if the board made a recommendation would a landscape hedge be required in front of it. Mr. Schield responded that was what staff would recommend; require a "fairly significant" hedge that was 80 percent planted and 100 percent within one year of planting.

Mr. Symanski questioned the purpose of the ordinance and asked if it was for visual only and not for sound. Mr. Schield replied it was visual. Mr. Saivetz voiced concern as one of Country Club Shores' provisions was they did not allow chain link fences. He also noted his concern with the board getting involved in this issue and changing the code to expect a hedge, as he questioned who would be responsible for maintaining. Mr. Symanski asked if the fence would be only along GMD and not down the interior road.

Mr. Schield replied the proposal was for along GMD. Mr. Wild suggested the phrase 'double frontage' be referred to as 'multiple frontages,' because they were not speaking of only GMD. He also believed a three foot fence was inadequate height and he would advocate a five foot minimum.

Mike McAdaragh, president of Country Club Shores Unit V, commented they held a board meeting on December 16, 2010, and they discussed this issue with the following recommendations: landscape screening must be full and completely obscure the fence from view from the street at the initial point of the fence's construction; the screening must remain in place and provide full screening for the life of the fence; the type of fence material was restricted and no chain link, fabric, or wood style be allowed (prefer decorative metal or concrete block with a stucco finish); the height of the fence be limited to four feet; and do not obscure the canal views. He asked why the Town allowed someone to remove the existing screening and allow a view of the chain link fence to exist on Bogey Lane. He would like to see the homeowner install screening vegetation on the GMD side of the fence, rather than inside the fence.

Henry Wahl, Bogey Lane, explained his reason for the request was the need for a fence for security purposes. He began with a request for a security barrier for his pool as required by state statutes, and at that time he wished to move it out, but the Town setback requirements caused an issue for his lot.

Gerhard Stefandl, Bogey Lane, commented that his lot backed onto GMD, and at one time he had an eight foot hedge behind his home, but the homeowner association's landscapers decided to cut two feet off the top. He understood from staff that GMD was considered a residential lot, and that was the reason for the problem with the 20 foot setback. He explained that because the roadway was higher than the elevation of the backyards, the sound projection was a concern. He noted there were structures (three walled entrances to Country Club Shores) that currently existed that not only violated the height limitations of the current code, but also, if built on residential lots, would violate the setback requirements. He found it difficult to understand why those structures existed and also, why anyone would be concerned if he built a wall that had view isolation from the street.

Chair Webb asked the board if they wished staff to bring back an ordinance to consider changes to existing legislation. Ms. Zunz questioned the required height for a pool fence. Mr. Schield responded that under the Building Code the requirement was four feet. He provided for clarification that under single-family residential there was no requirement in the code for any type of vegetative buffering for fences and no material requirements for fences.

Mr. Symanski believed there might be an enforcement issue if the board drafted fence and vegetation requirements. He always thought that walls should have been allowed for lots along GMD. Ms. Zunz asked if the board was discussing three foot walls or 5-6 foot walls. Mr. Symanski responded he believed six foot walls would be needed for sound buffering. Ms. Zunz commented that she would not like to see six foot walls along GMD. Chair Webb asked how the board felt if the wall was screened so it was not seen. Ms. Zunz pointed out there were issues raised regarding maintenance. Mr. Saivetz suggested the following language: *"In the event of a proposed reconstruction of security fences and/or walls, they are permitted no closer than three feet from the lot line if a visible barrier of living vegetation, within said offset, completely obscures said wall at time of construction and maintained thereafter by the owner."*

He commented if there was an existing hedge, he saw no objection to placing a wall inside the hedge.

Mr. Wild voiced concern from a perspective of property rights, and if it was screened there should not be a restriction on the fence height. He would like to have the ability, if the wall was screened by plantings, that it could be as high as six feet. Ms. Goldner agreed with Mr. Wild. She did not have a problem with a wall with a limit of six feet in height. She believed a property owner had the right to protect their property from sound and anything else. Ms. Zunz noted she had a problem with solid walls. Chair Webb discussed sound impacts from a roadway, and believed with adequate screening and maintenance of that screening, she would not have a problem with a fence, but the homeowner would be responsible for the maintenance. She suggested that staff bring something back for the board to review. Mr. Symanski asked if the discussion was limited to properties along GMD. Chair Webb commented that she would be reviewing those properties that had multiple frontages on a major thoroughfare.

Discussion ensued on what types of properties should be reviewed. Chair Webb commented that she did not believe Harbourside Drive would be an issue, because it was covered by covenants and homeowner association restrictions. She suggested they look at properties that had multiple frontages, including GMD as one of the frontages; totally screened; and use of appropriate materials. Mr. Schield pointed out in regards to the walls, the condition or view could be different along with the color of the wall. Chair Webb noted that was the reason she suggested it be totally screened. Discussion took place concerning the height with a recommendation of six feet. Mr. Schield recommended a five foot setback from the property line to maintain the vegetation. Chair Webb suggested no chain link be allowed. Mr. Symanski questioned how the screening would be enforced. Mr. Schield responded it would be through a code violation. He noted they could require a special exception, but it would definitely require a building permit for documentation. Mr. Saivetz suggested that the barrier be three feet wide and maintained by the owner. Chair Webb agreed with the three foot suggestion.

AGENDA ITEM #4
CONSENT AGENDA

MR. WILD MOVED APPROVAL OF THE MINUTES OF THE NOVEMBER 16, 2010, REGULAR MEETING. MR. ALPERS SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: ALPERS, AYE; GOLDNER, AYE; SAIVETZ, AYE; SYMANSKI, AYE; WEBB, AYE; WILD, AYE; ZUNZ, AYE.

Setting Future Meeting Date

The next meeting was scheduled for January 18, 2011.

ADJOURNMENT

The meeting was adjourned at 11:18 am.

John Wild, Secretary
Planning and Zoning Board