

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

MAY 21, 2013

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

Members Present: Chair BJ Webb, Vice Chair Jack Daly, Members Andrew Aitken, Leonard Garner, Walter Hackett, Allen Hixon, Ken Schneier, George Symanski,

Members Absent: John Wild

Also Present: Maggie Mooney-Portale, Town Attorney; Kelly Fernandez, Town Attorney; Robin Meyer, Planning, Zoning & Building Director; Steve Schield, Planner; Alaina Ray, Planner; Jo Ann Mixon, Deputy Town Clerk; Donna Chipman, Office Manager

ADMINISTRATION OF OATH

Deputy Clerk Mixon swore new member Ken Schneier and reappointed members BJ Webb and George Symanski.

ELECTION OF OFFICERS

Election of Chair

MR. DALY MOVED TO NOMINATE BJ WEBB TO CONTINUE AS CHAIR OF THE P&Z BOARD. MR. AITKEN SECONDED.

MR. HACKETT MOVED TO NOMINATE ALLEN HIXON AS CHAIR OF THE P&Z BOARD. MR. SYMANSKI SECONDED THE MOTION.

THE BOARD VOTED AS FOLLOWS: AITKEN, WEBB; DALY, WEBB; GARNER, HIXON; HACKETT, HIXON; HIXON, HIXON; SCHNEIER, WEBB; SYMANSKI, HIXON; WEBB, WEBB.

Due to the 4 to 4 vote, the Election of Officers would be continued to the June meeting.

AGENDA ITEM #1
ORDINANCE 2013-19, COMPREHENSIVE PLAN AMENDMENT
FUTURE LAND USE ELEMENT (T-6 ZONES)

Pursuant to published notice, the public hearing was opened.

Robin Meyer, Planning, Zoning & Building Director, provided an overview of the proposed ordinance noting:

- The board previously approved the transmittal of the resolution to the Department of Economic Opportunity at their March 2013 meeting
- Adopted an amendment to Section 158.180, which was the 250 tourism units
- Amendments allow an applicant utilizing the site plan approval process to have access to an additional story and additional height that was allowed if they went through an Outline Development Plan (ODP) process rather than the site plan process
- Amends language in Policy 1.1.10 and adds language to the table in Policy 1.1.11, Table 1
- Preliminary language went to the state and was approved; this is final approval required by the board and Town Commission

Mr. Daly questioned the difference between the ODP process and the site plan process. Mr. Meyer explained that the ODP process was a land use process where the applicant could request deviations from the code and in order to get a land use approval, it was a much more in depth process that required review by staff, the P&Z Board, and Town Commission. The site plan process was straightforward and tried to be more aware of the needs of development and so a lot of waivers, or deviations, were built into the code. He noted it was designed to accommodate development in the T-6 zones, taking into consideration they were the one zone designed to accommodate tourist development. Mr. Daly pointed out the staff memo noted the proposed change was due to comments from the state, but the letter from the state did not indicate any comments. Kelly Fernandez, Town Attorney, explained that the comments from the state were part of the process. Mr. Daly questioned the rationale for the change. Mr. Meyer responded the rationale was to accommodate tourist development on the T-6 properties within Longboat Key.

Discussion ensued on the following issues:

- A question concerning Agenda Item 4, Proposed Ordinance related to Telecommunications, where there was a substantial definition for 'adverse visual impact,' and whether it applied only to personal wireless service development and not to the ordinance being discussed; it was a definition that was proposed to be added as it was not currently in the code
- The definition of 'adverse visual impact' did not apply to the current draft ordinance (2013-19)
- Concerning the first paragraph, first 'Whereas' clause, it stated it was worthwhile and if the applicant needed another story that it could now be approved; should

confine the conversation as to whether the board wished to grant authority to grant an additional story

- The proposed ordinance did not grant something, but granted the right for the Town Commission to consider an application
- There were two T-6 districts on the key
- Whether the ordinance was to allow the proposal for five stories in a T-6 zone to be presented by way of site plan approval, as opposed to ODP approval; limit was five stories for a maximum of 65 feet
- Whether the site plan approval was done at the staff level or board level; it would be reviewed by both the P&Z Board and Town Commission

Mr. Hixon pointed out that since the discussions were relating to site specific locations, he wished to note for the record that he, along with his band, had worked at all the locations being discussed. He asked if anyone had concerns with his ability to evaluate and vote on the issues to speak up, and if so, he would excuse himself from the discussion. No objections were noted.

John Patterson, attorney representing Ocean Properties and its affiliates, owners of Longboat Key Club, voiced concern with page 5 of 6 of the ordinance, last sentence, which read, "*in order to grant approval or approval with conditions, the town.....*". He noted that Judge Haworth had found issue with provisions in the zoning code that were very vague and ambiguous, and allowed subjectivity, and he was concerned that these particular criteria may be so vague and ambiguous that it might not withstand judicial scrutiny. One way to deal with it was to either replace it with a substitute provision that would allow the Town, in the land development regulations, to set forth the standards for determining whether the additional story would be granted, and would be more particular than health, safety, welfare, and public interest. The Town could also add an additional sentence, which stated, "*the Town shall in its land development regulations adopt further standards for determining...*". His concern was not with the substance, but having to do with concerns arising out of the litigation and Judge Haworth's determination.

Mr. Hackett asked if Mr. Spikowski had touched on this issue. Bill Spikowski, Spikowski Planning Associates, commented that the two clauses in the comprehensive plan amendment were very general and were items that Judge Haworth also expressed concern were too general. They were in Ordinance 2013-07, along with seven or eight other criteria. The code was currently specific, but in order to be effective needed the plan amendment to be consistent. He did not believe the last sentence proposed by Mr. Patterson was a problem, but he also did not believe it was essential, because the code was already in place and specific to meet Judge Haworth's concerns. Mr. Hackett asked of the two sentences, which would be preferred. Mr. Spikowski responded the way it was presented by staff was better. Attorney Fernandez explained that the paragraph being discussed was part of the Data & Analysis of the comprehensive plan, which was explanatory, but was not a Goal, Objective or Policy.

Mr. Garner believed if it was already in the code, then the language would be burdening the commission to have competent, substantial evidence as to whether a project was in the best interest, and then the health, safety and welfare. He suggested the language state, "the Town must find by competent, substantial evidence that the project was in the best interest of the Town," and remove "health, safety and welfare." Discussion ensued on whether the language should be modified and if there were concerns with removing the sentence.

MR. GARNER MOVED TO RECOMMEND APPROVAL OF ORDINANCE 2013-19 WITH THE REMOVAL OF THE WORDS, 'HEALTH, SAFETY AND WELFARE OF THE' IN SECTION 5 OF THE ORDINANCE, LAST SENTENCE OF SECTION IV.D OF THE SUPPLEMENTAL DATA AND ANALYSIS. MR. SYMANSKI SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: AITKEN, AYE; DALY, AYE; GARNER, AYE; HACKETT, AYE; HIXON, AYE; SCHNEIER, AYE; SYMANSKI, AYE; WEBB, AYE

AGENDA ITEM #2
ORDINANCE 2013-10, AMENDING SECTION 158.145
LOT, YARD AND BULK REGULATIONS

Pursuant to published notice, the public hearing was opened.

Robin Meyer, Planning, Zoning & Building Director, provided an overview of the ordinance noting:

- There was a footnote (j) added under the T-6 description for tourist districts and additional language at the bottom of the chart providing a description of that footnote
- The amendment would allow an additional story and height up to 65 feet that may be approved through site plan review under Section 158.180

Mr. Daly asked if the change related to a single building with fewer than ten dwelling units. Mr. Meyer responded that language was an excerpt from the code. The only change was the addition of Footnote 'J'. Mr. Daly noted that the chart in the staff report reflect the footnote under the multi-family category. Mr. Meyer pointed out that was in error and the footnote should be reflected under the Tourism category.

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

MR. GARNER MADE A MOTION TO RECOMMEND APPROVAL OF ORDINANCE 2013-10 WITH THE CORRECTION TO THE TABLE TO NOTE FOOTNOTE 'J' UNDER THE TOURISM CATEGORY AND NOT MULTI-FAMILY CATEGORY. MR. DALY SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: AITKEN, AYE; DALY, AYE; GARNER, AYE; HACKETT, AYE; HIXON, AYE; SCHNEIER, AYE; SYMANSKI, AYE; WEBB, AYE.

The board recessed from 10:11 AM to 10:20 AM.

AGENDA ITEM #3
ORDINANCE 2013-20, AMENDING SECTION 158.200
MODIFICATION TO OUTLINE DEVELOPMENT PLAN/PLANNED UNIT
DEVELOPMENT PROCESS

Pursuant to published notice, the public hearing was opened.

Bill Spikowski, Spikowski Planning Associates, reviewed a PowerPoint presentation and discussion ensued with Mr. Spikowski on the following:

- The addition of a definition for the term 'departure'
- Section 14 and whether 'waiver' was defined; it was defined now, but the description was expanded to note the type of waiver and which board granted it
- Section 8 and the overall density for the land; there was a need for clarification concerning comments about unused density
- If the Town created a MUC-4 district (Whitney Beach Shopping Center), what density options would be available and what options would there be to increase the density if it was not adequate; the Planned Unit Development (PUD) option was advisable for a new development with one owner who would master plan a project, but it would not be recommended for applying it to Whitney Beach, because it was ill-suited for a property currently developed
- Why should a referendum be required if the units were available
- Staff had reviewed the judge's decision and drafted the ordinance as a result
- Question as to whether someone wished to develop the land in stages; why was there a statute of limitations
- Discussed the requirements of a PUD and increasing density
- Suggestion that the ordinance be redrafted and bring back language that could clarify, and clearly outline, the rights of who was asking for the approval and the rights of the municipality
- Asked that Section 8 be rewritten with better defined language and provide three specific directions
- Section 10, standards for approval of departures, where, after the judge's review, several of the items were being deleted
- References to the most appropriate use of land were deemed too vague and were removed
- The new language provided clarification and was more precise, and the new standards were more ridged and more flexible
- Attempts to make clear on the additional height what factors should the Town be looking at

Mr. Spikowski continued with reviewing Section 10, noting the judge wanted the standards to be clear. The revisions were essential and required, because the judge determined if they were not in place, then the code was not valid. Mr. Symanski noted his concerns with items (B) and (C). Mr. Garner pointed out that anything proposed needed to be compatible with its surroundings. Mr. Spikowski explained that if they went with compatibility, then it might make it more restrictive. Mr. Hackett was not sure where 'mass' was mentioned in the document. Mr. Spikowski responded he had

considered suggesting that this section was not only about height, as they were also about mass, and he considered moving them into the previous section for departures.

Mr. Symanski asked if the items were being added because of the judge's decision. Mr. Spikowski explained the judge had determined the items were too lenient and needed to be stricter, and this was his proposal to try to make them somewhat stricter. Mr. Symanski suggested the wording be revised to state, "*the request for additional height does not adversely affect the use of adjacent, or nearby, properties.*" He believed using the word 'structures' was limiting, whereas the word 'use' would provide flexibility. He pointed out they could combine 'B' and 'D' and refer to adjacent or nearby uses.

Chair Webb recommended that Section 10, Items A-D, be brought back with suggested other language. Mr. Hixon referred to page 4, and the term 'existing only' noting he had not read it in a zoning ordinance, and believed it was referring to 'pre-existing legal uses.' Also, under 'gross land area' the word 'total' might be a better term. He discussed coastal mapping and that it should be specific, because the beach could be partially in common ownerships and partially in condominiums; the Town did not want to take the land rights away according to this mapping system that did not agree with the deeds. Mr. Hixon referred to page 26, Item 2, subsection (d). Mr. Spikowski commented that the section did not grant the right of allowing the public to use someone else's property for parking. Mr. Meyer noted that the Town Code did not allow parking on private property for another use, and if there was language in the document that allowed it, staff would correct. Mr. Spikowski mentioned that staff could clarify the language to state they were talking about public beach access parking.

Discussion ensued on the document on the following items:

- Page 13, 'binding concept plan' and the need to have correct licensed professionals within the state preparing these types of documents, and that there might be a need to increase the items that need to be reviewed
- Section 'p' needs to be expanded by staff; it was added to explain the difference between 'binding concept plan' and 'final site plan' (Mr. Spikowski would review to see if they need to be revised)
- The section stated 'engineered site plan,' but should be 'appropriate licensed professional' (staff will review and make changes if necessary)
- Page 17, Item 7, definition for 'beach' or 'shoreline'
- Section 21(a), was it 'street setback' or 'front yard setback'; Longboat Key used the term 'street yard'
- Page 4 of 36, 'existing use' and if it was something that the commission placed on a piece of property or was it automatically there by virtue of its status; it was noted the designation would automatically be there
- What would happen if the code changed subsequently and made a property non-conforming; where would that leave the property
- Section 11 and the reason why it was reduced to half acre; a number of things were only allowed through the PUD process, and the problem was the existing code had a very large minimum size for PUDs

Mr. Symanski asked if each condominium that was currently referred to as 'legal non-conforming' would be considered, under the proposal, as an 'existing only use.' Mr. Spikowski responded the ordinance would only qualify something as 'existing only' when its zoning district list of uses stated it was existing only or pre-existing legal use. Discussion ensued on its application to condominiums, and the judge's requirement for the MUC district (Islandside) that the Town had to include a list of what was allowed.

John Patterson, attorney representing Longboat Key Club, commented that he had prepared a detailed set of comments on the proposed ordinance; reviewed the MUC-1, MUC-2, and MUC-3 descriptions; discussed and interpreted the statute on referendums (F.S. 163.3167) and noted that the referendum provisions within the Town Charter had been ruled illegal by the legislature; and, reviewed the judge's order related to Islandside. Mr. Aitken asked in the context of the new law, would this change the rule so a referendum was not required to change from a T-3 district to a T-6 district to gain the higher limit on the building. Mr. Patterson believed that was correct. Mr. Meyer explained that it would require a comprehensive plan change and then a rezoning, but would not require the public vote. Mr. Aitken voiced his concern that it would eliminate a large part of the public participation. Mr. Patterson pointed out that the proposed change would also require findings of fact in connection with development orders. Judge Haworth's decision did not require findings of fact, but it was up to the Town whether they wished to recommend it.

Mr. Patterson referred to page 33, MUC-2, under 'bulk', and commented that there would be a need for a departure to get the maximum height. He suggested it should be 12 and 130, which was currently allowed. Mr. Symanski noted it did not grant the right. Mr. Patterson noted it would have to go through the ODP process. Mr. Symanski requested that section be clarified, because he believed when reading it that a departure was required.

Chair Webb noted that staff would make changes to the proposed ordinance and bring it back to the June meeting for review.

Mr. Garner left the meeting at this time.

The board recessed from 12:02 pm – 12:26 pm.

Chair Webb informed the board that the Mar Vista applications were possibly coming back to the board for review. Mr. Meyer explained that the applications would be resubmitted to the P&Z Board for review due to an error with required public notice, so in order to provide due process, the applications will be sent back through the review process.

Chair Webb noted the committee formed to review the issue of boat trailers would include Commissioners Patricia Zunz and Lynn Larson, along with P&Z Board Members Andrew Aitken and George Symanski. Mr. Symanski requested that he be replaced due to a conflict. Mr. Schneier volunteered to serve on the committee.

AGENDA ITEM #4
PROPOSED ORDINANCE RELATED TO TELECOMMUNICATIONS

Robin Meyer, Planning, Zoning & Building Director, commented he would be reviewing the basic concepts that he was trying to encapsulate in this ordinance. One of the items was to amend Section 158.006, Definitions, to add other definitions. Mr. Aitken asked when it was stated that visual impact was already in the Code was it in the code in the same text. Mr. Meyer responded it would be in the definitions. Chair Webb commented that the concept, and larger issue, raised at the Town Commission meeting was how to provide for the health, welfare, and safety of the citizens, with adequate cell phone coverage, which was at the top of the list.

Mr. Meyer continued with his overview:

- Discussed the amending of Section 158.200 and 158.201 to add purpose and intent, along with a hierarchy of personal wireless service facility preferences
- Camouflaged towers would require site plan review and special exception
- Identified two sites that belonged to the Town for siting towers: Public Works Facility and Public Safety Facility (properties zoned Institutional were areas that cell towers would also be permitted)
- Lattice towers were prohibited by the code
- Applicant has to show that the less impactful technology cannot be done
- Economics would not play a part in the determination

Mr. Aitken commented there was an applicant that wished to construct a tower, but due to opposition, it fell through. He noted the economic viability of a project was the baseline for any proposal, and there might be some incentives provided by the Town. Mr. Symanski questioned the word 'hardship' and its definition. Mr. Meyer replied that part of that would include there was no service. Mr. Symanski commented that was the Town's hardship, not the vendor. Mr. Meyer referred to page 4 of 16 of the draft language concerning hardship. Mr. Symanski suggested eliminating the language, *"including but not limited to hardship that would be incurred by the applicant."* Mr. Aitken noted that Item 2 on page 4 of 16 had the same effect and should also be deleted. **There was consensus to delete this item.**

Mr. Hackett questioned the current status of the Longboat Island Chapel application. Mr. Meyer responded there were no pending applications within the Town's jurisdiction. Mr. Schneier believed the Town was stating they did not want cell towers on Longboat Key, so he was not sure if that was the intent of the ordinance. Mr. Meyer explained that staff went to the Town Commission for direction, and their direction was the concept of a tower was the least desirable form of system.

Discussion ensued on the following points:

- Page 1 and 10, 'adverse visual impact' was already defined in the ordinance, but there was a strong view that it needed to be changed; also, as it relates to personal wireless service facilities, was there an 'adverse visual impact' for other types of antennas

- Staff would like more direction concerning comments about visual impacts
- Requested Mr. Symanski to draft language on 'adverse visual impact' and forward to staff
- That all the other definitions were facility-related, and whether there was a need for an 'adverse visual impact' definition
- That it was very difficult to legislate aesthetics
- It was clear that the existing code was written to discourage towers, which was the reason for the long definition of 'adverse visual impact,' but there were only two places identified in the revised code and they only related to towers; suggested to review and see what context it was in and possibly strike the term, but it might be sufficient to leave the other substance around that term

Mr. Meyer continued with reviewing a PowerPoint presentation discussing Distributive Antenna Systems (DAS). He commented that if a tower was permitted, when the application was submitted, there would be an overwhelming opposition from the residents. Chair Webb voiced concern with the statement that the cost was a factor. Mr. Schneier asked about development of an ordinance that did not totally discourage towers, but made them feasible under certain standards. Mr. Meyer noted there was a provision in the code to allow towers on top of existing buildings to go up to 15 feet.

The following questions were discussed:

- Whether a regular tower was permitted; only a camouflaged tower was permitted, but would require a special exception and site plan approval by the board and Town Commission
- What was the approval process for a DAS; only a building permit was required, but there were details, such as height, landscaping, setbacks, etc, required to mitigate potential impacts.
- Has the Town made any analysis as to whether the Town-owned sites could provide service, or could they not be developed due to zoning constraints; staff looked at from the fall zone and believed the TE Connectivity Study reviewed the Public Works location
- Did staff come to any conclusions with respect to feasibility of construction on the Town sites; according to the TE Connectivity Study the sites would work
- What about zoning constraints; the applicant would be required to go through the special exception and site plan processes.

Mr. Hixon raised the following issues:

- questioned why the definition of monopole, or personal wireless service facility height, were deleted, and believed there was not a problem to include
- was still not sure of the difference of health, safety, and welfare (page 3 of 16) as to whether the property was Town-owned or privately-owned; ownership should not be an issue
- also referred to page 4 of 16 and noted there was a long length of time between an application submittal and a response, and asked if those items could be reviewed to shorten the time

- on page 5 of 16, Item M, referenced a 'thorough plan' and he asked what the definition for 'thorough plan' was
- on page 7 of 16, paragraph 7, "impede the view from any window" and asked why it was germane to anything
- on page 9 of 16, was there a conceptual approval step prior to final construction detail plans being submitted; it might need to be phased so it was more realistic for someone to come in with a proposal

Mr. Hixon left the meeting at 1:30 PM.

Mr. Symanski discussed camouflaged towers and noted that if there were facilities that could be visualized, and were acceptable to the residents, they would not be allowed by the language in the ordinance.

Mr. Schneier left the meeting at 1:35 PM.

Mr. Aitken referred to page 6 of 16 and asked if the Public Works facilities would meet items 1-3 and (c). Also, on page 8 of 16, it discussed the dimensions of the boxes for DAS and he was not aware of where the dimension came from. Attorney Fernandez responded the language was from the existing code, but was rearranged. Mr. Aitken suggested deletion of 'adverse visual impact' and rely on the hierarchy to accomplish the same thing.

Accursio Sclafani, Gulf of Mexico Drive, did not understand why the Town would want to site a cell tower near a residential area. He discussed that the TE Connectivity Study indicated the opening of more commercial districts for shorter solutions might be better. He believed the Town could resolve the issue with a shorter tower with less impact on surrounding residents; he would look at something shorter in proximity to the problem area.

Mr. Aitken noted that during the Town Commission workshop the Mayor had commented about the Town making an investment, but there was not a section in the draft ordinance that talked about that issue. They might want to include a section that incorporated that discussion. Mr. Meyer pointed out he would have to review how to write code to allow partnering, because he believed it would be a policy. Mr. Symanski commented the Town would be the co-applicant. Chair Webb suggested the board communicate to the Town Commission that the board would encourage the Town to be a co-applicant. Mr. Aitken commented that he would like to hear a presentation from one or more stakeholders; if the Town Manager was going to ask someone to build a tower, or pay for the service, then he would like to discuss it.

George Spoll, Fairway Bay, provided the history of the telecommunications issue on the island, pointing out the Town was dealing with an economic issue, location issue, and height issue. Mr. Hackett questioned the number of DAS systems that would be required. Mr. Spoll responded he believed 24 were needed, all at the north end of the island.

AGENDA ITEM #5
CONSENT AGENDA

MR. DALY MOVED APPROVAL OF THE MINUTES OF THE APRIL 16, 2013, MEETING AND SETTING THE FUTURE MEETING DATE FOR JUNE 18, 2013. MR. HACKETT SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: AITKEN, AYE; DALY, AYE; GARNER, AYE; HACKETT, AYE; SYMANSKI, AYE; WEBB, AYE.

There are no meetings scheduled for July and August.

ADJOURNMENT

The meeting was adjourned at 1:54 PM

BJ Webb, Chair
Planning and Zoning Board