

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

MARCH 18, 2014

The regular meeting of the Planning and Zoning Board was called to order at 8:30 AM.

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

Also Present: Maggie Mooney-Portale, Town Attorney; Kelly Fernandez, Town Attorney; Alaina Ray, Planning, Zoning & Building Director; Steve Schield, Planner; Donna Chipman, Office Manager

AGENDA ITEM 1
DRAFT ORDINANCE AMENDING CHAPTERS 157 AND 158
MODIFICATION TO THE OUTLINE DEVELOPMENT PLAN PROCESS

Alaina Ray, Planning, Zoning & Building Director, provided a brief background of the drafting of the ordinance and explained that Bill Spikowski, Spikowski & Associates, would be providing the review. Mr. Spikowski provided the following explanation of the judge's decision:

- The judge's Order noted that there were issues with the Town's regulations and some items needed to limit the amount of discretion given to the Town Commission when deciding on a MUC zoning, and it should be as constricted as the authority they delegated to the Planning, Zoning & Building Director
- He had tried, in working with the Town Attorney and Town Staff, to comply with the judge's Order, but in a less rigid way, and one that reserves a reasonable amount of discretion for the Board when reviewing ODP plans, but provides clearer criteria that would meet the judge's Order, but not tie the Board's hands
- The work was separated and the first part was addressed through adoption of an ordinance to set up a system for the 250 tourism units so they could be assigned without any departures in the T-6 districts (Ordinance 2013-07)
- The second part (Ordinance 2013-20) would clarify departure standards, provide land uses for MUC districts, address lot sizes, and address setbacks for MUC districts

Mr. Garner asked why the decision was made to provide flexibility and an area of discretion, instead of having a code, which in his experience, with the more specifics the better, and if someone wished to obtain a departure, they should submit what was

required. He believed the code should clearly define what the Town wanted. Mr. Spikowski responded the difficulty was if in the community there were gulf front parcels, it was easy to state what the regulations should be; however, when dealing with master plan communities, a lot of the problem with keeping flexibility was dealing with the final stages of build-out of the master plan community. The other situation was the Comprehensive Plan had set density levels for existing buildings that were so often below the actual density level the buildings were built at.

Alaina Ray, Planning, Zoning & Building Director, noted the ordinance was considered a 'stop-gap' measure. There were properties that were approved by the Town via the Outline Development Plan (ODP) process, but could not make any changes to their property without an amendment to their ODP. She noted because of the judge's Order, the Town had no process to allow them to make amendments. The Town's long term goal was to completely replace the ODP process.

The following comments were discussed:

- New development and re-development were two different items; why not write a redevelopment code for areas pursuing a redevelopment of an existing use
- Most of the island was developed and most redevelopment would be on existing developed properties; staff would be pursuing code changes in the future that would address redevelopment
- The ordinance would provide temporary relief to property owners approved under an existing ODP while staff reviewed a long term process through a new code and Comprehensive Plan
- Planned developments provided flexibility so why would there need to be a special code for redevelopment
- The Town had responded to the judge's Order to revise the codes over a year ago, and the Board was now reviewing the same materials that was not acceptable by the Board at that time; it should have been amended as requested by the judge
- It was noted that no work had been done on the ordinance from May 2013 through September 2013 and staff was not sure why the previous administration had stopped the work
- If something was to be approved, then it should be simple, direct and not redundant; it should not have the definition of 'lot width' in two sections, and should have a method of measuring a 'lot width' that was appropriate and correct
- Whether it was better to define the code and to minimize, and perhaps, eliminate, the need for departure standards

Mr. Spikowski continued reviewing the ordinance, specifically page 32, noting there was not a list of permitted uses. He commented that the judge had requested clarification of the uses for MUC districts. Discussion ensued on the following:

- Whitney Beach Shopping Center and its overlay for mixed use
- That lot dimensions were referenced in two places in the code (in the Zoning Code and Subdivision Code) with two different definitions; Mr. Spikowski would prefer they be placed into one section

- Concerning tourism, on the MUC properties, any new tourism units, other than the ones in the 250 tourism units pool, required a referendum (judge's Order), because of the way the Comprehensive Plan explains tourism versus residential density

Kelly Fernandez, Town Attorney, explained the way the Comprehensive Plan was structured in 1984 was the use of the terms for 'units' and 'tourism units' made it look like there were no assigned tourism units to the MUC-2. Discussion continued on the definition of tourism units and their assignment; redevelopment of Whitney Beach and if they would use this process; that the MUC districts did not apply to any other part of the island (only Islandside); the Town's rebuilding code did not allow more units; in the past definitions of residential types were vague; and, what process would be used for other condominiums outside the MUC districts for rebuilding. Mr. Spikowski discussed the term 'existing only'. He referred to the top of Page 6 of the draft ordinance where it renamed the concept 'pre-existing legal use' and clarified its relationship to non-conforming uses, but noted the concept was still the same.

Mr. Hixon asked if an existing non-conforming commercial use, if legal, could be expanded. Mr. Spikowski noted where the use table specifically stated 'pre-existing uses in that district,' then yes, if in the MUC districts. Because it was illegal to expand a non-conforming use, Mr. Hixon suggested inserting that it only applied to MUC districts in that section. Mr. Symanski believed it was a narrow definition to take care of several uses in Islandside, but it now sounded like it expanded. Mr. Spikowski responded the hotel and restaurant in MUC-2 and the restaurant in MUC-1 was the extent of where it applied to as this code was presented; it could apply in other areas by changing the code to be specific. Mr. Aitken commented that earlier Mr. Spikowski showed the district uses chart and it referred to residential districts, and if it only applied to MUC, then why it was covered. Mr. Spikowski explained the lot sizes in those districts were the basis for the new lot sizes in MUC-2, and he wished to show the board where they came from.

Attorney Fernandez reviewed the 1984 Comprehensive Plan and the description of the MUC districts (previously known as PD, GPD and NPD). Mr. Aitken noted that he would like to have Exhibit 'A' enlarged.

Discussion ensued on the following:

- Alternative 2, relating to the assignment of units and that Alternative 3 was middle ground and related to the approval of units (top of page 9, Section 8)
- Belief that language needed to be revised noting the former Einisman property (next to Publix) had assigned units; it would be a policy question as the code had always been silent on the issue
- That the notice issue needed to be addressed; if someone wished to do something in a MUC district, then there needed to be a provision to notify other owners
- The amount of density available in the Bay Isles PD
- That in Alternative 2 and 3, it referred to exceeding overall density, but the table in the memorandum used the term 'assigned units' for the one developed; it was

noted that assigned units meant those that had been assigned to a certain parcel and have been constructed

- Whether it made a difference if the approved PD utilized all the space in the district or less; the ordinance did not state they had to spread out to fill up everything

Mr. Aitken pointed out that in the MUC districts, they were primarily residential in nature, but when reviewing Alternative 1 – 3, the one choice should indicate to existing residents how the property was developed. Mr. Spikowski explained that they would get into legal problems when there was a certain subset voting on the issue. Mr. Aitken believed the existing residents should have substantial input on how their MUC would be developed.

Mr. Daly referred to Alternative 1 and asked if that would be eliminated subject to referendum. Mr. Spikowski replied yes. Mr. Daly asked if Alternative 2 would vest the ownership of the residual units with the developer. Mr. Spikowski noted it implied that. Mr. Daly commented that Alternative 3 was middle ground and that the district had a preference to be allocated through the ODP process. Mr. Spikowski replied correct. Mr. Daly asked which would be Mr. Spikowski's recommendation. Mr. Spikowski believed Alternative 1 would be his recommendation. Mr. Symanski asked if the Town had a legal opinion on taking rights away (Alternative 1). Attorney Fernandez explained that the section was not clear, but she was working on a memorandum addressing the legal ramifications on the alternatives, specifically for Alternative 1 and whether it would create a challenge to taking rights.

The Board recessed from 10:23 am - 10:34 am.

Chair Bishop noted that where she previously lived, density belonged to the property. She believed the question was if the density belonged to the property at Islandside and Bay Isles, which development did it belong to. Another question was whether density would get fully used on those properties at the time of development; who owned the development rights; and, how the Town wished to address it in this part of the ordinance. Mr. Hackett commented that in a PD or PUD, the density went with the land, but it was not a zone; what they had for the density was permitted uses and whether they were allowed. He pointed out that Islandside was residential, but wished to change to commercial, which was the issue.

Mr. Garner noted the comment related to 'open space' had to be clarified as to whether it was part of the development. He discussed that the Board had raised an enormous amount of issues and concerns. He suggested the ordinance be sent back for another review and ask that staff bring back modifications that addressed the concerns that were raised. **There was not a consensus to send back the ordinance for modifications.** Discussion ensued on ownership of units.

Mr. Symanski commented that Alternative 1 invited a lawsuit and was contrary to how the Board addressed the Longboat Key Club application; Alternative 2 would not be acceptable, because it put the developer in the 'driver's seat;' and Alternative 3 needed improvement, but once developed, they would have a reasonable use – they would be required to convince the Town, which would put the Town/residents in the 'driver's seat.'

He believed Alternative 3 would be the item to work on. Mr. Schneier agreed with Mr. Symanski. He noted that Alternative 1 did not address whose rights and also it included the referendum process, which was not legal. Alternative 2 provided a problem with prior units that were approved being memorialized; and, Alternative 3 made the most sense, with some revisions. Mr. Daly and Chair Bishop agreed with both Mr. Symanski's and Mr. Schenier's comments.

There was consensus to go with Alternative 3 with modification to the language to 'flush out' the other issues, such as ownership and notification. It was requested that staff take Alternative 3 and address those issues that need more language and clarification.

Mark Walsh, Longboat Key Club, mentioned they had been recently working with staff and Mr. Spikowski, and it was their goal to find a way to build something. He believed the density existed and belonged to the person who was developing land. It was their goal to have a regulation in place that allowed them to move forward with development.

The following issues were discussed:

- Importance that there was something more than only notification to existing residents about development
- That the density allocation was not a matter of ownership, because it was believed it could not be determined; it would be the developer or the applicant that had the right to the density units
- If there was a right to the units, then what would be the difference between that and ownership; anyone that had ownership interest in the property in a PUD, or aggregation of ownership interests, could make a proposal under Alternative 3 with notice to anyone else in that zone
- That, at some point, there was a responsibility of the neighbors and residents to be aware of what was going on in their neighborhood

Ms. Ray explained that when there was a large development proposed, on PUDs specifically, a developer or applicant was required to have at least one neighborhood meeting with each adjoining or adjacent neighborhood association at their expense. A staff member would attend to make notes on feedback, but it placed the burden on the applicant to meet with those associations to determine the issues; it helped to resolve major issues prior to a public hearing. Mr. Symanski commented the ordinance should include something about once the applicant received ODP approval, it was presumed a reasonable use, and in order to get an amendment they would have to show the amendment was furtherance of health, safety and welfare, good for Longboat Key, and not detrimental to the neighborhood. Mr. Garner commented that as far as allocation of development rights, he believed once the development was completed, it was complete, unless someone cleared the site and started over.

Mr. Spikowski continued reviewing the changes in the ordinance noting: 1) the last item in Section 10 included revised criteria for building height departures in the MUC-2 district; and, 2) the language on Page 34 in the table was revised.

There was consensus to continue with the departure language on height issues along with the language in Section 10.

Mr. Walsh commented that he did not believe height was the major issue they were having difficulty with as they will need the height in order to build a good project for Longboat Key Club.

Ken Metcalf, Director of Planning with Greenberg Traurig, representing Longboat Key Club, voiced their concern, because the Comprehensive Plan allowed 12 stories with 130 feet for tourism uses. He believed it described the process for allowing that, and that the policy guide that was adopted was to encourage high-rise buildings to create more open space. He felt strongly that the Town should maintain that process and standard; they need to “draw a line” between the height standard and the process one had to go through for approval of a development plan.

Mr. Symanski agreed with the concern with the word ‘overwhelm,’ and that they wished to consider height. He suggested it should state “not detrimental to the neighborhood” or “compatible with it.” He commented if the proposed Town Center was in a MUC-1 district, the Board did not know if they would be “foreclosing” the potential height for the Town Center, or whether it would impact tourism units. Mr. Garner agreed with the philosophy, but believed one of the most consistent words that was used was “compatibility,” which was more specific than ‘overwhelm.’

There was consensus to use the word ‘compatibility.’

Mr. Hackett questioned the process an applicant would need to go through to exceed five stories and 65 feet. Mr. Spikowski replied it would require a Comprehensive Plan amendment. He commented that other issues being reviewed were legal uncertainties with the Town’s referendum process, pending changes to the Zoning Board of Adjustment, the outcome of this meeting, and the outcome of the March 28th public workshop on this ordinance.

Mr. Spikowski noted there was language that was discussed on how long an ODP amendment was valid, which was drafted with a five year limitation, but he would be elaborating on that item; he was trying to find language that was less strict. Mr. Symanski questioned why the ODP would expire. Mr. Spikowski explained that after a certain point, if a project had not been done, the Town policy might have changed and warrant a re-examination of the project; it was not that it would automatically expire, but there would be a discretionary step on the Town’s part to extend it. The ODP was similar to a site plan approval. Mr. Garner asked if they were discussing if someone had approval, and if they had not started a project within a certain timeframe, then the approval would expire. He suggested that if someone was not building for that length of time, a lot of issues might arise, and the Town could provide for extensions, but they should retain the option, if there was extenuating circumstances, to be able to re-review the project after five years.

Mr. Aitken suggested that Item 17(d), on Page 25 of the ordinance, needed work as the title was inconsistent with the language. Mr. Symanski provided the following comments:

- On page 4, transient guests or tenants, he believed it had to be 30 days and asked why it referred to 'tenant'
- On page 6, under Variance, asked if that was the law in Florida; it said nothing about "hardship approaching confiscation"
- Whether staff was comfortable with not requiring Findings of Fact (Mr. Spikowski noted one of the challenges against the Town was because the ordinance did not require Findings, the ordinance was illegal; however, the judge stated the ordinance did not require it, but if they did not do it, the Town would be more subject to challenge; he was okay with not requiring it)
- On page 17, Item (9), what was meant by "the harmonious evolution of that pattern" (Mr. Spikowski noted the judge's Order said he wanted a standard on how the Town was going to decide of the allowable uses in the MUC districts of what goes where)

Chair Bishop suggested that Mr. Symanski think about his comments and provide language to staff before the next hearing.

Mr. Symanski also pointed out on Page 18(D), Departures, that it should include 'if applicable.' Mr. Garner suggested the word 'compatibility.' Mr. Spikowski responded that the problem with the word 'compatibility' was it made it more vague, and the Board was requesting clarification on items.

There was discussion on the following items:

- On page 21(H), why it included five years
- Whether MUC-1 should include tourism units as the way it was currently proposed would not allow those units in the Town Center
- That in order to allow tourism units in the MUC-1 would require a Comprehensive Plan amendment
- On page 6, Item (6), Waiver, what would be an example; the last line referenced the section of code that delegates

Staff would be making revisions to the ordinance and bringing it back to the next meeting for an advertised public hearing.

P&Z BOARD MEMBER COMMENTS

Mr. Daly discussed that the Board had not been involved in planning activities, and it was his thought to discuss and try to define what was the substantive planning role of the P&Z Board. He commented the caveat was that the best way was to have periodic public joint Town Commission / P&Z Board discussions. He explained the strategic planning process was straightforward – the Commission establishes a mission, vision and objectives, and the P&Z Board was assigned by the Commission, based on priorities, certain substantive planning activities. He believed a meeting with the Commission would "flush out" a specific planning role for the Board.

Chair Bishop suggested that Mr. Daly draft a memorandum to provide an outline that could be included in the April agenda packet. Mr. Hixon encouraged that discussion, as it had been attempted previously, but discouraged by the attorneys; he believed it was very important. Mr. Schneier commented that the Board needed to review what planning functions had been given to the ULI Implementation Advisory Committee.

CONSENT AGENDA

Mr. Symanski referred to Page 6 of the minutes, last paragraph, and asked that it be amended to state he said 'he had no problem.' Also, on the second line a 'd' should be added to the word 'suppose.'

MR. WILD MOVED APPROVAL OF THE MINUTES, AS AMENDED, OF THE JANUARY 21 2014, MEETING AND SETTING THE FUTURE MEETING DATE FOR APRIL 15, 2014. MR. HIXON SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: AITKEN, AYE; BISHOP, AYE; DALY, AYE; GARNER, AYE; HACKETT, AYE; HIXON, AYE; SCHNEIER, AYE; SYMANSKI, AYE; WILD, AYE.

Mr. Metcalf asked that they be allowed to provide timely comments on the ODP ordinance and a chance to interact with the Board. They had discussed the idea of using the departure process for height control, but as an alternative, they suggested to include locational criteria to ensure compatibility.

Chair Bishop asked that all comments be included with the April P&Z Board packets so the Board has time to review and also that anyone submit comments to staff by April 7th.

ADJOURNMENT

The meeting was adjourned at 11:48 AM

John Wild, Secretary
Planning and Zoning Board