

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

NOVEMBER 18, 2014

The regular meeting of the Planning and Zoning Board was called to order at 9:05 AM.

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

Members Absent: Walter Hackett

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

AGENDA ITEM 1
NONCONFORMING PROPERTIES AND POLICY DISCUSSION

Alaina Ray, Planning, Zoning & Building Director, outlined the process for the discussion, along with subjects that would be discussed on future meeting agendas.

Chair Hixon commented that the board was advised to request if anyone had an electronic device to ensure they were turned off during the hearings. Ms. Bishop commented she took notes on her iPad and had been advised by counsel that it was appropriate to do so. Maggie Mooney-Portale, Town Attorney, discussed that it was fine to take personal notes, but cautioned if there was anything beyond that, specifically texting or emailing. She asked that board members use their best judgment. She pointed out that if the notes were shared, they become public record, but if they were not shared, then it was considered entirely personal. Concerning whispering while on the dais, Attorney Mooney-Portale explained it could potentially be considered a violation of the Sunshine Law if members were discussing business at the dais.

Discussion ensued on:

- Not seeing a distinction between iPad notes and pencil notes – it was sharing notes that led to an issue
- The Town Attorney noting that she was not suggesting anyone was doing anything improper, but it was her job to make the members aware of the law – no passing notes as it would be considered public record and members were urged not to do that
- If a member was awaiting a personal call, should they have their phone on vibrate and then get up and leave the meeting; the Sunshine Law and public records laws did not regulate incoming telephone calls

Jerry Murphy, Town's Planning Consultant, began his presentation noting that staff was beginning the "overhaul" of the Town's Comprehensive Plan. He continued with reviewing a PowerPoint presentation and a color illustration denoting the nonconforming properties within the Manatee and Sarasota Counties portion of Longboat Key.

Mr. Aitken questioned if the map included commercial and tourist zoned properties. Mr. Murphy responded the map was provided by Commr. Phill Younger and at this time, staff had not verified the information. Mr. Symanski commented that Mr. Murphy noted that non-conformities were problematic and asked for him to expand on that statement; was it a 'given' that the Town liked every use existing or were they going to study each one to determine whether it was non-conforming for a reason. Mr. Murphy responded there were some policy issues that needed to be decided. There were some uses that might have gone away that the Town might decide they want, or there might be some they did not want to see. It was a policy decision that the board would need to recommend to the Town Commission.

Discussion ensued on the following issues:

- That there were 40 units behind Cedars East that were not identified on the map and should be reflected on future maps
- the map color legend and a question concerning duplexes- whether going to reflect the smaller family units; would be two-family units on single-family zoned properties
- that the map represented uses, and not the way the structure was constructed
- Town Charter changes related to allowing an opportunity to expand the Town Commission's ability to loosen those density constraints, without referendum, and not running afoul of the statutory prohibition against referendum changes to the Comprehensive Plan
- Reviewing and addressing nonconformities, with regards to the provisions within the Comprehensive Plan addressing involuntary destruction and voluntary reconstruction
- policy considerations – guiding document provisions in the Vision Plan; provisions in the resolution; current policy issues and potential options to address the policy issues
- Ordinance 2007-48, which provided a referendum related to density – implementation had not taken place

Mr. Garner addressed the issue of voluntary reconstruction commenting that if someone was going to do voluntary reconstruction, it would be to enhance the property to be more compatible with current standards. They were not going to be able to keep the same density and the same volume – they did not go together. Mr. Murphy responded they could, but they would keep the same thing they had. Ms. Ray explained this was the current policy, and the language that was underlined was problematic.

Mr. Murphy commented there would need to be the same level of outreach to the public once the Town decided what they wished to do. He continued with reviewing the policies in the Comprehensive Plan that would need to be revised.

Mr. Murphy reviewed a new policy staff was recommending: ***“For lawfully existing structures that do not conform to the future land use density and building cubic volume limits provided elsewhere in this Plan, the Land Development Code (may/will) specify incentives, provisions, and standards to encourage post-disaster redevelopment to conform the existing density.”***

Ms. Bishop discussed that her experience using the word ‘may’ was not good for land development or staff, and urged the members to consider the word ‘will’ for the standard. Mr. Garner commented using the word ‘may’ provides the same flexibility. It did not bind anyone, and he suggested using the word ‘may.’ Mr. Symanski agreed with using the word ‘may.’ Ms. Ray provided the distinction on the level of approval required – when there was a Comprehensive Plan change, it went before the state to review, but a land development code change did not require a state review.

Mr. Schneier referred to Policy 1.1.5 noting there were strict restrictions on what could be done that were built into the documents . He mentioned there should be a standard where you say to the Town Commission you will create standards. He would not leave as ‘may’ because of the vagueness. Mr. Symanski asked what the policy meant and referred to the last sentence and suggested it be revised to state, “to conform to the existing density.” Ms. Bishop asked why the board would want to state ‘may.’ Mr. Garner commented that the documents were not intended to be rigid; this portion was only referring to other documents that would be created.

Mr. Symanski asked if this was Comprehensive Plan language. Mr. Murphy replied yes. Mr. Symanski discussed using the word ‘will’ versus ‘may’ noting there were no incentive standards provided; the zoning code was suppose to follow the Comprehensive Plan. Mr. Murphy explained the document would go to the state, and when it was returned, the board would review the land development regulations (LDRs). The code provisions would be developed by the board and then forwarded to the Town Commission. The policy would order the Town Commission to adopt standards in the LDRs. Attorney Mooney-Portale explained the process noting that the Town Charter was the ‘constitution’ of the Town, and it was more difficult to change, because it required a referendum. The Comprehensive Plan was mandated by the state and was a document that was governed by the legislature. The next level would be the LDRs; the provisions went through the P&Z Board and Town Commission, but were easier to change.

Mr. Schneier commented that using the word ‘may’ would have generality and suggested the word ‘future’ be removed so it referred to those that *“did not conform to land use density.”* Mr. Murphy noted that the Future Land Use (FLU) density could change over time, but he did not expect it to change much on the island. Mr. Schneier suggested the word ‘conform’ be replaced with ‘*be consistent with.*’

Attorney Mooney-Portale commented the LDRs had to be consistent with the Comprehensive Plan. Mr. Symanski noted if the plan used mandatory language, the ordinances must conform to it. Attorney Mooney-Portale replied yes. Mr. Symanski pointed out that if it stated ‘*will*’ the ordinances must conform to it. Mr. Daly agreed with

using the word 'will,' because it mandated the LDRs to do certain things. He was not reading it as a mandate. Attorney Mooney-Portale explained there might be ways to revise the language to address circumstances. Mr. Murphy suggested the board use the 'will' language and eliminate everything following 'redevelopment.'

There was a consensus to use the word 'will' and eliminate everything following 'redevelopment.'

Mr. Aitken voiced concern with dropping the concept of no increase in density. Mr. Murphy commented the policy would be silent on density; the board was addressing density effecting policy, but not suggesting that existing density was always going to be with those standards that seek to conform. Chair Hixon requested that staff revisit the ordinance and bring back modified wording.

The board recessed from 10:23 am to 10:30 am.

The board continued with discussion of Policies 1.1.5(a) and (b), and 1.1.6, along with:

- A unified policy that discussed the non-conforming issue on the island (*The Land Development Code will specify standards for redeveloping lawfully existing property that does not currently conform to the future land use density and building volume limits provided elsewhere in this Plan—and may establish standards to conform property with lawfully existing nonconforming density.*)
- The need to retain the opportunity for the government to respond to the conditions that prevail
- The suggestion to use the word 'will'
- The land development code changed over time, and the board routinely had changes brought before them for discussion; it was hoped they would not use the word 'may.'

Mr. Symanski believed that the first use of the word 'will' was fine, but voiced concern with the second use of 'will'. He commented if the plan language said 'will' the Town could not amend the LDRs, contrary to the 'will' language. Mr. Garner agreed. Mr. Schneier agreed with the idea of eliminating Policy 1.1.5(a) and (b), and including 'will' in the first sentence. Ms. Bishop agreed with the suggestion and noted it might help resolve concerns from the previous discussion. Mr. Schneier reiterated there should be a single Policy 1.1.6, and delete Policy 1.1.5 (a) and (b). Mr. Murphy agreed with including the word 'will' in the first sentence.

MS. BISHOP MOVED TO DELETE POLICY 1.1.5 (a) and (b) AND INCLUDE THE WORD 'WILL' IN SECOND SENTENCE IN THE NEW POLICY. MR. WILD SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: AITKEN, AYE; BISHOP, AYE; DALY, AYE; GARNER, AYE; HIXON, AYE; SCHNEIER, AYE; SYMANSKI, NO; WILD, AYE.

Policy 1.1.10 and Table 1

Mr. Murphy explained that Table 1 set forth all the Future Land Use density limitations, and noted staff would need to prepare additional mapping and analysis, and bring it back to the board for review.

Mr. Garner commented in keeping with the concept of the Town Center, signage laws should be revisited and revised to allow appropriate signage. He asked if the Town moved forward with the Town Center, how would it be identified. Ms. Ray explained staff was working with Tindale-Oliver on the Town Center, and they would be scheduling the first public workshop on December 11, 2014. The workshop will introduce the public to the project and Tindale-Oliver, and bring them up-to-date on the historic background of the Town Center. This would give the Town input on what the residents would like to see. She mentioned that staff had been working with the Code Enforcement Officer (CEO) on the signage, and the CEO had several suggestions for revisions.

Mr. Aitken commented he would like to schedule discussion on short-term rentals in residential areas. Ms. Ray explained that enforcement was handled by the CEO, and there was a Code Enforcement Board meeting in December where the CEO would be discussing his enforcement process. She pointed out that Code Enforcement was no longer under the Planning, Zoning & Building Department, but was now under the Police Department.

Mr. Symanski asked with regard to zoning, was staff contemplating removing residential in tourism zones. Ms. Ray responded staff had not addressed that at this time as that discussion would be held during the LDR changes.

Mr. Murphy informed the board staff was anticipating providing an overview of the LDR revisions at their December meeting, along with inviting Professor Martin Gold from the University of Florida to address the board. Mr. Symanski asked if staff was contemplating more than just two tourism zones. Mr. Murphy replied staff would bring back options.

CONSENT AGENDA

The next meeting was scheduled for December 16, 2014.

COMMENTS FROM THE PUBLIC AND PRESS

Larry Grossman, St. Judes Drive, discussed changing the Charter provision for density by planning versus referendum. He discussed the non-conforming definition commenting there was no policy that defined what was an area's potential development or redevelopment.

ADJOURNMENT

The meeting was adjourned at 11:05 a.m.

John Wild, Secretary
Planning and Zoning Board