

**TOWN OF LONGBOAT KEY
PLANNING AND ZONING BOARD
MINUTES OF REGULAR VIRTUAL MEETING
OCTOBER 20, 2020**

The regular virtual meeting of the Planning and Zoning Board was called to order at 9:15 AM by Chair David Green.

Members Present: Chair David Green; Vice Chair Phill Younger; Secretary Penny Gold; Members David Lapovsky, Jay Plager, Debra Williams

Also Present: Maggie Mooney, Town Attorney; Allen Parsons, Planning, Zoning & Building Director; Maika Arnold, Senior Town Planner; Tate Taylor, Planner; Savannah Cobb, Deputy Town Clerk; Donna Chipman, Senior Office Manager

**AGENDA ITEM 2
ADMINISTRATION OF OATH**

Deputy Town Clerk Cobb administered the Oath to new P&Z Board Member, Jay Plager.

**AGENDA ITEM 5
ELECTION OF VICE CHAIR**

Chair Green informed the Board that due to the resignation of member Ken Marsh from the Board, the Board needs to appoint a new Vice Chair. Chair Green thanked Mr. Marsh for his years of service and leadership on the Planning & Zoning Board and noted that he will be missed.

MS. GOLD MOVED TO NOMINATE DEBRA WILLIAMS AS VICE CHAIR.

MR. LAPOVSKY MOVED TO NOMINATE PHILL YOUNGER AS VICE CHAIR.

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

**BASED ON A VOICE VOTE, MR. YOUNGER WAS APPOINTED AS VICE CHAIR:
GOLD, WILLIAMS; GREEN, YOUNGER; LAPOVSKY, YOUNGER; PLAGER,
YOUNGER; WILLIAMS, YOUNGER; YOUNGER, YOUNGER.**

**AGENDA ITEM 6
APPROVAL OF VIRTUAL MEETING PROTOCOLS AND PROCESS**

Pursuant to the Town Manager's Executive Order dated September 8, 2020, all in person meetings of the Town's Planning & Zoning Board have been temporarily suspended due to the ongoing threat from COVID-19. The Town Manager's Executive Order also provides that until further notice any scheduled Planning & Zoning Board meetings or hearings will be conducted using remote/virtual meeting technology. The public is encouraged to view and participate in all remote/virtual meetings and hearings, including the Planning & Zoning Board meetings.

In anticipation of today's meeting, and to ensure that the public has been provided as much access as possible, the Town has made public access to today's meeting and hearings available through generally accepted communication media technology means. First, the Town is live streaming today's PZB meeting through the Town's website. The Town does not typically stream PZB meetings on the Town's website, but we are doing so to afford the public as much viewing access as we can while the threat of COVID-19 still remains. The Town is also providing public access and encouraging public participation through Zoom. Zoom affords the public the ability to view or participate in the meeting by phone, by smart phone, tablet or computer. Zoom is free to anyone that chooses to use this medium. Finally, the public was also afforded an opportunity and option to submit written comments on the matters before the Board via email.

Detailed instructions on how to view or participate in today's virtual hearings has been posted on the Town's website, advertised in newspapers of general circulation, and was included in the notices to interested parties.

The Town also developed an online Request to Speak form (very similar to what the Town uses during in person meetings) for any individual that wants to participate in today's proceedings. Anyone that timely filled out a Request to Speak form online is permitted to participate in today's proceedings through Zoom. As mentioned above, anyone wishing to submit comments has been afforded the opportunity to submit such comments in writing in advance of today's proceedings to Donna Chipman. Ms. Chipman has, in turn, distributed all public comments she received to the Board and those comments will be part of the hearing record. If requested by the person submitting comments, Ms. Chipman will read those comments into the record during the appropriate agenda item.

The Town has made great efforts to afford more public access to the Town's virtual meetings and hearings than is typically provided when the Town conducts in person meetings at Town Hall. For example, the Town does not typically live stream video PZB meetings, nor does the Town typically read into the record public comments during the proceeding. These are just a few examples of how the Town is trying to provide more access to the public during these virtual proceedings.

The Town's virtual meeting process is consistent with how other local governments in our region and state are conducting public meetings while COVID-19 is still a threat. While we hope that in person meetings will resume in the near future, Governor Desantis' Executive Orders authorizes local governments to continue to hold virtual public meetings until at least November 1, 2020.

Allen Parsons, Planning, Zoning & Building Director, explained that after November 1, 2020, it is anticipated that the Town will resume in-person meetings, and as a result the Town is currently taking measures to install protective barriers and establish safety protocols, including temperature check equipment, requiring masks, setting up the room for social distancing, etc. He noted that the in-person meetings were subject to change based on COVID-19 and health requirements.

Maggie Mooney, Town Attorney, informed the Board that the Town was reviewing the process of conducting 'hybrid' meetings after November 1, 2020, which will require a

physical quorum of the Board present in the Commission Chambers, but also affording a non-quorum of the Board to appear virtually. She asked if any Board members were not comfortable coming physically into Town Hall to inform staff of their concern as soon as possible. Based on the current members, there will need to be at least four members present in Town Hall. Chair Green reiterated that if there were Board members who would be more comfortable appearing virtually to let staff know soon so they could evaluate if there was a quorum available.

**AGENDA ITEM 7
PUBLIC TO BE HEARD**

Opportunity for Public to Address Planning and Zoning Board

No one wished to address the board.

**AGENDA ITEM 8
|CONSENT AGENDA**

MR. YOUNGER MOVED APPROVAL OF THE MINUTES OF THE SEPTEMBER 15, 2020, REGULAR MEETING AND SETTING THE NEXT MEETING FOR NOVEMBER 17, 2020. MR. LAPOVSKY SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.

**AGENDA ITEM 9
A. ORDINANCE 2020-14, ZONING TEXT AMENDMENT, AMENDING CHAPTER 158
ADDING AND UPDATING ZONING CODE GRAPHICS**

Pursuant to published notice, the public hearing was opened.

Maika Arnold, Senior Planner, provided an overview of Ordinance 2020-14 with:

- reviewing a PowerPoint presentation
- noting the ordinance does not contemplate or change existing language in the Zoning Code, but only adds graphics to make it more user-friendly

Mr. Plager referred to Section 2, Page 3, Section 150.030 (K), and questioned the language “guided by controls.” Mr. Parsons responded when it was drafted into the code, the original drafters provided multiple different controls for multi-family development, and this stood out to ensure that future Town Commissions did not have authority to provide waivers. Concerning the language regarding ‘guided by’, when development involved departures, they also refer to multi-family and tourism uses, and if they were proceeding with a PUD, then all the other standards have the ability to be modified by the Town Commission.

Discussion ensued between staff and Mr. Plager regarding:

- Page 50, Section 26, Swimming Pools, with Mr. Plager commenting that it differed from text in the Zoning Code; staff noted that section of the Code was recently amended, and Mr. Plager may have an older version of the section
- Page 57, Canal View, Subsection C and how it related to the Canal View provision in Section 158.094 (C)(5) with staff noting that it is partially a conflict as

there is a Special Canal View Preservation section that is applicable in the Country Club Shores neighborhoods

- Mr. Plager's suggestion to add language to state, "unless specified elsewhere in this ordinance"
- Whether there is 'control' language so if there was an inconsistency with the language and graphic; if there is, then the language controls, and the graphic was for illustrative purposes

Attorney Mooney suggested that the prevailing interpretation language be incorporated as a "Whereas" clause for the interim. She explained the intent could be made known in the adoption ordinance, but ensure a continued interpretation throughout the code moving forward in an amendment to Section 158.003.

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

MS. GOLD MOVED TO RECOMMEND APPROVAL OF ORDINANCE 2020-14 AS AMENDED. MR. YOUNGER SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: GOLD, AYE; GREEN, AYE; LAPOVSKY, AYE; PLAGER, AYE; WILLIAMS, AYE; YOUNGER, AYE.

AGENDA ITEM 9

B. ORDINANCE 2020-16, ZONING TEXT AMENDMENT, AMENDING CHAPTERS 33 AND 158, MEETING NOTICE PROVISIONS

Pursuant to published notice, the public hearing was opened.

Tate Taylor, Planner, reviewed the ordinance noting:

- it amends Chapter 33 and Chapter 158 of the Town Code
- current notice provisions require delivery by certified mail to owners of property within a 500-foot radius of the property
- the amendment would allow private mail delivery as an option, as long as documentation of delivery confirmation can be obtained and provided by the provider (i.e., FedEx, UPS, DHL)
- this will address challenges with delivery to property owners outside of the United States
- provides alternatives if there are impacts to the US Postal Service (USPS) that limit certified mail delivery options

Discussion ensued between staff, the Board and Town Attorney on:

- Whether the language indicates a required percentage of owners that have to receive the notice; staff noted there was no percentage and the language only refers to mailing certified and there is documentation/receipt that it was obtained
- The quasi-judicial process and that providing notice is a fundamental part of any individual land use process

- The ability to utilize electronic delivery such as email
- Whether staff had checked with other jurisdictions to see if they have modified their language to recognize other forms of notice, other than certified mail
- The issue was raised recently with the Town's experience with the pandemic, and a project applicant was unable to provide USPS notice to affected owners outside the United States

Chair Green commented he was personally in favor of modifying the language to not only restrict to private mail delivery, but suggested it state, "or other delivery where documentation and delivery confirmation could be obtained and provided." Mr. Plager agreed with the revision, because mail is understood as having specific reference to USPS. He noted that the third 'Whereas' clause should be modified as it currently indicated the Town was providing clarification, which was incorrect, as the Town was not clarifying, but providing new provisions. Chair Green agreed and suggested the 'Whereas' clause be revised.

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

MR. PLAGER MOVED TO RECOMMEND APPROVAL OF ORDINANCE 2020-14 SUBJECT TO THE FOLLOWING AMENDMENTS: 1) MODIFY THE LANGUAGE TO INCLUDE, "OR OTHER DELIVERY WHERE DOCUMENTATION AND DELIVERY CONFIRMATION COULD BE OBTAINED AND PROVIDED," AND 2) REVISE THE THIRD 'WHEREAS' CLAUSE TO INDICATE THE TOWN WAS PROVIDING NEW PROVISIONS AND NOT PROVIDING CLARIFICATION. MR. LAPOVSKY SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: GOLD, AYE; GREEN, AYE; LAPOVSKY, AYE; PLAGER, AYE; WILLIAMS, AYE; YOUNGER, AYE.

AGENDA ITEM 9

C. ORDINANCE 2020-17, ZONING TEXT AMENDMENT, AMENDING CHAPTER 158 ZONING DETERMINATION NOTICE PROVISIONS

Pursuant to published notice, the public hearing was opened.

Tate Taylor, Planner, reviewed a PowerPoint presentation and discussed the ordinance revisions with the Board pointing out:

- Section 158.012 provided for notice, to owners within 500 feet of the subject property, subsequent to the P&Z Official making a determination
- The ordinance was being amended to only require the president and secretary of an association to be noticed, which is similar to the notice language provided in other sections of the Zoning Code for Town Commission, Planning & Zoning (P&Z) Board and Zoning Board of Adjustment (ZBA)
- Provides opportunities for neighbors to seek appeal of decision to the ZBA

Mr. Younger was not comfortable with the amendment to restrict to only president and secretary of an association, because he believed there was no guarantee that it was provided to the unit owner and every owner should be notified. Ms. Williams agreed with Mr. Younger's comments.

Further discussion took place on:

- that condominiums and cooperatives are a legal constituted entity under Florida law and hold a fiduciary responsibility to its members
- the language was consistent with other types of notices throughout the Town Code and how the Town has treated condominiums and cooperatives for years in terms of receiving notice
- other examples of legal notice that would be provided to a condominium, that were within 500 feet of the site, included site plan or other development approvals
- the scope of the issue and how many letters were requested; staff noted they rarely receive Zoning Determination requests
- staff's explanation of the difference between a Zoning Determination Letter and a Zoning Verification Letter
- suggestion that publication of a legal notice in the newspaper should be required in either case
- concern with other areas of the Town Code where property owners are being deprived of notice of upcoming zoning events
- that a Zoning Determination Letter has less impact versus a site development plan, or construction activity taking place on a site; there should be consistency in the Town Code and what the notice is to condominiums, be it this method or directly to each unit owner

Ms. Gold pointed out delivery to the president and secretary provided two opportunities for condominium unit owners to be notified and seemed a reasonable process for Zoning Determination Letters. Mr. Younger believed there was a need to notify as many people as possible, and he was not in favor of simplifying the notification process of the Town. Chair Green asked if Mr. Younger was taking the position that he would want staff to revisit the notice requirements related to condominiums for other land use decisions, where this method being proposed was currently being utilized in more intensive land development decisions than the Zoning Determination Letter. Mr. Younger responded it would be a good idea. Mr. Lapovsky and Ms. Williams agreed with Mr. Younger.

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

Chair Green believes the consensus is to provide additional notice to all unit owners versus the general notice to only the president and secretary. He recommended that staff share, with the Town Commission, the discussion on revising the other sections of the Town code to require notice to all unit owners.

MR. YOUNGER MOVED TO RECOMMEND DENIAL OF ORDINANCE 2020-14 AND THAT STAFF INFORM THE TOWN COMMISSION OF THE BOARD'S RECOMMENDATION TO REVIEW OTHER SECTIONS OF THE TOWN CODE TO REQUIRE NOTICE TO ALL UNIT OWNERS. MS. WILLIAMS SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: GOLD, NO; GREEN, AYE; LAPOVSKY, AYE; PLAGER, NO; WILLIAMS, AYE; YOUNGER, AYE.

Mr. Plager noted that he was in favor of the first part of the motion; however, he disagreed with the second part as he was not comfortable voting on provisions that were not before the Board.

AGENDA ITEM 9

D. ORDINANCE 2020-18, ZONING TEXT AMENDMENT, AMENDING CHAPTER 158 SCRIVENER'S CORRECTIONS

Pursuant to published notice, the public hearing was opened.

Tate Taylor, Planner, provided an overview noting:

- Staff found scriveners errors in various sections of the Zoning Code
- Errors mostly consist of minor cross reference citations directing the reader to other sections of the Zoning Code
- Cross-references were mistakenly not updated at the time of the Zoning Code update in 2019
- The proposed ordinance would provide for the correction of these errors found in Sections 158.030 (E) (6); 158.060 (C); 158.082 (A); 158.062 (C);

Chair Green commented the pagination was difficult to follow and requested that all tables be shown together and not split onto separate pages. Mr. Younger agreed with the Chair's comments concerning the splitting of tables.

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

MR. YOUNGER MOVED TO RECOMMEND APPROVAL OF ORDINANCE 2020-14 AS WRITTEN. MS. GOLD SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: GOLD, AYE; GREEN, AYE; LAPOVSKY, AYE; PLAGER, AYE; WILLIAMS, AYE; YOUNGER, AYE.

AGENDA ITEM 10

WORKSHOP DISCUSSION: COMMISSION DIRECTION TO FURTHER CONSIDER ORDINANCE 2020-07, AMENDING CHAPTER 158.098(D), DAYLIGHT PLANE AND SINGLE-FAMILY RESIDENTIAL STRUCTURE BUFFERING REQUIREMENTS AND AN OVERLAY DISTRICT CONCEPT FOR SINGLE-FAMILY REDEVELOPMENT

Allen Parsons, Planning, Zoning & Building Director, provided an overview of the Town Commission's direction discussing:

- The background on discussions with the P&Z Board and Town Commission
- That the Town Commission was returning the Ordinance to the P&Z Board to further review consideration of refinements to the ordinance and its provisions for privacy guidelines and standards (Section 158.098); and, the concept of Overlay Zoning Districts
- At their September 14, 2020 Regular Meeting, the Town Commission chose not to incorporate recommended changes to the Daylight Plane requirements

Discussion ensued with the Board and staff on:

- Suggestion to use the word 'mitigate' versus 'shall be controlled' in Section 158.098(E), because in some areas it may not be possible to prevent someone from looking into a side yard
- How the Town made the determination that the new property owner made every effort to hold the sight line
- If someone chose to appeal a decision, where would the appeal be heard; staff noted it would be heard by the Zoning Board of Adjustment (ZBA) in a quasi-judicial hearing
- Would the adjacent property owners be notified of a building permit on the adjacent property; staff pointed out there were no notification process in place for building permits
- Whether there should be notification of adjacent property owners, in these unique circumstances where they had to go through an enhanced permit review process
- That if there were criteria in the Town Code to establish with the applicant, and if the applicant disagreed with the Town Official's decision, they could appeal to the ZBA, which would result in notification to surrounding property owners
- There were mechanisms for property owners to weigh in on a project, and the Board was considering additional legislation to allow staff to enforce more stringent regulations on an applicant
- If someone was not satisfied with the ZBA decision, they could appeal to the circuit court
- Concern with telling an owner what they should do with their property and that notifying the neighbors a building permit application was issued could open the Town up for litigation
- Concern with dictating designing structures to accommodate older structures
- Section 158.098 and suggestion to remove language related to 'building design and construction materials'
- Understanding that the Town Commission has accepted the wording recommended for Section 158.098 (E); it was noted that the Town Commission was requesting the P&Z Board revise the enforceability of the standards so they continue in the future

Chair Green suggested the P&Z Board should take their time reviewing and recommending revisions, and asked if the Board was agreeable with placing further discussion on a future agenda as workshop discussion related to the standards and guidelines. Mr. Younger agreed with removing certain sections and bringing back discussion. He recommended staff bring back the discussion, but break it down into sections as it was a very long narrative.

Discussion on Overlay Districts:

Mr. Parsons explained what an Overlay District was and how it worked. Mr. Younger advised caution with Overlay Districts as it might cause issues if created. Ms. Gold agreed with Mr. Younger.

Chair Green recommended staff come back with the challenges, and articulate why staff, and the Board, believe creating an Overlay District is not advisable to move forward with. The Board needed to provide the Town Commission reasons why the

P&Z Board did not agree. He commented a second approach might be to create a mechanism where a neighborhood could organize, create standards, and present to the Town through a quasi-judicial process.

Attorney Mooney requested an opportunity to weigh-in on the standards as there were legal implications when local governments impose regulations on vested rights, particularly with respect to the Bert Harris Act. She recommended staff examine the possibility of a neighborhood privately imposing deed restrictions, or covenants, that impose regulations that take the government out of it.

Mr. Plager commented an overlay was a mechanism in which you can impose certain standards particular to that area, and it could also be accomplished through a rezoning. He said they would still have to decide what the rules and regulations would be imposed under that overlay just as they would a rezoning; overlays would be helpful in special circumstances.

Staff noted they would bring back workshop discussion at the November meeting.

AGENDA ITEM 12 STAFF UPDATE

Allen Parsons, Planning, Zoning & Building Director, provided the following update to the Board:

- Next meeting will be held in a 'hybrid' format
- A hearing on a Special Exception application for Harry's Continental Kitchens restaurant
- Requested if any Board members needed to have their Town Code books updated to please bring them to the Planning, Zoning & Building Department for staff to review

AGENDA ITEM 13 ADJOURNMENT

The meeting was adjourned at 12:31pm.

Penny Gold, Secretary
Planning and Zoning Board