

**PLANNING BOARD
MEETING**

November 19, 2009

Call to Order

Pledge of Allegiance

Roll Call

PRESENT

Ron Holehouse
Martin Lott
Will Jacoby, Chairman
Linda Chaney

NOT PRESENT

Don Breitweiser

ALSO PRESENT

Vice Mayor Al Halpern
Karl Holley, Community Development Director
Catherine Hartley, Planning & Zoning Department

Chairman Jacoby announced that this is a Special Meeting regarding amendments to the Comprehensive Plan and then turned the Meeting over to Karl Holley.

Linda Chaney asked the Board to discuss sending a formal letter to the City Commission requesting that the Board have legal representation at the Board Meeting so that the Board could be more effective and not have to put things off.

Chairman Jacoby stated that several members of the Board have mentioned this to the Commissioners and he suggested that each member again discuss this issue with the Commissioner and Mayor who appointed him/her.

Mr. Holley then stated the purpose of the Meeting is:

ORDINANCE 2009-35 "clarifying" amendments to the Comprehensive Plan

For the benefit of the residents in attendance, Mr. Holley read Ordinance 2009-35 out loud.

Mr. Holley pointed out to the Board that this is simply a Comprehensive Plan Amendment in the same manner that has been considered previously. The fact that it is being brought forward as part of an effort to settle ongoing litigation does not procedurally effect the nature of the Board's consideration or constrain its ability to review and recommend on the matter. The Board is free to act under its own Charter and provide guidance to the Commission as to whether you think these amendments are appropriate, in whole or in part; you are free to recommend modifications. Mr. Holley asked that the Board understand that these things are the result of on-going negotiations and if they are changed, one party or the other may find those changes objectionable. The Board's task today is to simply review and provide a recommendation to the Commission, whatever that recommendation may be.

The Commission cannot consider the amendments unless and until they have been brought before the Planning Board, as required by the Land Development Code. It is important to understand that the City Commission is free to modify these amendments in accordance with public comments, in accordance with the Board's recommendations or in accordance with other considerations, but they have to do that as a consequence of the public hearing that they hold. These amendments could not be modified in the interim such that a different set of Amendments was brought to the Commission on the 30th of November than was presented to you here today.

Mr. Holley stated that this is the standard process. Even though there are external complications related to the fact that this is associated with the settlement negotiations for ongoing litigation, the process of reviewing and approving these Comp Plan amendments is specified by law and does not change.

Linda Chaney asked Mr. Holley if the Board's review of this document, even though it may not be the exact document, is close enough to follow the law, in your opinion. Mr. Holley responded by saying this will be the exact document. What you are looking at will be brought forward to the City Commission on the 30th of November with your recommendations, comments and observations. You need to separate the issue of settlement negotiations from the process of amending the Comp Plan.

Vice Mayor Al Halpern stated that the Commission has not looked at this document. The Commission is dealing with a settlement document that mentions these things but it doesn't specify how those things are actually worded and put into the Comp Plan and that's what he thinks this Board needs to concentrate on at this point. Are we saying it right and is it going in the right paragraph, and so on.

Chairman Jacoby asked for general comments and Linda Chaney stated that as much effort that is being put into this by everyone, she doesn't see anywhere that this is an assurance that whatever is agreed to is actually going to happen in the short and long term. If the Board makes these changes in this document, and six months from now, a

year from now, the Commission decides we want to make these changes, it does not have to go back to the residents. These parties can agree to anything, to get everybody to say yes and let's just move forward and everybody be happy and then two weeks later reverse the whole thing. If there is some assurance somewhere that this is not going to happen, I would like to see that. If there is not anything in here, then she has suggestions for that.

Martin Lott suggested to Ms. Chaney that the Board look through the document and go through the process.

Catherine Hartley stated that this is an amendment to the Plan. If this is passed by this Board, the Commission and the voters, by DCA, the PTC and all of that, it's in the Plan. If the Board wants to repeal it, they have to start over again.

Mr. Holley stated that these Comprehensive Plan Amendments are part of or may become part of a comprehensive settlement agreement with respect to ongoing litigation that has been negotiated or that we are in the process of negotiating. In fact, there is a settlement agreement that has been drafted that very clearly and very specifically obligates the City to do certain things in the same manner that it obligates the litigates to do certain things. The entire settlement agreement is not the subject of this public hearing and it is not the issue that the Board is supposed to be advising the Commission on at this point. The settlement agreement includes significant changes to the Land Development Regulations, as well, which also have to come before the Board at some point for consideration, as well as other conditions that require the parties to that settlement agreement to undertake certain actions at certain points. The settlement agreement is, in fact, enforced under the authority of the circuit court. There is a judge that says you violated the settlement agreement and here is what your punishment is going to be. While Ms. Chaney is correct in saying that this is subject to change, because the Comp Plan is always subject to change, there is no way you can carve this in stone and say absolutely will never, ever change but the point is there are numerous components to the settlement agreement that are intended to insure that this is properly enacted and you can be sure that the legal counsel for Dr. Pyle and Mr. Cadora are very thoroughly reviewing these things to make sure that there aren't any loopholes and that their clients, in fact, get out of the agreement what the agreement says.

Mr. Holehouse stated to Mr. Holley that there are three instances that it can be changed, i.e. by the voters, by the Commission and by something else, but it cannot be changed by the Commission without public hearing. Mr. Holley said no, it cannot. It has to be reviewed and approved by the various authorities. Mr. Holehouse said he thinks Linda's driving point is that she wants to make certain that the citizens of this community are made aware before the Commission can vote on a change.

Linda Chaney said no, that's not her concern.

Chairman Jacoby asked Ms. Hartley to proceed.

Catherine Hartley then presented the proposed amendments, as follows:

Ms. Hartley said that the first thing she wanted to point out is the change to the future of _____ map. When Ordinance 2008-15 was adopted, there was clearly a scrivener's error in the map because there are policies throughout the document that say that the preservation line is that line which is defined by the State coastal construction control line and anything _____ of that is _____, so we're correcting that error with the map in the packet given the Board. So the map that's in the current Plan does not show the preservation line, this map does.

Page 11, **Policy 2.1.7** is being deleted because the policy basically says that if you have existing residential temporary lodging units, you don't have to meet density and that's a bad policy so it's being deleted.

Page 12, just shows how the Policies are re-numbered based on the deletion of that policy.

Page 15 starts with **Objective 2.5** and shows changes to that Objective as well as **2.5.1 and 2.5.2**. This says that if you have a structure that is non-conforming by density, intensity or use, you are protected against catastrophic loss. In the event you do have catastrophic loss, you can rebuild and you can rebuild to a greater square footage to allow for ADA standards and height can be increased, not above the maximum height in the district, but if you have to elevate to base level elevation. Also says that you can re-build accessory structures if they were in existence as of October 29th.

Karl Holley stated that the height can be increased of the re-built structure to account for the difference between grade and base level. In doing so, they still cannot exceed the maximum height limitation of the zoning.

Ms. Hartley stated that those districts that don't have height in the Comp Plan can apply for a variance.

Page 21, goes back to what we were saying about the preservation line, it very clearly states that the preservation line refers to the State CCCL not the city's Coastal Construction _____ setback line. And it also goes on to say that things that are allowed beyond that line are things that are already in existence grandfathered. You can put a tiki hut or a _____ beyond that line.

Linda Chaney asked why we would encourage accessory structures if we are saying that we really don't want them there. Why not just sunset it as opposed to allowing them to

apply for a hardship variance to re-construct it? Why not just sunset any construction in that area?

Page 23, **Policy 3.1.2**, just says that the City is going to follow it's own regulations and the _____ regulations when it comes to coastal construction.

Page 26, **Policy 5.1.2**, refers to the drainage ordinance. We have regulations in our Comp Plan and Land Development Code and the Code of Ordinances; all have flood control and drainage regulations. This particular Policy references a document that we're not really sure what it means.

Karl Holley said that the plan is that those drainage regulations are not contained solely in one document or one section of the City Code so referring to the Ordinance may be somewhat misleading.

Page 43, **Policy 2.1.6**, basically says that the densities, intensities and heights that are contained in the Plan referring to the re-development district are maximums.

Pages 64 & 65, III, is basically deleting a Policy that says that the property owner _____ could not also be charged an impact fee in addition to _____ to the Community Improvement Fund. Impact fees and the Community Improvement Fund are two different things. If they have impacted the system, they are going to have to pay impact fees at such time as we actually adopt them so that is deleting that Policy. This is so we can't charge them both.

Chairman Jacoby asked if there was a way to lock in these impact fees. Will the settlement agreement lock those in so that those fees are...

Karl Holley said he understands that there is actually a provision or language in the proposed settlement agreement that requires the City to engage the services of a consulting engineer or consulting planner to properly structure the impact fee system including the Community Improvement Fund for implementation. The point is that the City has not determined at this juncture whether the fee structure that is contained in the Comprehensive Plan is actually consistent with state requirements for the imposition of the impact fee and should it prove not to be, then obviously it's going to have to be modified and part of the settlement agreement is that one of the things that the litigants have insisted upon is that the City expend appropriate funds to have that properly reviewed so that it is legally implementable and defensible.

Page 67, under **B3**, the words "as may be amended from time to time in accordance with the City Charter" are deleted.

Page 68, under **Objective 1.2** for the Gulf Boulevard Redevelopment District, the Policy is saying that some character districts within the Gulf Boulevard Redevelopment District that do allow for residential and some of them don't. The Policy is being changed to say that instead of prohibiting residential, where in other Policies of the Plan they are allowed, this is saying that residential is discouraged _____ other Policies that limited density versus the density is greater for hotel rooms in some instances. Rather than have a conflicting policy in the Plan that says residential is prohibited and this other Policy says it's allowed; we're clarifying that issue.

Pages 75 & 76, reference is made to the beach access provision. It says that if you are going to re-develop you have to put in a beach access and it's going to be 10 feet wide and it's going to have 5 feet of accessible space, with a minimum length of 5 feet.

Linda Chaney stated that it does not say if you are going to re-develop; it says "any new building". Christine Hartley went on to read "when any re-development for temporary lodging uses of a parcel or abutting parcels under _____ plan abutting the gulf beaches, increases in building height in the _____ resort district, the landowner shall dedicate, improve and maintain public beach access."

Linda Chaney continued reading "an average of 10 feet, a minimum of 5 feet, or that required by Florida _____ Code if any **new** building is nine stories or taller." It was decided to strike the word "**new**".

Martin Lott went on to read "if any building is five or more stories above structured parking". If it's not above structured parking, it doesn't apply, and why not.

Ms. Hartley said they could strike "**above structured parking**". They agreed to strike "**above structured parking**".

Ms. Hartley pointed out that this policy also allows the property owner to _____ in lieu of providing the access, they can

Ms. Chaney asked if there assurances that the beach accesses that are there remain there And that this Plan does not give them a way to eliminate those accesses, even if it's through purchase.

Mr. Holley stated that this Plan does allow them to eliminate.

Ms. Hartley stated that what it says in the Plan is that if you are re-developing, you have to give beach access. But if you do not want to give the beach access, you can pay the City fair market value of whatever that access is supposed to be and the City can do what it wants with that money, either improve the existing beach access that the City already owns. City access; not improve someone else's private property that you use for your

homeowner's association access. Real public access. That money can be used to improve the access that is already there or possibly purchase a new beach access from somebody. That would be public access.

Ron Holehouse made a recommendation that states the Board supports beach access to the highest level.

Page 77, **Policy 2.4** is new and it states "where practical, useful, public and private beach access shall be encouraged and pursued in coordination with trolley or bus stops _____ pedestrian path."

Page 172, **Policy 1.3.3** says that the City is going to pursue impact fees. We already have a division in our Land Development Code that discusses impact fees. It gives the City the statutory authority to levy them but right now in Division 41 we haven't actually set any fees.

Karl Holley explained that it is very clear the City *shall* assess and implement community improvement fees in the community redevelopment district. The concern of the litigants was making sure that a community improvement fund was actually implemented which is why we are going through the process of determining how to appropriately, legally and defensively implement it.

Mr. Holley emphasized that the City, as structured in the current policy language of the Plan, doesn't know that that specifically meets all the requirements of state law with respect to implementing impact fees which is why we are having it reviewed. The point is that should there be some problem with the language of the Plan, our obligation would be to modify the language of the Plan in order to implement it.

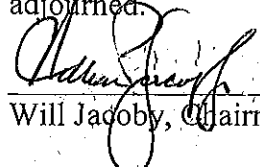
Chairman Jacoby asked for public input, to which there was none.

A motion was made by Martin Lott to recommend adoption of the amendments, specifically the deletion of the word "new" in **Policy 2.1** on pages 76 & 82 and the deletion of the words "above structured parking" on page 82; to recognize the need of support to beach access at a high level; and that the settlement agreement has assurances that those agreements be honored.

The motion was seconded and approved by unanimous voice roll call vote.

ADJOURNMENT

A motion was made, seconded and carried by unanimous vote that the Meeting be adjourned.



Will Jacoby, Chairman

ATTEST


Theresa McMaster, City Clerk