PLANNING BOARD
MEETING

November 18, 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

Karl Holley, Community Development Director
Catherine Hartley, Planning & Zoning Department

ORDINANCE 2009-33

Karl Holley advised the Board that the City is required by Florida Statute to update the schedule of capital improvements in the capital improvement element of the Comp Plan on an annual basis. The proposed update presented here both amends the content with respect to any capital expenditures meeting the One Hundred Thousand ($100,000.00) Dollar annual threshold that have been approved by the Commission subsequent to the previous update as well as dropping the one year off the front end and adding another year to the back end to move it forward as to another comprehensive 5-year period.

For the benefit of the audience, we have a sign-in sheet for anyone who desires to be on a list to be notified by the Department of Community Affairs on any actions that they may take on this proposed amendment which is available over by the City Clerk.

Chairman Jacoby referred to fiscal years 09-10, 10-11, 11-12, 12-13, 13-14, regarding street rehabilitation and the numbers in there that range from $378,000.00 down and up depending on the year. Chairman Jacoby stated that there is no plan that this is tied to with this Ordinance and asked what street rehabilitation was being done, where and what the plans are for it on this.

Karl Holley stated that the figures shown are aggregate budgeted expenditures in accordance with the city's approved capital budget. The Commission has approved these amounts in these years, that is already a part of the approved city budget. Not approving this is in no way going to amend or impact the fact that the Commission has already approved this in the city capital budget. When the schedule of improvements is available from Mr. Hallock, Mr. Holley will make it available to the Board. These figures are based upon what we anticipate receiving from the identified sources for this activity.

Linda Chaney made a motion to approve **Ordinance 2009-33, AN ORDINANCE OF THE CITY OF ST. PETE BEACH, FLORIDA AMENDING THE CAPITAL IMPROVEMENTS ELEMENT OF THE COMPREHENSIVE PLAN; PROVIDING FOR UPDATE OF THE FIVE-YEAR SCHEDULE OF CAPITAL IMPROVEMENTS, PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ORDINANCES OR PART OF ORDINANCES IN CONFLICT HEREWITH, TO THE EXTENT OF SUCH CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.**

The motion was seconded and by unanimous voice roll call vote, **Ordinance 2009-33 was APPROVED.**

ORDINANCE 2009-34

Karl Holley explained to the Planning Board that this Ordinance is the result of some inquiry and expression of concern that some of our citizens had with respect to the public notice that was provided with a recent rezoning request.

The elected officials directed us to revise the public notice standards so that for any public hearing required by the city's Land Development Regulations, unless otherwise specifically exempt, all public hearings for actions relating to a specific piece of property we will be required to post notice of that action in a sign on the property as well as mailing notice to the property owners within 300 feet of said property.

Further, Mr. Holley stated that another matter he would like the Board to consider is eliminating the requirement for mailing notice outside the United States. The reason is simply monetary. As an economy measure, he is suggesting that the city not be required to provide notice to owners whose residence of record lies outside the US.

Chairman Jacoby asked if the city puts these public notices on their website, and if not, what about having a section on our site that would address all public notices.

Mr. Holley stated that the notices of the agendas with the subject matter could certainly be posted on the website. The Board could certainly suggest that the ordinance be modified such that it also mandates that the city staff place public notice of these proposed actions or public hearings on the website for public inspection.

Mr. Holley then confirmed that the two issues the Board would like to be addressed in modified language would be the requirement to post notices on the city's official website and also the requirement to obtain a receipt of mailing from the post office. Another way to keep track of mailing is to list the date and registration number from the city's postage meter.

Karl Holley asked Chairman Jacoby if the Board wanted the language revised and brought back for consideration or does the Board want to add this language now and act on it. Mr. Holley asked if he could do some "homework" and get back to the Board.

Linda Chaney suggested advising property owners residing outside the US that the City will begin sending notices on zoning and land use changes on the website; perhaps an enclosure with the property tax bill, advising them of the change in policy with regard to notices. If their address of record is outside the US, they receive their tax bills at their address of record Ms. Chaney asked if a message could be put on the tax bill or an insert placed with the bill. Water bills were also suggested, however, those go to the resident and the resident may not be the property owner. In the case of condominiums, the water bill goes to the Condo Association, not the resident.

Catherine Hartley stated that if the City puts the responsibility on the applicant for mailed notice and let them bear the cost of overseas postage, then the matter is resolved. Ask staff to come up with a list and do publication.

Chairman Jacoby said that if there is an error on the list that doesn't have all the addresses or correct addresses of owners living outside the US, then the City is responsible. Maybe the issue of production should fall upon the applicant, he/she then brings it to the Community Affairs Department and they go through the checklist, then the cost isn't upon the City. The City is paying for the postage meter with the application fee. Mr. Jacoby asked how many the City has of these a year and Mr. Holley said that there were four variances last month, three this month, that's seven.

Karl Holley asked the Board if they wanted an amendment to this Ordinance reflecting the applicant must bear all expense of mailing and it was decided that he would draft something and bring it to the next Meeting.

Linda Chaney brought up point #7 regarding notices, stating that the rule is very broad and then it states that the rule doesn't have to be followed. She suggested that the lawyer come up with something more specific. Just add certification that the mailing was done.

Karl Holley advised the Board that the language calls for either strict compliance or substantial compliance and has a specific legal meaning in its terminology. We are imposing these requirements on ourselves; this is not mandated by state law. What we are saying is that the City is going to provide a higher level of notice to its citizens than is otherwise required, but in doing so, we don't want to set ourselves up to have our actions invalidated because we can't prove that 75% of the people actually received the notice. We can only say we sent it; we can't determine who actually received it. The Board wants only valid proof that notice was sent. If someone comes forward and says they didn't receive notice, the City would not be able to refute that.

Ms. Chaney pointed out that if someone showed up and says they didn't receive notice, then we don't want the whole thing to go out the window; we want to be able to say 10% of the people have to sign a certified affidavit which has some legal penalty to it. There must be a significant number of people who say they didn't receive it which indicates that there was a failure of the system. Ms. Chaney asked if Mr. Davis could provide the Board with some examples from other cities showing strict compliance and how it is specifically handled.

Chairman Jacoby asked if Mr. Davis or someone from his office could be present at the December Meeting, which is scheduled for the 16th.

Mr. Holehouse made a motion to continue this matter until December 16, 2009, with the attorney present. The motion was seconded and unanimously approved by voice roll call.

DISCUSSION ITEMS:

a) **Sign Code Amendments**

Catherine Hartley presented an emergency amendment to the Code for the Board to consider. In addition, one of the Commissioners requested that the Board address "sandwich boards" and allow them in certain places.

The first change under the Definition Section under Window Signs, the amendment states that a window sign can also be painted on.

The second proposed amendment is under Prohibited Sign. Projecting signs are presently prohibited sign; that has been crossed out, and then the Section was re-numbered.

Further, throughout Section 26.6, any reference to the old Development Review Board has been changed to Board of Adjustment to reflect the appropriate Board.

Chairman Jacoby referred to 26.7 and advised that one of the questions that has come up is point B. "Annual Renewal Fee – all sign permits shall be renewed annually. Renewal of fees shall be due and payable….." The question brought up on this is simply a) does this refer to anything that was listed as a sign in the front such as a painted window sign? Linda Chaney responded that anything you are required to obtain a permit for. The next question is, is there any sort of inventory system that keeps track of signage out there to make sure all signs are correct.

Linda Chaney said that there is a list of permitted signs but is not sure if Code Enforcement is checking every single sign.

Chairman Jacoby asked if there is a way to go back and check all the signs over a period of time, perhaps over the next year. Karl Holley believes it would be possible to check all the permitted signs in the City and identify which ones are not permitted. That is something that is certainly physically possible to do.

Catherine Hartley then brought up amendments to the ROR District which currently constitutes the 8th Avenue area in Pass A Grille. First is to allow a "sandwich board" under certain provisions, 1) that it doesn't get in the way of easy access, minimum clearance of 48" on the sidewalk, and 2) that it doesn't get in the way of a visibility triangle from a driveway or from an intersection. Size limitations are no larger than 4' high and 12 square feet total, per face; that it shall not be illuminated and only displayed when the business is open.

Chairman Jacoby asked if a provision could be added to put a small "whirly-gig" on the top of it so that people down the block can see it.

Ms. Hartley went on to proposed new Section 26.34, which would add sign regulations for the TC 1 zoning district. The proposal is that they can have up to three of the following: one is the sandwich board, a marquee or canopy sign, a display sign (a little box with a menu in front of a restaurant) a projecting sign, a wall sign, or a window sign. Each business can choose three from this list.

The same proposal applies to the large resort district; they can choose three from these, with the addition of a free standing monument sign.

Linda Chaney asked if a limitation of an area 10 feet setback from the property line can be imposed on the free standing monument signs. The Board was in agreement with this limitation.

AUDIENCE COMMENTS:

Spiro Gogas, 595 Corey Avenue, next to PJ's Seafood Restaurant. He is coming in trying to open a health food market restaurant. They are doing their best to follow the "rules". He has a minor problem with his sign. The original sign was taken down and we purchased a new sign, basically the same structure but the square footage on the new sign is smaller than the original sign but it's a different shape. The original sign was a longer sign; his is taller by ½' and the problem he is having now is trying to put his new sign and they were stopped.

Coyer ??? said that the sign that was up there was about 20 square feet larger than the new sign that was purchased so Mr. Gogas assumed that he could put that back up. He was with Catherine Hartley checking the square footage and trying to get the permits and found out that the new sign is still too big.

The original sign was removed by the landlord when the building was painted several months ago.
Karl Holley said he understood that Mr. Gogas wanted to replace a non-conforming sign with another non-conforming sign that is less non-conforming that the previous one; he can do that.

Chairman Jacoby asked if Mr. Gogas could meet with Mr. Holley during a 10 minute recess.

RECESS

The Meeting resumed and the next item for discussion is:

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

Chairman Jacoby called upon Karl Holley to open the discussion with his comments. Mr. Holley asked Ms. Hartley to run through these amendments, but by way of introduction, these proposals are specifically related to the City's ongoing negotiations with plaintiffs in civil suits challenging the adoptions of ordinances that were approved by the voters in June of 2008. Presently, to his knowledge, the City does not have a settlement agreement with respect to that litigation that has been signed by all parties. However, the City is holding out hope that we will reach a satisfactory conclusion to those negotiations. That is why the City is proceeding with these proposed amendments at this time. The objective from a timing prospective is to have these submitted and reviewed by the Department of Community Affairs prior to the 8th of January of next year which is the deadline for submitting ballot language to the Supervisor of Elections for Pinellas County for our March municipal election. The plaintiffs desire to have these proposed changes ratified by the citizens as a demonstration of citizen concurrence with the settlement. In order to meet with that time frame, the City must move forward with what is before the Planning Board or what will be before the Board tomorrow morning at 9:00 am. Even though, as has been pointed out, we do not currently have an executed settlement agreement and that these things may be subject to some change or more specifically the negotiations may be subject to failure and not all of these things may be carried forward. The point is, the City has very little margin of time and if the Board doesn't consider these items and forward them to the Commission with your recommendations, then the City will not be able to have an election or referendum of any kind on these items in March of next year.

Ron Holehouse asked Mr. Holley if there is a deadline on when these negotiations may end.

Mr. Holley stated that several deadlines have come and gone and all parties are earnestly working in good faith to try to resolve their differences. Even if there is a failure in the negotiations, there is still a necessity to move forward on some of these items. The City is trying to, at this point, accommodate a range of outcomes by moving this forward in this time frame.

Mr. Holehouse asked if these, in effect, changes to the new Comp Plan basically.

Mr. Holley responded that there are amendments to the City's adopted Comprehensive Plan. Many of them affect areas that were amended in 2008; many of them are amendments that are in addition to those amendments that were adopted by the voters in 2008.

Just for understanding purposes, Mr. Holehouse asked that once the Board looks at them and passes them on to the Commission, then they go on the ballot in March because all of these were voted on and in order to change them they need to be voted on again.

Ms. Hartley stated that the map amendment has to be voted on, regardless. Nothing in here substantially changes intensity, density, height, doesn't change any of those things so these would not have to go to referendum per se. The overall intent is put everything on the ballot.

Mr. Holley stated that the litigants in the matter have desire to have a signal of public approval, even though based on the results of the charter amendments in November; some of these items would not be required to be voted on under normal circumstances, but the Commission, as part of the effort to reach settlement, said that they will put these before the voters in March.

Mr. Holehouse stated that if there is no change in density, intensity, etc., then there's nothing to look at.

Ms. Hartley stated that there is nothing to be voted on, but there is change. Any change made to the Comp Plan, whether it's one word or a map or whatever, the Planning Board has the statutory obligation of making recommendations. Voters don't have to look at every single amendment, but they will only look at map amendments.

Linda Chaney stated that if the Board is noticed and have to take action on this tomorrow morning at our Noticed Meeting, we have it on the agenda to discuss but we could, rather than discuss it tonight and again tomorrow morning, we could move the discussion from tonight to tomorrow morning and have the discussion and action all at one time.

Chairman Jacoby stated that after talking to the some of the Commissioners, this thing is "fluid". We have advertised one thing; they were going back and forth. The Board is being asked to take action on something that is "fluid and moving" that may not even be what we take action on after we take action.

Mr. Holley stated that he would not officially agree with that language, that characterization. The Board has a specific item before it that has been properly and duly publicly noticed and the Board is being asked to recommend upon that item. That does not mean the Commission, when they consider the item, may not modify it. They fully have the authority to do so. The Board can only comment upon what is before you; you cannot speculate about what may or may not happen, but the Board does have a physical concrete item that is before you for your consideration.

Chairman Jacoby stated that it's a "hurry up" thing but we're really not sure what the final outcome will be and that is what concerns him.

Mr. Holley said that the Commission did not add something to this set of amendments that you have not considered. They cannot add amendments to the things that the Planning Board has considered; all they can do is take them out. The Commission can ask you to consider ten amendments and when it comes to them, they can say that we are not doing these three, we're only going to vote on these seven. That's perfectly legitimate. They couldn't give you seven and then show up at the Commission Meeting and say, guess what, we're adding three more. That would not have been properly acted on by the Planning Board. The Commission certainly has the ability to modify these amendments that come before this Board; it's not a take it or leave it proposition. They are limited to making changes to what the Board has considered or removing items from the list of amendments the Board has considered, but they cannot add different amendments to their public hearing and try to "piggyback" it on actions that this Board has already taken.

Catherine Hartley stated that there was a provision in the old Plan, from the 2008 Amendment, that basically eliminated density requirements from an existing structure; that really didn't make sense, so that was deleted.

Linda Chaney asked if that meant that existing structures now do count towards density.

Ms. Hartley said yes, they should be counted as your density; just can't count them as zero.

Under Objective 2.5, if you have a non-conforming use, you can rebuild it under certain provisions. You can have a replacement structure and you can increase the height to meet the Building Code. You can also increase the square footage if you are complying with new Building Code requirements.

Martin Lott stated changes have been made by the Fire Code too; what about those?

Catherine Hartley then moved on to Policy 2.11.1, if you have a piece of property where the city's coastal structural control line is closer than the state's coastal structural control line, that "no man's land" in between can be used to calculate your density. You can calculate your density all the way up to the State CCCL but you can't build passed the City's CCCL. Nothing new, not a different practice, just saying it over again.

Policy 3.12 basically just says we are going to follow our own rules when it comes to physical construction.

Policy 5.12 basically deletes, when it comes to drainage, this policy says that the city is going to follow it's own drainage ordinance. We have drainage standards in our Plan and in our Code, and it's not necessarily called the drainage ordinance, so we took the drainage ordinance out.

Policy 2.1.6, is saying that because of height restrictions and floor area ratio and impervious surface and all of the other things that come into play when you are designing a site, you may not actually achieve the density or intensity that is allowed by the Plan. Those are maximums; you may be able to make it all fit.

On pages 64 & 65, under E III, this is saying that you may still have to pay an impact fee because the Community Improvement Fund that was established by this Plan is a little different than an impact fee. The fees that were set up here were to go towards beautification, towards parking garages, not necessarily to meet a level of service standard. By striking this language, you may have to pay both the Community Improvement fee and an impact fee if your development has an impact ____________ level of service standard.

For clarity purposes, Mr. Holley stated that this table is not being amended.

Mr. Holehouse asked if this was a voter issue; can this be changed via the Commission?

Mr. Holley said it could be amended without publication.

On page 67, the words referring to the city's Land Development Code, the words "as may be amended from time to time" were stricken.

On page 68, 1.2, takes out the language that residential is prohibited because we didn't want to make the use non-conforming.

On pages 75 & 76, where it talks about beach access, it just clarifies when you have to actually put in a beach access; that 67% Rule was bizarre. So now it simply states that beach access is required. If you are going to redevelop, you have to put in the access; this is how wide it's going to be, it's going to meet ADA access. Just makes the provision much more clear. In all cases, beach access is required. This applies to new buildings.

The same provision applies on page 82 and continues on to page 83. This states that if you have a walk that is less than 150' wide, you can apply for a variance; you don't have to have beach access.

Policy 1.3.3 on page 172 of the Capital Improvement Element (?), Ms. Hartley pointed out that on the settlement agreement that the attorneys put together, she corrected the referenced policy. This says that we can access impact fees based on what the city can do under Florida Statute and case law.

GENERAL DISCUSSION:

It was agreed that the Meeting scheduled for November 19, 2009, be limited to two hours.

ADJOURNMENT

There being no further business to come before the Board, a motion was made and seconded that the Meeting be adjourned. The motion was unanimously approved by role call vote.

William Jacoby
Will Jacoby, Chairman

Theresa McMaster
Theresa McMaster, City Clerk