**PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY**
Monday, June 1, 2009
Community Center-509 Ocean Avenue
7:00 pm

# MINUTES

## I CALL TO ORDER

Present were:

Chairman David Campbell
Member Susan Dieterle
Member Coleen Doyle
Member Stephen Schwartz
Alternate Member James Flanagan
Town Attorney Paul Gougelman
Town Planner Dennis Ragsdale
Town Manager Jim Bursick
Building Official William Whitelock
Deputy Town Clerk Rhonda Danielle

Absent:

Sherrie Quarrie

## II. APPROVAL OF MINUTES- May 4, 2009 Regular Meeting

On Page 4, the last paragraph, it needs to amend to show that the motion made by Susan Dieterle was withdrawn.

Motion made to accept minutes with changes by Susan Dieterle. The motion was seconded by Stephen Schwartz. Question called; motion carried 5-0.

## III. PUBLIC HEARINGS

### A. Discussion/ and or possible action regarding RV/boats and trailers, Ordinance 2009-07.

Chairman Campbell asked if Ordinance 2009-07 had been advertised.

Town Manager Bursick stated that it had.

Town Attorney read the Ordinance by title only.

Chairman Campbell stated for the record that he looked at the Comprehensive Plan. In the future land use element, policy 6.1 states that the periodic review existing development regulations to ensure that they are consistent with the changes within the community and that they reflect, to the extent possible, improvements and methods

and practices in the regulation of the land uses. This would fall under the category which makes it compliant with our comprehensive plan.

Member Dieterle had a question on trailers parked on corner lots. She asked if we are keeping corner lot properties from being able to store a trailer on their property where everyone else can. This concerns her because we should be enforcing codes equally.

Attorney Gougelman replied that Melbourne Beach ordinance requires that a trailer/RV not be visible at all.

Member Dieterle asked if he had any suggestions to correct that.

Chairman Campbell answered that you could strike out "and not visible from the street" and finish the sentence with sheltered from view.

Chairman Campbell asked if everyone was in favor of doing that. The question was called and there were 5 votes of aye.

Chairman Campbell brought up that on page 2 (D2) in the last sentence that the comma's need to be removed.

The Board agreed that the commas should be removed.

Member Dieterle noted that in subparagraph B on page 2 under self propelled van type campers, that we don't have a definition for that. These 25' campers on truck bodies are registered as motor vehicles. Are we going to allow those to be parked in the driveway because their registered as motor vehicles and not RV'S?

Attorney Gougelman suggested that they strike paragraph b and re-letter.

The Board agreed on this decision.

Chairman Campbell opened the discussion for any public comments. There was none.

Member Dieterle made a motion to forward Ordinance 2009-07 to the Town Commission for their approval with changes and that it is in compliance with the Comprehensive Plan. Member Schwartz seconded the motion. Question called; motion carried 5-0.

## IV. NEW **BUSINESS**

### A. Request for Planning and Zoning to prepare a letter of determination that the concession stand at Ocean Park is inconsistent with the Comprehensive Plan.

Member Dieterle read a prepared letter for the record. It stated as follows:

“When the board first voted on this issue, the board voted using the information provided to us at that time.

Subsequent tot hat vote, new information has been brought before this board that makes a case for a vote either for or against this issue seems appropriate. The new information appears to put this board and the town in an uncertain position in regards to the appropriate and allowable uses of 9I zoning district.

The controversy surrounding this issue and our existing codes and asking this board to make any decision for or against this issue until a thorough legal opinion is rendered by the Attorney General seems to be treading on uneasy grounds.

My opinion as a board member is that the original vote should be suspended, reversed or withheld until that legal opinion is received. To act any other way may open this board and the Town of Melbourne Beach to possible legal action.

It is not the boards’ job to interpret the code as to what we think it means but to enforce it without being subjective. Based upon current and past actions of the Town in regards to the use, and rental of public buildings and public property in 9I, it appears a precedent has already been set for the rental and use of public property in the 9I zone and that is in direct opposition to what Chairman Campbell has stated is allowable and this board has voted to deny.

That having been said, I would like to make a motion that we do not issue a letter of determination at this time, and as a board, request an Attorney General’s opinion before we take any further action.”

Town Attorney Gougelman stated that an Attorney General will not render that interpretation. He interprets State law, not City codes.

At this time, Chairman Campbell read his proposed letter as follows:

“The Melbourne Beach Planning and Zoning Board/Local Planning Agency has determined that a business is not an allowed principal use in Zone 9I (where the proposed concession stand is to be located). Further more, Zone 9I does not allow any special exceptions.

Objective 5.0 in the Future Land Use Element of the Comprehensive Plan of the Town of Melbourne Beach states:

Objective 5.0: Insure that existing regulations are adequately enforced.

Since a business is not allowed according to existing regulations, the Local Planning Agency finds that the proposed concession stand is not in compliance with the Comprehensive Plan.”

Chairman Campbell asked if anything needed to be added to the letter.

Attorney Gougelman said that it was a good letter. You just need a simple letter saying that the board discussed it and the board found that it was inconsistent with the Comprehensive Plan.

Member Schwartz moved that they authorize Dave Campbell, the Chairman of the Planning and Zoning Commission to sign a letter as stated by Attorney Gougelman to send to the appropriate State Bureau regarding the establishment that we reviewed in the previous meeting of the business in 9I.

Chairman Campbell opened it up to the audience for comments.

Steve Walters, 416 Sixth Avenue stated that 2 months ago the board unanimously decided that it wasn't in compliance with the comprehensive plan and also at that time Mr. Campbell asked the Town officials if a letter was necessary. At that point they said no, but the agenda item now reads that they do. That should be the only thing on the table tonight. What's on the agenda is what we can discuss.

Chairman Campbell asked if the Board was in favor of sending the letter Attorney Gougelman quoted to the State. Question called: motion carried 5-0.

**B. Request for appointment of a representative from the Planning and Zoning Board to the committee to select a planning consultant for the preparation of the EAR-based Comprehensive Plan Amendments**.

Town Manager Bursick said that the State found that our EAR was sufficient and in compliance, therefore were in the process of soliciting proposals from consultants to prepare the Ear-based Comprehensive Plan Amendments. So, I am asking for a representative from the Planning and Zoning Board to assist Town staff in choosing that consultant and reviewing RFP's and proposals that we will receive.

Town Planner Ragsdale gave a little background on what the whole process entails and what the Town is actually looking for.

Town Manager Bursick stated that it had been advertised and placed on the Town website. Responses are due by the middle of June. That will give us time to review RFP's and proposals and interview firms if necessary. It then has to go to the Commission for their July meeting.

The board discussed this issue and Chairman Campbell said that he would be willing to do it.

Member Schwartz moved that they accept Dave Campbell as their representative to the selection process for the EAR consultant. Member Dieterle seconded the motion. Motion carried 5-0.

## V. OLD BUSINESS

### A. Ocean Park determination of consistency.

Chairman Campbell opened it up to the audience for any comments.

Bruce Black, 405 Avenue A stated that he assumed he would get a chance to rehash this subject again. Last week he was told that it was not a possibility. He stated that he doesn't agree with the decision and is going to try to find another opinion. He believes that the codes weren't followed.

Member Schwartz made a motion to follow the staff's recommendation to table the issue. Question called: motion carried 5-0. Issue is tabled.

## VI. ITEMS TO BE ADDED TO THE AGENDA FOR FUTURE MEETINGS

None

## VII. ADJOURNMENT

Motion made to adjourn by Member Dieterle. Motion seconded by Member Schwartz. Question called; motion carried 5-0.

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| Rhonda Danielle<br>Deputy Town Clerk | David Campbell<br>Chairman |