**PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY**
Monday, May 4, 2009
Community Center-509 Ocean Avenue
7:00 pm

# MINUTES

## I CALL TO ORDER

Present were:

Chairman David Campbell
Member Susan Dieterle
Member Sherrie Quarrie
Alternate Member James Flanagan
Town Attorney Paul Gougelman
Town Manager Jim Bursick
Building Official William Whitelock
Deputy Town Clerk Rhonda Danielle

Absent:

Member Steven Schwartz
Member Coleen Doyle

## II. APPROVAL OF MINUTES- April 6, 2009 Regular Meeting

Corrections to be made include on page 3, paragraph C to change the wording of Member Dieterles question to ask how long can someone stay in a recreational vehicle on their own property.

Motion made to accept minutes with changes by Susan Dieterle. The motion was seconded by James Flanagan. Question called; motion carried 4-0.

## III. PUBLIC HEARINGS

### A. Discussion on Flood Plain Management Ordinance

On page 42, paragraph C, under vertical additions, Member Dieterle wanted to know if that meant if someone is below the flood plain now and they want to put a second floor on, can they can do it or do they need to raise the entire building.

Building Official Whitelock replied that they would have to bring it into compliance with flood plain regulations, if it's considered substantial improvement.

Attorney Gougelman read the definition of Ordinance 2009-04.

Chairman Campbell opened up the floor to any audience comments.

There were no comments from the audience.

A motion was made by Member Dieterle to approve Ordinance 2009-04 and forward it to the Town Commission for their consideration. Sherrie Quarrie seconded the motion. Question called; motion carried 4-0.

## IV. NEW **BUSINESS**

**A. Determination of allowable use in 9-I zoning district (Ocean Park) and consistency with Comprehensive Plan.**

**Town-owned building with restrooms only.**
**Town-owned building with restrooms and Town-operated concession stand.**

The Board decided to separate the issues and discuss them individually. Town-owned building with restrooms only was the first to be discussed.

Chairman Campbell said that his view of the memo that Town Planner Ragsdale gave the Board was that it was in compliance with the Comprehensive Plan.

Chairman Campbell opened up discussion to the audience.

There were no comments from the audience.

Member Quarrie made a motion to approve the restrooms in 9-I as they are in compliance with the Comprehensive Plan. Member Dieterle seconded the motion. Question called; motion carried 4-0.

The next item to be discussed was the Town-owned building with restrooms and a Town-operated concession stand.

Member Dieterle stated that the word recreational is not defined in our codes. She wanted to know when a word isn't defined, where does the definition come from?

Attorney Gougelman said that you have to look at the context it's used in and when a word isn't defined you usually go to the dictionary meaning.

Member Quarrie stated that in the EAR draft there's an objective under the coastal zone management conservation element that says we are to ensure that public funds are not expended to financially assist new development in the coastal high hazard area. She wanted to know if that would apply to this parcel of land.

Town Planner Ragsdale replied that the intent of that statement was that you don't build infrastructures in the coastal high hazard area in order to allow new development.

Attorney Gougelman stated that his opinion was that policy says public expenditures will not be utilized to subsidize new development in coastal high hazard area.

Chairman Campbell asked what kind of concession stand.

Town Manager Bursick stated that there's been discussion on both levels. One where different non profit groups would come in and use it and the Town would lease that out for that purpose and also the other option would be the Town operating a concession stand on a continuous basis.

Chairman Campbell replied that is a business and it would be in competition with other businesses in the Town.

Attorney Gougelman stated that "zoning doesn't regulate ownership, it regulates use".

Chairman Campbell opened up the discussion to the audience.

Paul Guglietta, 205 Fir Ave asked that the Board please clarify their ruling from April 6, 2009 concerning the 9-I zoning district. He said that what he got from the ruling is that the Town of Melbourne Beach can't lease or rent public property or anything in 9-I as written because it's not an allowable usage. He went on to say that it was his understanding that a for profit business is not allowed in the 9-I zoning district, therefore the proposed concession stand is not consistent with the Comprehensive Plan.

Member Quarrie replied that a business can't be in 9-I. A business can't be in a recreational zoned property.

Mr. Guglietta replied that if the Town owns the building but leases it out on a permanent basis you're saying it's not allowed because it's not an allowable usage.

Chairman Campbell replied that was correct.

Mr. Guglietta asked if the Town wants to lease the building every day to make a profit, can it be done.

Chairman Campbell answered that he didn't think so.

Bruce Black, 405 Avenue A asked what is recreation. He stated that Chairman Campbell had said there was no business allowed in 9-I. He thought that was an interpretive rule It says no where in there that no business can be in 9-I. It says recreational. No where does it say a length of time. No one says it can only be for 1 or 2 days. He continues on to say that his proposal was that he was going to rent the building from the Town. He says that he believes a business is interpreted by

individual opinions. He interprets it as a Town building in 9-I and he would like to rent it.

Gail Gowdy, 215 Ash Ave stated that if food will be made or served, it is a restaurant and that is not an allowable use. Government shouldn't compete unfairly with local businesses. She went on to say that bathrooms would be a normal use for that zone.

Betsy Baird, 1111 River Road said that you don't have to rent it out. The Town shouldn't be competing with local businesses.

Jean Marshall, 410 Sixth Avenue stated that meals are served on the premises and it is for profit. There's a difference between a hotdog stand and a restaurant.

Xochitl Ross, 1106 Atlantic Street stated that a business is not allowed in 9-I and it is clearly a business. You have signage and parking spaces.

Kathy Emerson, 512 Ocean Avenue stated that there appears to be a precedent set. It is also additional revenue coming in for the Town and she feels that everyone should be able to appreciate that.

Ann Downing, 801 Pine Street just wanted to say that originally there were alot of people that thought it was a good idea. Some restrooms, a crossover and a little place to eat.

Member Quarrie stated that her understanding of 9-I doesn't equate to the new concept being requested. These were built as public buildings, that's what 9-I is. The principal use is a public building with activities such as city halls, public safety buildings, auditoriums and similar uses. If the Town builds a building in 9-I that was going to be for that use, that would meet what the zoning code states is acceptable. She stated that she doesn't believe that what is being proposed is a public use. It is a private business, not a public principal use.

Member Dieterle stated that she didn't think that this is something based on the discussion tonight and the past vote and all of the inconsistencies that the Board can make a decision on. Everyone can make their opinions fit the criteria.

Chairman Campbell asked what they mean by concession stand.

Town Manager Bursick said that it's been discussed in two scenarios. One is we operate and build a concession stand with Town employees. The other is we build a facility and lease it out to facilities and groups.

Member Dieterle's view is that it is consistent with the Town Comprehensive Plan. She went on to say that if the Town owned and operated it or leased, it brings money back into the budget. She made a motion to approve it as it is consistent with 9-I zoning.

Member Quarrie stated that she felt uncomfortable with the way it was presented to the Board. In the beginning of the meeting it was presented as a Town-operated concession stand or Town-owned building with restrooms only and a Town-operated concession stand and she believes that public response has been responding toward the lease situation that was presented to us at the last meeting. She didn't believe that the true intent was presented.

Attorney Gougelman asked Mr. Black if the lease that he and the Town worked on was done in his view.

Mr. Black said that it his opinion it was not. He went on to say that he submitted a letter to the Town to ask the Board to bring it up in a future meeting for reconsideration.

Chairman Campbell stated that he would like to table this and get a very clear definition of what the Town wants the Board to look at. He also asked that Mr. Blacks memo be included. Member Dieterle seconded the motion.

This item was tabled until the June 1st meeting.

## V. OLD BUSINESS

None

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

## VII. ADJOURNMENT

Motion made to adjourn by Member Dieterle. Motion seconded by Member Quarrie. Question called; motion carried 4-0.

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