PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY
Monday, October 4, 2010
Community Center-509 Ocean Avenue
7:00 pm

MINUTES

I. CALL TO ORDER - 7:00 p.m.

II. ROLL CALL

Present were

Chairman David Campbell
Vice Chairman Susan Dieterle
Member James Flanagan
Member Tom Davis
Town Attorney Paul Gougelman
Town Planner Dennis Ragsdale
Temp. Deputy Clerk Jennifer Howland

Absent were

Member Coleen Doyle
Interim Town Manager Hoskovec

III. APPROVAL OF MINUTES

July 12, 2010

Moved by Member Dieterle; seconded by Member Davis to approve the minutes of the July 12, 2010 meeting. Question called; motion carried, 4-0.

IV. PUBLIC HEARINGS

None

V. NEW BUSINESS

1. Discussion of the Land Development Code amendments that need to be accomplished after adoption of the Comprehensive Plan.

Chairman Campbell asked if the Comprehensive Plan is on the agenda for adoption.

Planner Ragsdale answered it is on the Town Commission agenda for October 13, 2010 and October 20, 2010. He explained the minor changes that were made as requested by the State.

Chairman Campbell said there shouldn't be any problems with the Town Commission's approval.

Planner Ragsdale said they will have to wait for the State's final approval which should be about 45 days.

Chairman Campbell asked if there was a suggestion on the order in which they should address the changes.

Planner Ragsdale answered they should start with definitions and then address the Land Development sections page by page. He said as they get to the issues address and be specific about procedures and levels of authority.

Member Dieterle asked if the definitions in the Land Development Code will be made consistent with the Comprehensive Plan.

Planner Ragsdale said they will go through the definitions.

Member Dieterle said she was concerned with the definitions being circular and whether that will be addressed.

Planner Ragsdale said yes, but just addressing 15 issues will not get you where you need to or want to be.

Chairman Campbell said they'll be going through the Land Development Plan page by page.

Planner Ragsdale agreed and said some are easy, but will deal with them as they come. He said the docks issues could be a problem.

Vice Chairman Dieterle asked if they made an ordinance and we realize that people find a way around it, can we amend.

Planner Ragsdale answered yes we can amend, but there is no way to become loop hole free and people will always find a way.

Chairman Campbell asked if they should start with definitions next month.

Vice Chairman Dieterle said yes.

Planner Ragsdale said he will get with the Interim Town Manager to determine how to wok out my services.

Chairman Campbell said he spoke with the Interim Town Manager and the Interim Town Manager said he's covered in the budget.

Planner Ragsdale said he lowered his fee.

Planner Ragsdale told the board if they saw anything else that needed to be added to the list that he'd add it. He said they have a one year period to work on this and if it is not complete in a year, the Land Development Code will be considered complete.

Chairman Campbell asked if the Planner recommends going through one ordinance to adopt the changes.

Planner Ragsdale said yes or they can create ordinances as they come, but it is better to lump them in a package.

Chairman Campbell asked for Attorney Gougelman's opinion on the matter.

Town Attorney Gougelman answered he had no feeling either way. He said they can find ways to interrelate the parts, but on the other hand sending a complete package can be overwhelming.

Chairman Campbell said they would have problems if they laid the whole thing out. He said the definitions can't be last.

Town Attorney Gougelman said there is more than one way to do this.

Chairman Campbell said some areas like the Costal High Hazard section should stand alone. He said they should start on definitions and go on from there.

Vice Chairman Dieterle asked if they had comprehensive landscaping plan.

Planner Ragsdale said its standard, but it's up to you.

Vice Chairman Dieterle said there are major changes proposed for Sunset Blvd and the people doing it don't know what we want.. She asked if there is a rule where you have to use all natives.

Planner Ragsdale said there is no regulation that says they have to be all natives, but it has to be a percentage. He said some can be naturalized, but some can be invasive.

Vice Chairman Dieterle said she is asking because the landscaping concepts are good, but there may be some overlaps with the ordinances. She gave an example of how the change in the height of the road will go against or cause a change in the ordinances.

Planner Ragsdale answered that the ordinance will be amended to allow for a change caused by an act of the government. He said they can look into that.

Vice Chairman Dieterle said there should be an ordinance that deals with the building of swales.

Chairman Campbell asked who is doing the work.

Vice Chairman Dieterle answered Jones Edmunds is doing the proposal and a lady will be doing the landscaping. She said she thought the referendum vote was to eliminate stormwater damage and draining, and about cleaning the water as mandated.

Planner Ragsdale said the water management district has new requirements where phosphorous has to be eliminated and swales is the best way to eliminate it.

Vice Chairman Dieterle said she is not worried about the swales as much as the landscaping because she believes the residents should have a say in that.

Planner Ragsdale asked if the landscaping was to be done in the right-of-ways.

Vice Chairman Dieterle answered yes, but some is to be done in our yards and in the swales. She said she is more concerned about the center aisle that it is done right and it conforms to our code.

Chairman Campbell asked if they were taking the center aisle out.

Vice Chairman Dieterle said they are taking everything out and they are trying to save trees and are discussing landscaping.

Planner Ragsdale asked who is in charge of the final approval.

Vice Chairman Dieterle said the Town Manager.

Chairman Campbell said they should get the Environmental Advisory Board brought in.

Vice Chairman Dieterle said she doesn't think they know anything about it. She said it is a current issue and has to be addressed.

Chairman Campbell said they should get in contact with the Town Manager since he is the ultimate person to make any decisions.

Planner Ragsdale said he hasn’t seen the plans and will be willing to review them to make sure landscapers aren't going overboard with landscaping.

Vice Chairman Dieterle said she thinks the residents should participate.

Chairman Campbell said they should contact the Town Manager and get the Environmental Advisory Board involved.

Planner Ragsdale said there are a lot of issues including maintenance issues with landscaping.

Vice Chairman Dieterle asked if Planning and Zoning should get involved.

Chairman Campbell said it is up to the Town Manager and that Planning and Zoning Board doesn't look in to environmental issues which is why the Environmental Advisory board was created.

Vice Chairman Dieterle said if they do it right it will be an example to other Towns. She said residents are concerned and they thought they would have input.

Planner Ragsdale said try to find out who is responsible and if it is run by grants, grants have strings. He said there may be more than one way to approach dealing with those strings.

VI. OLD BUSINESS

1. Discussion of land rules for building docks in canals.

Chairman Campbell referenced the notes he supplied to the board and reviewed them with the board. He said it only affects the people on the canals. He said Planner Ragsdale said it may be impossible to come up with rules. He said he doesn't know if the residents in the area want rules. He said he had spoken with Mr. Schwartz who made the initial suggestion on this subject and he was hesitant about getting involved. Chairman Campbell said he didn't know if they should waste their time.

Planner Ragsdale said the only problem with not addressing docks is that there are no rules; therefore no way to address it. He said the building official can review and say it's structurally sound, but there are no setbacks.

Chairman Campbell said docks in canals are different. He said there is a permit fee schedule for building accessory structures and there is wind construction requirements.

Planner Ragsdale said the question is how far out can the dock go into the canal.

Vice Chairman Dieterle asked who regulated the building of the dock.

Planner Ragsdale said the building official can determine whether it is structurally sound, but that's about it.

Member Davis asked if the county or state have any thing to say about it.

Planner Ragsdale said on navigable water the coast guard gets involved. He said the canals are probably considered navigable. He said there's probably a joint permit between the County and the State.

Vice Chairman Dieterle asked about the process.

Planner Ragsdale said you'd have to go through the coast guard, DEP, and Army Corp of engineers.

Chairman Campbell said the applications from residents on the river go to four places because it's navigable waterway.

Vice Chairman Dieterle asked how building on docks become a part of that.

Chairman Campbell answered building code covers structures and the State has regulations about the docks themselves.

Vice Chairman Dieterle said if there is a structure with a roof, it's not a part of the dock, and asked if that was true.

Chairman Campbell said that would be considered a boathouse. He said, in regards to setting rules and putting an ordinance together, unless you do it lot by lot, you can't do it.

Planner Ragsdale said he has run into the problem before, rules were made and applied until they were in a squeeze and they got the property owners together and worked out the details. He said that was literally the only way to do it and sometimes they had to go to the board of adjustment when there was a hardship.

Member Flanagan said the more we get into this the harder it gets to make rules. He said maybe they shouldn't do anything.

Planner Ragsdale said the problem with doing nothing about it, it will be ok until someone builds the wrong way.

Town Attorney Gougelman explained a situation in Melbourne when someone built a large structure and another built a larger dock.

Chairman Campbell said if they adopted something, five or six docks will be non compliant. He said maybe the residents don't want to get into that. He said he will get back in touch with Mr. Schwartz, tell him the board talked about the issue and tell him the best solution is to have the homeowners get together to decide if they want an ordinance. He asked Town Attorney Gougelman if he saw any problem with that.

Town Attorney Gougelman answered they should see how far they can go in regulating.

Chairman Campbell and Vice Chairman Dieterle asked for clarification of what he meant.

Town Attorney Gougelman gave an example of submerged bottom regulations.

Planner Ragsdale answered they should look at State regulations on submerged bottoms because his father had to get a permit for a submerged bottom in fresh water. He also gave an example of a man who thought he owned a submerged bottom, but the State wanted him to lease the land.

Town Attorney Gougelman said the residents aren't going to want to change something that isn't broken. He said they should set some rules so that docks aren't built too long.

Member Flanagan asked if the State regulated the length of docks.

Planner Ragsdale answered only if in navigable waterways.

Vice Chairman Dieterle said they should get a list of questions together before they have a meeting.

Town Attorney Gougelman said the residents should understand why rules are needed.

Vice Chairman Dieterle asked if they should check to see who owns the land and asked how to do that.

Town Attorney Gougelman answered check the plats.

Chairman Campbell said Mr. Schwartz's concern is the boat houses blocking the view, not the navigability. He said looking at the docks is getting back into the States view. He said if the residents want a rule they should decide on a rule.

Planner Ragsdale said he can research the plats and see what the regulations are for each.

Town Attorney Gougelman said there are three plats and they need to know what land is private and what is public. He said what is confusing is that two plats were re-recorded to dedicate the waterway into the plats.

Chairman Campbell and Vice Chairman Dieterle gave a local example of that particular problem if the dock was built to the center line it could become non-conforming.

Planner Ragsdale asked if the lots were platted before the 1950s.

Town Attorney Gougelman answered in the early 1970s.

Planner Ragsdale said he asked because a law about Florida Established Bulk Head line passed in the 1950s. He said in the 1960s residents were allowed to apply for title in the space between the bulkhead and shoreline.

Chairman Campbell asked Planner Ragsdale to check on the dock distances and he will contact Mr. Schwartz.

Planner Ragsdale said they should chip away at this over the next couple months. He said they can be regulatory but flexible.

Chairman Campbell and planner Ragsdale discussed the fact that some properties don't have room for a dock.

Chairman Campbell said he'll contact Mr. Schwartz.

Planner Ragsdale said he will contact the State.

Chairman Campbell asked if the classification of the water in the canals is not navigable, will the State get involved.

Planner Ragsdale said yes and he said he has a staff member who can help him get in contact with someone in the State.

Chairman Campbell asked if anyone had anything else.

Planner Ragsdale said someone wanted to put in an internet café, but if it is not specifically permitted in the Ordinances, then it is not permitted. He said if the person wanted it allowed he would have to go before the zoning board to change the code. He said the board should be careful when changing the code so that they do not allow anything that they don't want in Town.

Chairman Campbell said next month the board will go through the definitions in the Land development code. He said the Environmental Advisory Board should look at the landscaping issue.

VII. ITEMS TO BE ADDED TO THE AGENDA FOR FUTURE MEETINGS

VIII. ADJOURNMENT

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

Meeting adjourned at 7:46 pm.

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Jennifer Howland	David Campbell
Temporary Deputy Town Clerk	Chairman

Docks, Boathouses, Viewing Platforms on Canals

1) Melbourne Beach does not have any regulations about location of docks, boathouses, and viewing platforms located on the canals.
2) In the past, the locations of the above structures were either handled on a neighbor to neighbor negotiation or possibly by the Harbor East homeowners association.
3) The location of docks, boathouses, and viewing platforms only affects the homeowners who live on the canals. These structures are not visible from the public streets that run by the homes.
4) Dennis Ragsdale (the Zoning official) in his attempt to create an ordinance for the location of these structures pointed out that some existing docks would be non-compliant with virtually any “uniform” set of regulations. He stated that in reality, the only way to handle the location of docks, boathouses, and viewing platforms would be on a lot by lot basis.
5) Does a majority of the canal front homeowners even want a Melbourne Beach ordinance to regulate the location of docks, boathouses, and viewing platforms on the canals?
6) Suggestion: The canal front homeowners form an ad hoc committee to determine if they even want an ordinance. If so the committee can come up with acceptable guidelines, proposed regulations, etc.

Dave Campbell
Chairman Melbourne Beach Planning and Zoning Board
October 4, 2010