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

MINUTES

I. CALL TO ORDER - 7:02 p.m.

II. ROLL CALL

Present were:

Chairman David Campbell
Member Susan Dieterle
Member Steven Schwartz
Alternate Member Davis
Alternate Member Belsten

Town Attorney Paul Gougelman
Town Manager Jim Bursick
Town Planner Dennis Ragsdale
Jennifer Howland

Absent were:

Member Coleen Doyle
Member James Flanagan

III. APPROVAL OF MINUTES

May 3, 2010
Moved by Member Dieterle; seconded by Member Schwartz to approve the minutes of the May 3, 2010 meeting. Question called; motion carried, 5-0.

IV. PUBLIC HEARINGS

None

V. NEW BUSINESS

1.Discussion of eating and drinking establishments as a principal use in the 6-B zoning district

Member Dieterle asked if the subject at hand is approved should it be added to the Comprehensive Plan before it is finalized so an amendment does not have to be made immediately.

Chairman Campbell answered that a change can be made after the Comprehensive Plan comes back from the State, according to Planner Ragsdale.

Member Dieterle asked if that change can be made without an amendment.

Planner Ragsdale answered that you would make an amendment as you adopt the Comp Plan. You or the Commission can still make changes to the section of the Comprehensive Plan and the State would have to find it in compliance since it is still in the review stage.

Member Dieterle asked if there is a limit in the number of amendments that can be made per year.

Planner Ragsdale stated that there is not a limit to the number of amendments per year, but there are only two windows of opportunity to make the amendments.

Chairman Campbell stated that the restaurants in 6B are by special exception. There was extensive discussion about special exceptions and the Board of Adjustment (BOA) was given the ability to impose criteria for any and all special exceptions. Chairman Campbell read Objective 11 from the Future Land Use Element of the Comprehensive Plan which says, "provides suitable buffers between residential properties and commercial uses," and Objective 10 which says, "maintain areas where commercial development exists so that it will not detract or result in deterioration of nearby residential neighborhoods." Chairman Campbell stated that we gave BOA the ability to make sure suitable buffers exist. When we review site plans, we don’t have that ability.

Chairman Campbell stated that the strip malls on the north side of Ocean Avenue project noise toward Ocean and First and that by allowing a restaurant on the south side parking can be in the back only. He stated that Roburrito's hours of operation are restricted to be no later than 7 p.m. In order to change their hours, they would have to go through the BOA and the BOA can make recommendations on that.

Chairman Campbell stated that there are two situations in the Town in regards to special exceptions, one in regards to small restaurants and one in regards to unknown restaurants. He stated that it would be wise to keep with the Comprehensive Plan and keep it like it is so that the BOA would be able to impose restrictions.

Member Dieterle asked whether it is possible or practical to allow it on one side of the street, but not the other due to residential.

Chairman Campbell stated that if, in the future, the grocery store was torn down to add a restaurant, it would make it open to add something that is not wanted. It is in the interest of the Town and consistent with the Comp Plan to leave it as it is.

Alternate Member Davis stated that with the special exception process, there is a relief.

Chairman Campbell stated that is the only way to put in a restaurant.

Alternate Member Belsten recalled that there is an issue with the fees that are involved and asked if there is any relief from them.

Chairman Campbell answered that is one of the issues since it is $1,200, but is set by the Town.

Member Dieterle stated that the fee is not as big of an issue as the waiting period and the debt incurred due to paying rent, etc. while waiting.

Member Schwartz stated that by making eating and drinking and drinking establishments a principal use in 6B, small businesses would be able to enter the market more easily.

Member Belsten stated that by time startup costs and rent are paid, there is a barrier to a business.

Member Schwartz stated that the special exception process is somewhat chaotic and is a good argument for allowing eating and drinking establishments as a principal use. Member Schwartz also stated that the downside is the possible change in character of the Town.

Chairman Campbell stated that is the reason we made sure the Comprehensive Plan didn't allow the character of the Town to change.

Member Dieterle asked if we could limit the number of restaurants.

Town Attorney Gougelman answered that there is not a way to limit the number of restaurants, but that the way the Town is laid out limits the number somewhat. He stated that in 6 B there are only two restaurants. He stated that some towns have established criteria for certain uses but they had to have rationale for it.

Chairman Campbell stated that on getting a lease, at least on the strip mall side, the waiting period for special exceptions is shorter because of shared parking and the fact that nothing can be done to the greenery since they do not own the property. It is only with the stand alone or new buildings where the process is slow.

Planner Ragsdale stated that it was discussed at various meetings that the Town would like to keep the chains and national brands out. He stated that by allowing eating and drinking establishments as a principal use in 6B, you may allow something that is not wanted. Allowing BOA to place restrictions will keep out the national brands.

Member Dieterle asked what the definition of eating and drinking establishment is.

Town Attorney Gougelman answered that it is not a defined term and that it depends on the nature of the business. In the instance of a small business with one table and 2 chairs, it is an eating and drinking establishment since it serves food and generates traffic, but it is not an eating and drinking establishment since it is too small.

Chairman Campbell read the definition of the Land Development Code, page 147. A restaurant is "any building or structure or portion thereof where food is prepared and served to paying persons not residing on premises."

Attorney Gougelman stated that a restaurant is not what the conditional use is for, it is for an eating and drinking establishment. He stated that there is an inconsistency in the Land Development Code

Chairman Campbell stated that upon cleaning up the Land Development Code, the issue needs to be addressed.

Chairman Campbell then opened the floor for public comment.

Bruce Black, 405 Avenue A, stated that Roburitto's Special Exception application took six and a half months for approval and was expensive.

Mr. Black stated that he had asked the former Building Official what the definition of eating and drinking establishment was, but there was no definition.

Mr. Black stated that he knows of a business owner that will not put any tables or chairs in his ice cream shop because of the special exception application expense. Mr. Black stated that the expense associated with the special exception process is outrageous and that there has to be an easier, less expensive way. Mr. Black also stated that the BOA does not necessarily know the best operating time for a business so the restrictions on hours of operation should be eliminated.

Mr. Black stated that he hopes that the board comes up with some idea to make it easier for small businesses to open a business.

Member Dieterle asked whether it would be difficult to list what we do allow and whether we could allow certain establishments.

Attorney Gougelman stated that the first issue is that the term eating and drinking establishment needs to be defined since currently anything that serves food can be considered an eating and drinking establishment. He stated that the zoning official should define it. He stated that the second issue is when alcohol is involved and whether to allow alcohol in an eating and drinking establishment. He stated that another issue is parking and traffic generation. If only one or two tables are in the establishment then there is the possibility of high traffic due to take out. Attorney Gougelman stated that it is conceivable to allow certain small uses and require intensive uses to go through the special exception process.

Planner Ragsdale stated that scale is an issue. He stated that brand names are different than non brand name (i.e. donut vs. Krispy Kreme donuts) so that would have to be considered.

Planner Ragsdale stated that when looking at scale the size of the unit should be considered since when a small number of tables are placed in a large area, tables multiply.

Alternate Member Davis asked if Planner Ragsdale meant square foot area.

Planner Ragsdale answered yes.

Member Dieterle asked if one big box establishment was allowed wouldn't all big box establishments have to be allowed.

Planner Ragsdale stated that the door is open now through the special exception process and that by eliminating special exceptions it opens the door a little wider.

Attorney Gougelman stated that you can't discriminate based on ownership.

Member Dieterle stated that the idea is to define eating and drinking establishments.

Chairman Campbell stated that he agreed with Mr. Black that the small scale situation is fine, but we don't want to open the door for an unwanted situation. Chairman Campbell stated that when the board goes through the Land Development Code eating and drinking establishment is defined.

Mr. Black stated that all he wants is easier market entry for small businesses.

Alternate Member Belsten stated that possibly classes can be established for different levels of eating and drinking establishments. Alternate Member Belsten also asked if they could recommend to the Town to reduce or wave the $1,200 special exception fee.

Chairman Campbell stated that the real issue is the time frame.

Alternate Member Belsten agreed that the time frame is an issue, but the fee is also. He stated that he would like to see the special exception remain, but with less of a barrier.

Member Dieterle asked Planner Ragsdale if he had any ideas on what to do about the time frame for special exceptions.

Planner Ragsdale answered that applicants will complete the application themselves and find that their application is insufficient at the first BOA meeting, then at the second meeting there will still be issues with the application. This process is difficult to stop. It is also possible for the staff to get involved and become an advocate of the applicant, which we do not want to happen.

Chairman Campbell asked if a pre-application process could be used.

Planner Ragsdale stated that you can help people only so much and they will not always address any issues presented to them.

Chairman Campbell asked if any board members wanted to keep special exceptions. A few members said yes.

Chairman Campbell stated that the first thing on the agenda of the review of the Land Development Code is to add a definition of eating and drinking establishments and to come up with a mechanism.

The board agreed.

2. Site plan for Bed and Breakfast proposed at 514 Ocean Avenue owned by Richard and Jean Beaudoin

Chairman Campbell asked if it was the same site plan that was approved in 2008.

Town Manager Bursick answered that it is the same site plan with a few minor changes. He stated that since six months had passed before a building permit application was submitted after the site plan approval that the site plan had to be reviewed again.

Chairman Campbell asked if the site plan has to go to the BOA.

Town Manager Bursick answered no.

Chairman Campbell stated that there are no interior setback requirements because of the zoning district and it meets the setback and height requirements.

Chairman Campbell stated that the reason for the six month limit after site plan approval is due to the fact that the State can make construction code changes.

Chairman Campbell stated that there was a Binding Lot agreement since there were not enough parking spaces in front of the building.

Member Dieterle made a suggestion to reduce the height of the second floor.

Moved by Member Dieterle to accept the site plan for 514 Ocean Avenue with the changes as noted as it is in compliance with the Comprehensive plan. Seconded by Alternate Member Davis. Question called; motion carried, 5-0.

3. Site plan for storage building proposed for 507 Ocean Avenue by the Town of Melbourne Beach

Chairman Campbell asked what will be stored in the storage building.

Town Manager Bursick answered Christmas decorations, police equipment, such as radar, trailer, signs, and lost and found bicycles, etc.

Chairman Campbell stated that there is virtually no criteria for the 9I zoning district and that the storage building is up to code according to the fire chief and police chief and up to 007 building code.

Chairman Campbell asked who pays the fees.

Building Official Forbes answered that there is no charge

Moved by Member Dieterle to accept the site plan for the storage building at 507 Ocean Avenue as it is compliance with the Comprehensive Plan. Seconded by Member Schwartz. Question called; motion carried, 5-0.

Chairman Campbell asked when will it be built.

Town Manager Bursick answered probably in September after Town Commission approval.

4. Discussion of land rules for building docks in canals

Chairman Campbell stated that it was brought up in 2007 and it is being reviewed for consideration again.

Chairman Campbell stated that he recalled Planner Ragsdale stating that there is no way to enforce land rules and that we were opening "Pandora's Box."

Planner Ragsdale stated that the trouble is the way lots are configured since some are pie shaped and is difficult to tell where the property lines are in the water and where the setbacks are. He stated that negotiations between land owners have to happen. Planner Ragsdale stated that it is difficult to put in an ordinance and make it work considering the different sizes of boats.

Member Dieterle stated that it seems like the building of docks takes away some people's rights. She stated that if they were to go down to Harbor East and apply the draft ordinance that it would be difficult since every lot is different.

Planner Ragsdale stated that he had to help out in a situation where three neighbors all wanted to put in docks and it was very difficult to do.

Chairman Campbell stated that according to the aerial view from years ago there were very few homes that didn't have docks and according to the draft ordinance some shouldn't have a dock, so if there was a hurricane that wiped out the docks they couldn't rebuild them.

Member Schwartz stated that the ordinance should have a statement that says properties could always have a dock and it would jut be a matter of how they are configured.

Member Schwartz stated that the way docks are built and how boats are docked needs to be regulated. He stated that, if not regulated,docks can be configured in any manner which may cause dangerous docking situations when the weather is bad.

Member Schwartz stated that another concern of his is the building of viewing docks and he believes it should be regulated so that there are no problems.

Member Schwartz stated that if there is enough space to build a dock and it is logical, it should be regulated. He stated that in cases where docks wouldn't work should be clearly stated in the ordinance.

Member Dieterle stated that if an ordinance is made, then it should be applied to everyone equally.

Alternate Member Belsten stated that there are two issues in the canals in that some properties end in the middle of the canal and others end at the seawall. In addition, docks have been placed in places convenient for the homeowner, not necessarily for the neighbors, although the dock seem to be planned out in a neighborly fashion.

Member Dieterle asked how do you regulate that.

Alternate Member Belsten answered that he didn't know.

Member Dieterle stated that the issue should be taken care of by the community.

Member Schwartz stated that the community can't because the Home Owners Association does not have legal authority.

Alternate Member Belsten stated that the Town is regulating docks by issuing permits.

Member Schwartz stated that the issuance of a permit for building docks involved people outside of the Town and the decision only says its legal to build a dock. He stated that he believes that the large boathouses are inappropriate for the canals.

Member Dieterle stated that ordinances need to be best for everyone.

Planner Ragsdale stated that typically when making an ordinance, a schedule is made to get rid of the ones not in compliance, over time.

Chairman Campbell stated that Planner Ragsdale is saying that when a new ordinance is put in place, anything that is non compliant will have to be changed over time.

Member Dieterle stated that you could create a code on how to build a boat dock.

Chairman Campbell stated that does not tell you where to put it and that is the issue.

Chairman Campbell stated that you would have to primarily work with the lot size in building a dock so that everyone has equal access.

Town Attorney Gougelman stated that the idea that everyone has to be treated the same is false. The rule is that similarly situated people must be treated the same. He explained some different situations that were not the same. He stated that every canal is different so imagine all the situations.

Attorney Gougelman stated that there was a situation in the City of Melbourne where a dispute led to a regulation for zoning for boat docks. He stated that it took two and a half years to adopt.

Member Dieterle asked if she could see the regulation.

Attorney Gougelman answered that it can be found at municode.com.

Member Dieterle asked for Attorney Gougelman's opinion.

Attorney Gougelman answered that the regulation seems to work.

Member Belsten asked what other governmental agencies were involved in permitting building docks.

Attorney Gougelman answered DEP.

Attorney Gougelman stated that the DEP would be involved for a couple of reasons, including, if they owned the ground under the water of a navigable waterway or a natural waterway, or they owned the water itself.

Alternate Member Belsten asked what is considered to be a navigable waterway.

Planner Ragsdale answered that it is a navigable waterway if commerce can be done on it.

Alternate Member Belsten stated that it is more than a issue of building of docks. It is also an issue of building the docks to the center line or by the seawall.

Chairman Campbell asked if it varied lot to lot or by canal.

Alternate Member Belsten answered lot by lot.

Chairman Campbell asked the board if they wanted to continue looking at the issue.

Member Dieterle asked if they should hold a workshop because she wanted to do more reading and research on it since she did not feel qualified to address the issues.

Chairman Campbell agreed and that the Ordinance had a lot of problems. He stated that the board should think about what to put together and hold a discussion at next month's meeting and discuss where to go from there.

Member Davis asked if the signs limiting public access to State owned waterways was legal.

Town Attorney Gougelman stated that most of the time waterways are opened to everyone regardless.

VI. OLD BUSINESS

None

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

Chairman Campbell asked Mr. Black how the fence from the gas station looked from his house.

Mr. Black stated that the fence looked good and it made a good visual barrier based on the concrete-like barrier.

Chairman Campbell stated that he asked the question because the concrete barrier issue is going to be coming up after the Comprehensive Plan is finalized. He stated that in one section of the Plan concrete was required while in another part concrete or concrete-like substance was required. Chairman Campbell stated that he wanted to know how the concrete barrier worked out.

Chairman Campbell asked Planner Ragsdale about the process for doing what they need to do based on the Comprehensive Plan.

Planner Ragsdale stated that he will go through the Comprehensive Plan and draft a proposal on what it will take to accomplish what needs to be done. He stated that he will bring the issue to the board in chunks.

Attorney Gougelman stated that Planner Ragsdale should provide a laundry list of things to do.

Attorney Gougelman stated that it is important that they accomplish what the Comprehensive Plan says and make the code consistent with the Comp Plan since there has been problems with inconsistency in the past.

Chairman Campbell asked if there was anything else for future meetings.

Town Manager Bursick stated that he has the Site Plan for the Ocean Park improvements of the restrooms and ADA ramp and the review of the five year capital improvements program as required by the Comp Plan for Fiscal Year 2011-2015.

VIII. ADJOURNMENT

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

Meeting adjourned at 8:28 pm.

Jennifer Howland	David Campbell Chairman