PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY
Monday, December 5, 2011
Community Center-509 Ocean Avenue
7:00 pm

MINUTES

I. CALL TO ORDER – The meeting was called to order at 7:00 pm.

II. ROLL CALL

Present

Chairman David Campbell
Vice Chairman Susan Dieterle
Member James Flanagan
Member Lisa Farrall
Alternate Sherrie Quarrie

Town Manager Hoskovec
Building Official Bob Phoenix
Kathy Jo Pearson

Absent
Member Kurt Belsten

III. APPROVAL OF MINUTES

October 3, 2011

Chairman Campbell noted a typo on page three of the minutes. Minutes read as Town Attorney Gougelman stated we should continue to move forward showing good faith but they ask the State for an extension. They should have been then.

Moved by Member Dieterle; seconded by Member Farrall to approve the minutes of the October 3, 2011 meeting with the correction. Question called; motion carried, 5-0.

IV. PUBLIC HEARINGS

1. **Site Plan Review for an accessory structure greater than seven and one-half feet and greater than 108 square feet at 512 Andrews Avenue – Permit # mb11_160. Zoning District 1RS**

   Chairman Campbell asked if everyone had received a copy of the building official's findings. Chair Campbell stated since this goes to the Town Commission will it go before the Commission before it is signed by Board of Adjustment.

   Manager Hoskovec stated that this item would not be going before the Commission until the January meeting.

   Chairman Campbell stated that the final order had not been signed.

Mr. Phoenix stated that the final order is still in draft form.

Town Manager Hoskovec stated that the final order has been accepted in principal, it is just drafting the final language.

Member Farrall asked why she had received another copy.

Clerk responded that a copy was provided since it was an email copy and she was not sure if everyone would have brought their copy.

Vice Chair Dieterle voiced her concern about the fact that the owner did not pull a permit and went on the word of the contractor.

Manager Hoskovec stated that there is a Statute that states that if you are a Seminole or Miccosukee Indian they do not need to have a permit.

Vice Chair Dieterle stated that she had read the backup but should not the owner should have taken due diligence and research what the contractor was telling them.

Manager Hoskovec stated that the owner is not required to do that. The owner is taking the word of the contractor who they signed a contract with.

Vice Chair Dieterle stated so all, the onus falls on the contractor to come to the town to pull the permit not the person who is building it.

Manager Hoskovec stated that essentially yes. Manager Hoskovec went on to say that, that if the contractor is a Seminole or Miccosukee Indian then the state allows him to build a chickee. He does not need to have a permit,

Vice Chair Dierterle stated that now they have a non-conforming structure and the owner gets by on it.

Chair Campbell stated that they have gone to the Board of Adjustment is going to rule on it.

Vice Chair Dieterle asked why this item come before their board.

Chair Campbell stated that the structure is now getting a building permit. Chair Campbell went on to say that, all building permits come before the Planning and Zoning Board and then before the Town Commission.

Vice Chair Dieterle stated that there are mitigating circumstances.

Chair Campbell stated that, no that is just a Variance that allows us to approve the permit.

Vice Chair Dieterle stated but that has not been approved yet.

Chair Campbell stated that, the variance gives permission to approve the structure based on the passage of the final order.

Manager Hoskovec stated that this could be approved based on the passage of the final order from the Board of Adjustment and the Town Commission.

Chairman Campbell stated that is why he asked the question about the item going before the commission before the order was signed.

Member Quarrie asked if they are supposed to do anything other than table this until the order is signed final order.

Chairman Campbell stated that they could do either. They could act on it or table it.

Manager Hoskovec stated that the town is trying to make the whole situation legitimate considering everything that has happened.

Chairman Campbell asked if the board wanted to approve it pending the final order being signed.

Member Quarrie made a motion to approve the site plan based on the approval of the final order by the Board of Adjustment.

Member Farrall seconded the motion.

Question called. Vote 5-0. Motion carried.

Member Quarrie asked if this item could be used as an education piece on our website to our homeowners.

Manager Hoskovec stated that was a wonderful idea.

Member Farrall stated that homeowners to depend on the contractor to do the right thing and to pull the building permit.

Vice Chair Dieterle asked Mr. Phoenix if he was here when this structure was built.

Mr. Phoenix answered that yes he was. He had done a pre driveway inspection on a Tuesday, the following Monday when he went back to do the final inspection on the driveway the structure was there. The structure went up in a very short amount of time.
Member Farrall stated that what was concerning is that he put electric in without an electrical license.

Town Manager Hoskovec stated that, is why the final order is asking that the electric be removed permanently.

Vice Chair Dieterle asked if they had to pay double the permit fee.

Mr. Phoenix stated that they are paying three times the permit fee.

Town Manager Hoskovec states that the owners could go after the original contractor if they wanted to recoup the fee.

Member Quarrie asked if the town has filed unlicensed activity against the contractor.

Town Manager Hoskovec stated that, the building official has already started that process. Mr. Phoenix stated once the Board of Adjustments minutes are approved we will file a complaint with Tallahassee for unlicensed electrical contracting.

Member Dieterle stated not unlicensed contractor.

Town Manager Hoskovec stated that the contractor had already addressed that issue. Town Manager Hoskovec went on to state that, the unlicensed contractor was the first issue that Mr. Phoenix contacted the state about and he also contacted the county about it as well. Town Manager stated that is probably why he went and had his license reinstated.

Vice Chair Dieterle asked if there is any way that the town can have the contractors that do work in the town register and pay a fee to be able to work in town.

Town Manager Hoskovec stated that we do not license contractor, it is not our authority but the state's authority. Town Manager Hoskovec stated that, we could require that all contractors have a business license to do work in the town. Town Manager Hoskovec voiced his concern about chasing the contractors down would be impossible, and that Mr. Phoenix would spend more time checking licenses then doing inspections.

2. **Site Plan Review for an addition to a residence at 807 Riverside Drive, Permit # MB11_329 Zoning District 3RS**

Vice Chair Dieterle stated that she did not see any elevations on the plans.

Chairman Campbell stated that he did the measurements and came up with 15 feet.

Vice Chair Dieterle stated that the problem could be that the house was not built to be 18 inches over the road. Vice Chair Dieterle is concerned that the new addition may not be 18 in above the crown of the road.
Mr. Phoenix stated that there is a note on page one that indicates that the addition is supposed to be 18 inches above the crown of the road.

Vice Chair Dieterle asked where, did it show that?

Mr. Phoenix answered page one in the area marked as notes.

Vice Chair Dieterle stated that there is no elevation.

Mr. Phoenix stated that there is no elevation and no bond beam survey.

Member Quarrie asked if Mr. Phoenix would consider this the grade of plans that he would need to complete his work for this type of project.

Mr. Phoenix answered that this would not be acceptable, the two pages that were submitted were for the review for the Planning and Zoning board only. Mr. Phoenix went on to say that, he would require a full and extensive set of plans before the building permit would be released. The plans submitted were for review only.

Member Quarrie asked Mr. Phoenix if his commentary on number five that the height would not exceed twenty-eight feet, how you are assured without a full elevation on the plans.

Mr. Phoenix stated that, knowing that the roof was going to be a 5 12 pitch maximum on a single story residence should not exceed anymore then nineteen feet.

Member Quarrie stated that when they measure the document it is only fourteen feet and that seems to be an error.

Mr. Phoenix stated that it could be a scaling error. He stated that he would be speaking with the contractor at length about that. Mr. Phoenix continued to say that, the contractor was asked to put the elevation on the plans, but the contractor did not have the plans ready for the Planning and Zoning board.

Member Quarrie asked Mr. Phoenix if he was comfortable with the board approving this with meeting that requirement to the build official's satisfaction since it is not scalable so that the project could move forward.

Mr. Phoenix stated that he was comfortable; the safeguard will be when the truss plans are submitted for the permitting process, which will provide an extensive outlay of what the full pitch will be at the roof level, which will help determine what the height will be. He continued by stating that, he was confident that it would be under twenty-eight feet.

Member Quarrie stated that she would be comfortable if the building official were comfortable with the two statements that the elevations and the finished floor elevations.

Vice Chair Dieterle stated that from the drawings it does not seem like the house is at an elevation of eighteen inches above the crown of the road.

Town Manager Hoskovec stated that the road undulates, it rolls.

Chairman Campbell asked when this was going to be forwarded to the Town Commission.

Town Manager Hoskovec answered that this is scheduled for the December 21st commission meeting.

Member Quarrie asked Mr. Phoenix if the truss package was completed and submitted.

Mr. Phoenix answered that it was not submitted.

Member Quarrie stated then the owners will not be ready for construction until January or February.

Town Manager Hoskovec stated that the owners were in attendance for the meeting and that we could ask them.

Chairman Campbell asked the owners when they would begin construction.

The owners, Mr. and Mrs. John James stated that they would like to start whenever they can. However, they do understand that they need to have everything approved before they can begin.

Mr. Phoenix began speaking about flood proofing. Mr. Phoenix continued by saying that, new construction or substantial improvements when the cost of the improvement costs more than 50% of what the property costs at the property appraisers office, then the entire building would need to be brought up to the new building standard according to the building code.

Vice Chair Dietele states that this is not a renovation, this is an addition.

Mr. Phoenix answered that yes.

Member Quarrie asked if that was 50% of the square footage of the property or of the value.

Mr. Phoenix answered the value of the property from the property appraiser's office.

Vice Chair Dieterle stated that she does not read the code that way. She went on to say that, when you are doing new construction it is just that new construction, it has nothing to do with renovation or replacing. It has to do with adding something.

Town Manager Hoskovec stated that it does also consider additions.

Mr. Phoenix stated that in the 2007 Building Code the state of Florida broke out existing home construction to existing building into three levels of improvements. Each level has a threshold and when those are exceeded that is when the Florida Building code comes back in to be considered.

Vice Chair Dieterle asked if the town's codes had to be updated to have, the definitions match the state.

Mr. Phoenix answered that we did not need to update the codes. The way the town codes are written, they will automatically adopt any new changes to the Building code done by Tallahassee.

Town Manger Hoskovec stated that Attorney Gougelman put the language in place years ago.

Mr. Phoenix stated that way we would not have to go back every three years and change our codes.

Member Quarrie stated that at one point value used to be tied to square foot now it is tied to the dollar amount.

Mr. Phoenix stated that is why when the fee schedule was redone we have the contractor submit a signed contract or the dollar amount of the work. Previously the town used a table that came from the International Code Council that was the same for all areas of the country. Those numbers worked out to be about $100.00 a square foot. Where people locally, can actually get their building built for less than that. It is a more honest value.

Town Manager Hoskovec, which is how we hold the contractor's feet to the fire because the value is provided.

Chairman Campbell stated that the project does meet the setbacks.

Member Quarrie stated that she has no problem, accepting this with the stipulation that the building official has the proper truss package.

Town Manger Hoskovec stated that you could tie the approval to the building official verifying the height.

Vice Chair Dieterle asked if there was ever clarification if a porch was to be included in the square footage did it need to have footers. Did the porch need to be tied into the main house.

Mr. Phoenix stated that, it is tied into the foundation but the new porch is not part of the inside calculation.

Member Quarrie stated that the porch has an open roof. If it had a roof then it would need to have different footers.

Chairman Campbell asked if there was any further discussion about the site plan.

Member Quarrie made a motion to approve the site plan for 807 Riverside Drive based on the building official verifying the elevation not to exceed twenty-eight feet in height.

Vice Chair Dieterle seconded the motion. Question called. Vote 5-0 Motion passed.

V. NEW BUSINESS

1. Approval of the 2012 Planning and Zoning Meeting and Application Deadline Schedule

Chairman Campbell stated that he did not worry about the deadline.

Town Manger Hoskovec stated for advertising is 15 days.

Mr. Phoenix stated that the deadline was for the town to know when things needs to be in and advertised.

Chairman Campbell asked if a small project came in after the deadline would that be held until the next meeting.

Mr. Phoenix stated that he would poll the members to see if they would mind having it added to the next meeting if it came in late, or would it have to wait.

Town Manager Hoskovec stated that we also have to meet what is written in the Town Charter.

Member Farrall stated that she would not want to stop anyone from moving forward on their projects.

Member Farrall made a motion to accept the Planning and Zoning Meeting and Application Deadline Schedule for 2012.

Member Quarrie seconded the motion. The question was called. Vote 5-0 Motion Carried.

VI. OLD BUSINESS

1. **Review of the Land Code Development Code to add a definition of eating and drinking establishment and to come up with a mechanism as per action on June 7, 2010 Planning and Zoning Board.**

Chairman Campbell asked for an update on the Town Planner.

Town Manager Hoskovec stated that on the December 21st Town Commission agenda is the approval of the contract to hire the Town Planner. If it is executed by the commission then the Planner could start immediately. In reality, you are looking at the Town Planner starting at the first of the year.

Member Farrall stated that she did not understand the background for this item.

Chairman Campbell stated that the building official put all the minutes together about this item.

Mr. Phoenix stated that the conversations went back and forth. This started with the idea of if eating and drinking establishments were defined or should restaurants be automatically included in the 6B district. The discussion almost came to a finish in June of 2010. However, with administration changes it was not completed. Mr. Phoenix went on to say that, with the events that have happened in the last couple of weeks he thought it was a good idea to bring it back up for discussion to see if the board want to move forward with it.

Chairman Campbell stated that we were moving forward with it. That the board was working on the Land Development Code. Part of the Comprehensive Plan was that the board had to make the Land Development Code had to be compatible with the Comprehensive Plan. As part of that, the Board was in the process of redoing the Land Development Code when the Town Planner resigned. The Board has completed about half to two-thirds completed with that process. That includes a multitude of definitions that are not in the code now, but are in the Comprehensive Plan. This is one of those definitions that needs to be in the Comprehensive Plan. The Ordinances talk about eating and drinking establishments not restaurants. It has been construed in the past that Restaurants and eating and drinking establishments are one in the same. If that is the case then that needs to be put into writing in the Land Development Code.

Chairman Campbell went to say that, the other question is should restaurants' be permitted use in 6B zoning or should it be a special exception. Special exception cost $1,200.00.

Member Dieterle stated that it seems that if someone wants to open a restaurant in the town that between the rent and the time to go to the meetings, they run out of money before they can open their doors.

Town Manager Hoskovec stated that the process is lengthy and it is an expense. Town Manager Hoskovec went on to say that, this is a process that the town will need to take a look at. There are pro's and con's for both sides. Instead of picking a side, the town needs a good planner to direct us.

Member Quarrie asked would not the mechanism be someone wanting to open a business.

Chairman Campbell stated that when someone comes into Town Hall to ask a question, they get the answer to that question but do not necessarily give the person the big picture.

Town Manger Hoskovec stated that he could not agree with Chairman Campbell more that the town needs to do a better job on mentoring the residents that are coming in and asking for special exceptions, variances and other items that they might need.

Member Farrall suggested a handout.

Town Manager Hoskovec stated a pamphlet would be an excellent idea. Pamphlets for building permits, site plans, and variance and special exceptions would be really good to provide information to the residents. We will put these together in the next couple of months and bring them back to the board for their blessing along with the Board of Adjustment.

Town Manager Hoskovec went on to state that, with the web site he wants to make the website interactive and to place a computer in the lobby of town hall so that contractors and residents can have a one-stop shop area to apply for their permits and other interaction that need to take place with the town.

Member Quarrie asked if the town knew of anyone that was previously involved with the Planning and Zoning Board that might want to donate time to help the residents with the process.

Town Manager Hoskovec stated not that he knew of.

Mayor Davis stated that he had been in touch with Mr. Washburn, that maybe he would like to assist. Mayor Davis went on to state that the eating and drinking establishments have been brought before the town on many levels. One of the big arguments is seating, that during the process of the Comprehensive Plan, the town felt the need to finally settle if restaurant and eating and drinking establishments are synonymous. So that in the future there are no complaints about a facility having too many seats, they put their seats outdoors. Those questions are asked hundreds of time.

Town Manager Hoskovec stated that his argument with the special exception is it should be special. Nevertheless, what has happened is that everyone with an eating

and drinking establishment needs a special exception, and they are just accepted. The question is does there need to be a higher standard or not.

Chairman Campbell stated that is why we need a Town Planner, so we know what language can be used from a legal standpoint.

Member Quarrie asked how the restaurant criteria be changed for a license with the state, how can the town say anything different.

Chairman Campbell stated that the town grants a license to operate a restaurant if it meets the requirement of the Land Development Code, whatever that requirement may be. Right now, there is nothing in the code except that there are a certain number of seats per parking spot.

Town Manager Hoskovec said, there are three seats per parking space.

Member Quarrie asked if that was not the state requirement.

Chairman Campbell said no.

Town Manager Hoskovec stated that as long as they meet the fire code requirement and the parking requirement. They also have to have the special exemption.

Chairman Campbell stated that we just need to have the definition in the Land Development Code and decide if the restaurant should be a permitted use.

Member Quarrie asked for a review of this subject.

Town Manager Hoskovec stated that Attorney Gougelman would be happy to do a review this with her.

2. Discussion and possible action regarding Ordinance No. 2008-09, which has amended the Land Development Code requirements related to the timeline for construction of walls and fences.

Member Dietlerle called Grey Hamilton for a quote. Their quote was $121.00 a linear foot. The maximum that Grey would call for solid concrete would be $90.00 a linear foot.

Town Manager Hoskovec stated, a business that is in town went to have a fence put up and this was an actual bid that the business obtained. The bid was for $12,000.00. He also obtained a bid for a PVC pipe fence that was in the amount of $2,000.00. Town Manager Hoskovec went before the Commission and asked if he could bring this situation to the board. The Commission stated as long as the conversation was about the make-up of the fence then it was fine. Town Manger Hoskovec went on to

say that, the cost of cinderblock has gone up over the last few years. Concrete has gone up as well.

Member Quarrie stated that the owner of the BBT Building came to her when he had to replace the wall at that building and it was at least double, what this estimate is, if not closer to $30,000.00.

Chairman Campbell stated that the board wanted to keep the word similar in there. The commission took the word similar out of the information. Chairman Campbell asked what type of wall the service station had.

Mr. Phoenix answered that it is concrete block with a hardy plank material.

Chairman Campbell asked what the lifetime of a hardy plank is.

Town Manager Hoskovec answered forever. He went on to say that, it is an alternative that the town was looking at as well. Hardy plank is more reasonable to fasten and it will last for a lifetime.

Member Dieterle stated that she brought up this thought and could not remember if it was accepted or not because of it being similar.

Chairman Campbell stated that the former town planner was big on giving examples to the residents. So those fences would be compatible. Chairman Campbell asked if the type of fence with hardy plank material could be tested for wind load.

Mr. Phoenix answered yes it could be.

Member Quarrie asked did not we have people get upset that the town was getting into architectural and design.

Chairman Campbell answered that architectural is different from design. Yes, but that was on homes.

Town Manager Hoskovec stated we do that now with the zoning codes now.

Member Quarrie asked was not there a group of residents that thought the wall would look like the great wall of Melbourne Beach, similar to the Great Wall of China.

Town Manager Hoskovec stated that if the example could be used of the gas station that is the example of the Key West type of structure that the town seems to be embracing. The Town is looking at that and or we could look at PVC that can be tested for wind load as well.

Chairman Campbell asked about the life of PVC out in the UVA.

Mr. Phoenix stated that it is about twenty-five years and then it needs maintenance, parts and piece would need to be replaced.

Town Manager Hoskovec stated that part of the problem was that they fence needed to have a super footer as it was going to be on shifting sand.

Member Quarrie asked if it was on the retention pond.

Town Manger Hoskovec stated that it is adjacent to the pond. Town Manager Hoskovec went on to say that, the time on this ordinance expired this year and the town is trying to find a better idea to present to the commission.

Chairman Campbell read in to the record Ordinance No. 2008-09.

Chairman Campbell stated that the Building Official and the Town Manager are asking for are design standards for wall and fences.

Member Quarrie stated that the maximum foot for a wall could be 8 feet instead of six feet. Is it a police issue?

Town Manger Hoskovec stated no it is not an issue as the police have access to all those areas anyway.

Mr. Phoenix stated that he would recommend going to a higher wall when separating commercial and residential.

Town Manager stated that this was just to give you an idea what the town is looking to do with the board.

Chairman Campbell stated that he would like to have the planner on board.

Town Manager Hoskovec asked if the February meeting was ok to bring this back.

The Board agreed to bring this back to discuss for the February meeting.

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

None.

VIII. ADJOURNMENT

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

Meeting adjourned at 8:00 p.m.

_____
Kathy Jo Pearson

_____
David Campbell
Chairman