M I N U T E S

ORMOND BEACH PLANNING BOARD

Regular Meeting

February 11, 2010 7:00 PM

City Commission Chambers
22 South Beach Street
Ormond Beach, FL 32174

PURSUANT TO SECTION 286.0105, FLORIDA STATUTES, IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE PLANNING BOARD WITH RESPECT TO ANY MATTER CONSIDERED AT THIS PUBLIC MEETING, THAT PERSON WILL NEED A RECORD OF THE PROCEEDINGS AND FOR SUCH PURPOSE, SAID PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, INCLUDING THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

PERSONS WITH A DISABILITY, SUCH AS A VISION, HEARING OR SPEECH IMPAIRMENT, OR PERSONS NEEDING OTHER TYPES OF ASSISTANCE, AND WHO WISH TO ATTEND CITY COMMISSION MEETINGS OR ANY OTHER BOARD OR COMMITTEE MEETING MAY CONTACT THE CITY CLERK IN WRITING, OR MAY CALL 677-0311 FOR INFORMATION REGARDING AVAILABLE AIDS AND SERVICES.

I. ROLL CALL

Members Present

John Adams
Patricia Behnke
Al Jorczak
Patrick Opalewski
Rita Press
Doug Wigley

Staff Present

Randal Hayes, City Attorney
Ric Goss, AICP, Planning Director
Steven S. Spraker, AICP, Senior Planner
Becky Weedo, AICP, Senior Planner
Chris Jarrell, Recording Technician

Members Excused

Doug Thomas

II. INVOCATION

Doug Wigley led the invocation.

III. PLEDGE OF ALLEGIANCE

IV. NOTICE REGARDING ADJOURNMENT

NEW ITEMS WILL NOT BE HEARD BY THE PLANNING BOARD AFTER 10:00 PM UNLESS AUTHORIZED BY A MAJORITY VOTE OF THE BOARD MEMBERS PRESENT. ITEMS WHICH HAVE NOT BEEN HEARD BEFORE 10:00 PM MAY BE CONTINUED TO THE FOLLOWING THURSDAY OR TO THE NEXT REGULAR MEETING, AS DETERMINED BY AFFIRMATIVE VOTE OF THE MAJORITY OF THE BOARD MEMBERS PRESENT (PER PLANNING BOARD RULES OF PROCEDURE, SECTION 2.7).

V. APPROVAL OF THE MINUTES

The minutes of the January 14, 2010 Planning Board meeting were unanimously approved, as presented.

VI. PLANNING DIRECTOR'S REPORT

Mr. Goss reserved his comments for the public hearings.

VII. PUBLIC HEARINGS

A. SE 09-26: Land Development Code Amendment – T-1 Zoning District

Mr. Spraker said that the item, presented to the Board in December, 2009, was an amendment to replace the dimensional standards and uses within the T-1 zoning district. He recalled that at that meeting, the Board had expressed concern regarding the hurricane shelter requirement; staff subsequently consulted with the city attorney's office and was advised that the State statute referenced at that meeting did in fact allow the city to apply zoning regulations.

Mr. Spraker also reported that the Chief Building Official had suggested not requiring a shelter, but instead requiring any replacement manufactured/mobile home to have been constructed after 1994, when a change had been implemented in the construction standards. He pointed out that the regulations already required certain windload standards and other requirements to ensure that the mobile homes had the same durability and sustainability as a single-family home. He clarified for Mr. Opalewski that the 1994 threshold standard was meant to be applied to individual mobile/manufactured homes (not the parks) and was for homes that were removed or destroyed, not for existing units.

Mrs. Press questioned the difference between a mobile home and a manufactured home.

Mr. Goss explained that mobile homes were once considered to be units brought in on wheels and set into place with a skirt constructed around it; he said that manufactured housing was actually built in halves, then brought to an existing foundation and assembled. He thought that all modular housing was now referred to as manufactured housing. He confirmed for Mr. Jorczak that there had also been other, additional requirements imposed since 1994, such as those in the Building Code that had been integrated through the inspection process to HUD (Housing and Urban Development), as well as through DCA (Department of Community Affairs). He said that it was only the units constructed before 1994 that would not meet current standards; therefore, any hurricane shelter constructed would be for those residents in units built before 1994.

Mrs. Behnke stated that she was uncomfortable with the use of the term "manufactured after 1994", saying that every other residential building had to meet safety standards. She thought that including a specific date was discriminatory and said she preferred the language "must meet all safety standards". She noted that manufactured homes that did not have wind-bearing windows, e.g., could have shutters.

Mr. Spraker said that the Board would request the language be changed, but said that several state officials had advised staff that many communities had used this date in their ordinances because that was when the construction methods had changed.

Mrs. Behnke restated her preference for the "safety standards" language and again said that including the date was a discriminatory phrase referring strictly to one class of residential homes. She said that she would like the "must meet required safety standards" language to be included the section entitled "Previously Existing Manufactured Homes Parks".

Mrs. Press asked if the couple of vacant properties zoned T-1 would subsequently be classified as R-5 and R-6, since they could be multi-family.

Mr. Spraker explained that the item was solely an amendment to reinstate the T-1 zoning in the Land Development Code (LDC) and that there were no zoning changes involved. He said that T-1 properties were generally less than 10 acres, with uses such as single-family homes (one unit per lot), houses of worship, day care facilities, or they could be a manufactured home community as a conditional use. He said that a zoning needed to include both uses and dimensional standards, but that at present there were no uses identified in the LDC for the T-1 properties; he said that they would not become R-5 or R-6 unless application was made for a zoning change.

Mrs. Press and Mrs. Behnke said that the fact that the T-1 zoning was listed in both Medium-Density and High Density categories was confusing. Mrs. Press questioned the difference between the R-5 and R-6 zoning classifications.

Mr. Spraker said that one district most likely had a higher density. He explained that each property was assigned a land use and a zoning and that the T-1 land use was Medium-High Density Residential, because they were allowed a greater number of units per acre with a manufactured/mobile home park, more so than with the Low Density designation, which allowed perhaps 3-4 units per acre. He referenced the consistency matrix used to make the connection between the land use designations and the zoning categories and said that the amendment would re-establish that connection in the LDC.

Mr. Goss recalled that when staff was reviewing the issue, the Fire Chief had requested that a redevelopment requirement be included for a shelter for mobile home parks so that residents could be sheltered in place in a facility that met the current windload standards. He said that during that process, staff had discovered that manufactured housing built after July 13, 1994 already met windload standards, because of different construction standards than those of manufactured housing units built prior to 1994. He encouraged the Board members to keep the provision in the amendment that would mandate replacement of an individual manufactured house with one built after July 13, 1994. He said that State personnel had advised that even though the older homes had hurricane straps, it was the newer construction standards that made

the difference. He said that he understood Mrs. Behnke's point of view, but that the provision had been included as a compromise to not requiring a hurricane shelter for manufactured home parks. He said that it allowed people to stay in their units during a storm event, rather than having to be evacuated.

Mrs. Behnke asked if the building inspector would not be able to determine if a manufactured home on a specific lot did or did not meet safety standards.

Mr. Goss explained that a mobile or manufactured home constructed before 1994 might meet safety standards, but that because of the different construction standards, simply meeting safety standards did not mean that the home would be able to withstand the windloads. He again encouraged the Board members to retain the date of July 13, 1994, or after.

Mrs. Behnke said that of the 646 homes in her community and a comparable number of homes in The Falls in Aberdeen, not one home had been destroyed during any of the storms, including the pre-1994 units. She said that they did not experience the damage of some stick-built homes, such as water intrusion or mold, only loss of some shingles and screen rooms. She thought it sufficient that they met safety standards, saying that no other residential structure had to meet a specific date requirement.

Mr. Goss said he understood that those communities had suffered no significant damage in the past, but said that the regulations had to look forward to sudden and unforeseen events, such as what occurred with Hurricanes Andrew and Katrina. He reiterated that the recommendation of July 13, 1994 was based on conversations with State officials and the fact that the provision was being used elsewhere in other cities and counties in the state.

Mr. Jorczak noted that insurance companies use a threshold for the determination of the point at which a house is deemed completely destroyed and must be replaced. He felt that the 1994 date was a way to establish a basis for engineering construction.

Mr. Wigley pointed out that a destroyed, stick-built home had to be rebuilt to current standards; he said those owners could not utilize 1994 construction regulations and standards.

Mr. Goss reminded the Board that the building official had indicated that units constructed after 1994 would withstand a storm event the same as a stick-built home, but that units built prior to 1994, were not as well constructed.

Mrs. Press asked Mrs. Behnke if using the term "safety standards" meant that the homes were upgraded to meet windload standards.

Mrs. Behnke replied that shutters were utilized for the wind break; she said they also utilized lateral and vertical tie-downs, which satisfied the insurance companies. Although she understood the rationale for the 1994 date, she restated that meeting safety standards was sufficient.

Mr. Jorczak called for a motion to substitute the "meet safety standards" language in lieu of using the 1994 date. No motion was made.

Mr. Wigley made a motion to adopt LDC 09-26, as proposed by staff.

Mr. Opalewski seconded the motion.

Ms. Jarrell called the vote:

Mrs. Behnke	No
Al Jorczak	Yes
PO	Yes
John Adams	Yes
DW	Yes
RP	Yes

The motion was approved by a 5-1 vote.

B. LDC 10-34: Land Development Code Amendment – Garage Sales

Mr. Spraker said that the item was a request to amend Section 2-50 to allow a third garage sale [annually, at no cost]. He said that the amendment as drafted by staff was at the direction of the City Commission.

Mr. Wigley questioned if allowing a third garage sale was really necessary.

Mr. Opalewski asked if there had been a problem with citizens wanting more than two [per year].

Mr. Spraker reiterated that the Commission had discussed it and subsequently directed staff to bring forward the amendment. He advised the Board that they could vote against the amendment if they did not feet a third garage sale was necessary.

Mr. Wigley made a motion to deny LDC 10-34.

Mrs. Press seconded the motion, which was approved by unanimous vote.

D. LDC 10-51: Land Development Code Amendment – Airport Overlay District Map

Ms. Becky Weedo informed the Board that the item was an administrative amendment to add the overlay district Map 10-2 (Exhibit A) to align with the text description in the Land Development Code (LDC), previously adopted in January, 2006.

Mr. Jorczak explained that the amendment had been prompted by his request to staff to look into the way the existing overlay had been established in order to determine the maximum overlay district that could be achieved within the existing airport boundaries. He said it was essentially an effort to look at the area the city could protect and whether the zone, as defined in the LDC could be changed at a later date. He advised that the reply he had received from Mr. Lichliter was that there had been no fixed formula used and that the area had been defined by the City.

Ms. Weedo stated that the item was a housekeeping issue and recalled that the overlay and map presented had been defined by staff with the help of the Airport Advisory Board (AAB) in 2003. She said that the overlay area developed was a corridor that covered the airport areas and landing strips and had been presented to the Planning Board four times before finally being recommended for approval in November, 2005. She added that the City Commission had voted to adopted the overlay in January, 2006, but that for some reason the map had not been included in that ordinance.

Mr. Jorczak asked what would be involved in changing that dimensional area of the overlay.

Ms. Weedo said that it would have to go back through the AAB and the public participation process. She pointed out that Airport Manager Steve Lichliter had advised by e-mail that the area, as defined, was basically covered, since the airport could only be expanded to the west.

Mr. Jorczak asked how the overlay would affect someone developing within that zone.

Ms. Weedo recalled a county project in 2007, which was proposed within the Airport Overlay Zone and said that the city had advised the county that they were in the overlay zone and they had withdrawn their project. She assured Mrs. Behnke that it was the exact same overlay that had been developed in 2003, and replied to Mrs. Press that there was no increase in the dimensions of the overlay. She explained to Mr. Jorczak that a specific application would first have to be made to develop in that area and that other regulations would also apply; a change in the overlay dimensions would require public hearing, but that such a change would not present problems in amending the land development code.

Mr. Opalewski made a motion to accept LDC 10-51.

Mr. Wigley seconded the motion, which passed by unanimous vote.

VIII. OTHER BUSINESS

Mrs. Press stated that the gas station at Granada Boulevard and Ridgewood Avenue [100 West Granada] was an eyesore and a topic of conversation in the community. She questioned whether there should not be a property maintenance requirement in the Land Development Code (LDC) to prevent such problems in the future. She felt that property owners should have to address graffiti and the unkempt appearance of their empty buildings, at least in the Downtown.

Mr. Goss reported that staff had prepared such an ordinance some time ago; he said it had been reviewed and amended, but that staff had not yet received the go-ahead to take it to public hearing. He advised that he thought there were legal issues involved and that the property had been foreclosed upon.

Mr. Goss responded to Mr. Adams that the ordinance was derived from the ICC's (International Code Council) Maintenance Code, which requires a property owner to maintain his/her property and allows for enforcement action if not done.

Mr. Adams asked why the provision would be controversial.

City Attorney Hayes responded that it was easier to regulate conditions for buildings that had structural issues, rather than aesthetic or maintenance issues, which were more difficult to legally enforce. He agreed to check the status of the ordinance and move it forward.

Mr. Adams stated that at some point, total neglect went beyond aesthetics and asked how the city could be sure that the building was safe and was secured.

City Attorney Hayes said that although he could not speak for the building official, there was no indication that the gas station was structurally unsafe. He felt certain that the Neighborhood Improvement and Building Divisions were aware of the issues and would have dealt with them if it had been necessary.

Mr. Goss thought the delay was most likely because the draft ordinance covered both the aesthetic, as well as the structural issues. He said the ordinance was currently in Legal for review.

Mrs. Press asked if it was possible to prohibit buildings in the Downtown from being boarded up. She also asked if the gasoline sign could be removed after all the years of the property's being vacant. She said the property would not look so bad if it was cleaned up and the graffiti removed.

Mr. Goss said that there was a provision in the current sign ordinance, but that no one could recall the city having implemented it.

City Attorney Hayes explained to the Board that the issues were multi-faceted, including safety and aesthetics, and that some were easier to regulate than others. He said that all communities were struggling with the maintenance of abandoned properties, given the volume of foreclosures that have occurred (and are expected to occur), and because there was often a lender involved with an equitable interest by virtue of the lien on the property. He said that sometimes the property was abandoned and the owner could not be found. He said the question became who to cite and how to do so.

City Attorney Hayes said a pending ordinance that would not be heard by the Planning Board would help the Neighborhood Improvement Division (NID) by requiring the registration of properties once they go into foreclosure and requiring the lender or a property manager to oversee the on-going maintenance of that foreclosed property. He said the ordinance would ensure that and once the *lis pendens* was filed as notice to the public of the foreclosure, the NID personnel would have the necessary information to monitor the property. He pointed out, however, that it presented a staffing situation that would need to be resolved. He said that additional regulations created the need for staff to enforce those regulations, which raised the issue of who would pay for that additional staff.

City Attorney Hayes explained that another issue involved the technicalities of implementing the ordinance. He said a concept being developed was to enter into an agreement to have a company monitor the registration of the properties and feed the information to NID. He thought that the City Commission would most likely adopt the ordinance, but was unsure whether the Commission would want to utilize code enforcement staff or the contractual services of an outside party. He said that the difficulty would be in coordinating the ordinance language with a couple of other

ordinances, including that drafted by Planning staff, so there would be no contradictions or overlap.

Mr. Jorczak asked if anyone had asked the mayor to simply write a nice letter reminding the bank holding the property of their responsibility.

Mr. Goss indicated that Joe Mannarino [Economic Development Director] had done so.

City Attorney Hayes said it was his observation that the lenders were overwhelmed with the number of foreclosures and that the banks did not readily take action on those properties. He cited the Surfside Hotel as an example, saying that there had been very little that the city could do until the case went through the bankruptcy proceedings. He said that the City could begin to enforce the regulations once there was a solvent party and that after attempting to work with the bank to resolve the issues, the City finally filed suit to have the property demolished. He said that once the lawyers for the bank were served with the lawsuit, someone finally contacted the City and they have now been given a little more time to put together a timeline for the demolition. He said that the process moves so slowly because there are so many foreclosed properties, but that the triggering effect has to be a structural issue with the building. He said once that happens, the City can initiate the demolition process; he noted, however, that demolition was very expensive.

City Attorney Hayes summarized that work was being done on the issue from several different angles and that the Board could expect to see something moving forward in the next few weeks.

Mr. Goss advised that staff had decided against recommending that the city purchase the gas station property after Volusia County Environmental told them of issues with the site. He said that there unknown clean-up factors which convinced staff that the city should not touch it.

City Attorney Hayes explained that the property owner who caused the problem, as well as the current property owner, are responsible for cleaning up such properties for any leaching or contamination that might have occurred. He said that the City would not acquire the property without knowing the extent of the problem.

Mr. Jorczak questioned the status of the piping across the Tomoka River off of US 1.

Mr. Goss was unsure, but offered to find out and report back.

IX. MEMBER COMMENTS

There were no member comments expressed.

X. ADJOURNMENT

The meeting was adjourned 8:55 p.m.

Respectfully submitted,

Ric Goss, AICP, Planning Director

ATTEST:

Al Jorczak, Vice-Chair

Minutes transcribed by Betty Ruger