

MINUTES OF THE REGULAR MONTHLY MEETING OF THE COMPREHENSIVE PLANNING AND ZONING BOARD of the City of St. Augustine Beach, Florida, held Tuesday, March 18, 2014, at 7:00 p.m. in the City Commission Meeting Room, City Hall, 2200 State Road A1A South, St. Augustine Beach, Florida, 32080.

I. CALL TO ORDER

Chairman Alfred Guido called the meeting to order at 7:00 p.m.

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

BOARD MEMBERS PRESENT: Chairman Alfred Guido, Vice-Chairman Margaret England, David Bradfield, Steve Mitherz, Elise Sloan, Karen Zander, Senior Alternate Lennet Daigle.

BOARD MEMBERS ABSENT: Roberta Odom, Junior Alternate Jane West.

STAFF PRESENT: Gary Larson, Building Official; James Whitehouse, City Attorney; Max Royle, City Manager; Bonnie Miller, Recording Secretary.

IV. APPROVAL OF MINUTES OF TUESDAY, JANUARY 21, 2014 REGULAR MONTHLY MEETING

Ms. Sloan **MADE A MOTION TO APPROVE THE MINUTES OF THE REGULAR MONTHLY MEETING OF TUESDAY, JANUARY 21, 2014.**

The motion was seconded by Mr. Mitherz and passed 7-0 by unanimous voice-vote.

V. PUBLIC COMMENT AND DISCUSSION

Mr. Guido asked for public comment on any issue not on the agenda. There was none.

VI. NEW BUSINESS

1. AMENDMENT/MODIFICATION OF FINAL DEVELOPMENT ORDER FILE NO. 2006-02 FOR REPLAT OF TRACT C OF LAKE SIENNA SUBDIVISION, pertaining to the City Commission's approval, at its regular monthly meeting held on Monday, March 3, 2014, of a request for a replat of Tract C of Lake Sienna Subdivision, to reduce the numbers of lots platted on Tract C from four lots to two.

Mr. Larson said it's his opinion a final development order is not needed for the replat of these two lots on Tract C of Lake Sienna Subdivision. There will be no road construction,

as access to the lots will come off of Old Beach Road, and the sewer will tie-in to the existing lift station, per the agreement between Lake Sienna Homeowners' Association and the property owner, Mr. Jerry Smith. The only outstanding issue is the mitigation process Mr. Smith is currently going through with St. Johns River Water Management District for the two lots. If this is successful, the project will be a go, but if it fails, it dies.

Mr. Guido said there's a significant deviation between the original final development order granted for four lots on Tract C, which had a one-year expiration date in which all construction had to be completed, and the modified final development order for two lots, included in the Board's packet information, which has a three-year expiration date for completion of construction. He asked if the original final development order has any standing at all, since construction was not completed within one year from the date of the final development approval of the four lots which are now proposed to be reduced to two.

Mr. Whitehouse said from a legal perspective, it would be appropriate to consider the request for modification and the time period change, as what's proposed is a less intense development. He does, however, think a modification to the final development order is needed, to allow for the change in the expiration date for completion of construction.

Mr. Mitherz said he talked to Ms. Miller about this agenda item and also visited the site.

Mr. Guido asked for any other ex-parte communication disclosure. There was none. He asked if the applicant or a representative for the applicant was present.

Mr. Larson said no, Mr. Smith is from Atlanta, Georgia, and he has a critically ill wife, so he is unable to be here tonight. Aside from that, the proposed modification to the final development order, if it is needed, is coming from staff.

Mr. Guido said the basic question before the Board is the modification of the time period from one to three years, as all of the other provisions of the original final development order are still in place in the modified final development order. As Mr. Larson stated in his staff memo, the City was involved in a lawsuit over these lots, but the litigation against the City was dismissed, and the issues between Lake Sienna Homeowners' Association and the property owner were settled in mediation. The replat request has gone before the City Commission, which approved reducing the original four lots to two.

Mr. Bradfield asked what the nature of that lawsuit was.

Mr. Larson said basically, a lawsuit was filed against the City for initially not approving the original four lots proposed on Tract C. With the City's subsequent approval of the four lots, the litigation against the City was dismissed. They're not privy to what was resolved in mediation between the Homeowners' Association and Mr. Smith.

Ms. Zander asked for clarification on what exactly the Board is being asked to approve, since Mr. Larson has advised he doesn't think a final development order is needed to reduce the number of lots on this property from four to two.

Mr. Guido said what the Board is considering is the change in the time period. The original final development order for four lots was effective for a period of one year, by the end of which, all construction on the site was to be completed, while the modified final development order has an effective date of three years, by the end of which, all construction is to be completed. Everything else in the modified final development order seems to be identical to the conditions of the original final development order.

Mr. Whitehouse said it's his understanding, from the staff recommendation, that the only difference between the original final development order and the modified final development order is the reduction of the original four lots to two, along with the change in the time period for the effective date of the final development order. Staff has analyzed the other conditions and determined the proposed reduction of the original four lots to two lots meets the City's Land Development Regulations and Comprehensive Plan, which is also within the Board's purview to determine, based on whether there is any testimony to the contrary and discussion or knowledge as to whether there have been any substantial changes to the area since approval of the original final development order.

Mr. Bradfield asked if the reason for this being approved in the context of a modification to the final development order is because it would have to comply not only with the City's Land Development Regulations and Comprehensive Plan, but with the other conditions as stated in the extended, and modified, final development order.

Mr. Whitehouse said the reason the original final development order has to be modified is because it has expired. The four lots approved by the order were never developed, and they've now been reduced, per the replat approved by the City Commission, to two lots.

Mr. Bradfield MADE A MOTION TO APPROVE MODIFICATION OF FINAL DEVELOPMENT ORDER FILE NO. FD 2006-02 TO EXTEND THE EXPIRATION DATE FOR COMPLETION OF CONSTRUCTION FOR THREE YEARS FROM THE DATE OF APPROVAL OF THE FINAL DEVELOPMENT ORDER MODIFICATION, AND FOR A REPLAT OF TRACT C OF LAKE SIENNA SUBDIVISION, TO REDUCE THE NUMBER OF LOTS ON THE ORIGINAL PLAT FROM FOUR TO TWO, AS APPROVED BY THE CITY COMMISSION AT ITS REGULAR MONTHLY MEETING OF MARCH 3, 2014. The motion was seconded by Ms. Sloan and passed unanimously 7-0 by roll-call vote.

2. AMENDMENTS TO CAPITAL IMPROVEMENTS ELEMENT OF THE CITY OF ST. AUGUSTINE BEACH COMPREHENSIVE PLAN, for the Board's recommendation to the City Commission regarding amending the Capital Improvements Element of the Comprehensive Plan, to adopt by ordinance inclusion of the St. Johns

County School District's Five-Year Capital Improvements Plan, and improvements, consisting of trails, porous brick pavers for the parking lot, and a nature center, to Ocean Hammock Park, 978 A1A Beach Boulevard, St. Augustine Beach, Florida, 32080.

Mr. Royle said each year, the State requires that the City Commission amend the Capital Improvements Elements of the City's Comprehensive Plan to include the St. Johns County School District's Five-Year Capital Improvements Plan. The adoption of the School District's Five-Year Capital Improvements Plan will have no impact on the City's budget, nor on any land uses in the City, as the building of a public school in the City or on Anastasia Island is unlikely because of the area's vulnerability to storms and the high cost of land on a barrier island. The Board is requested to make a recommendation to the City Commission to adopt the School District's Five-Year Capital Improvements Plan by ordinance, and staff also asks the Board to recommend, as part of the amendment to the Capital Improvements Element of the City's Comprehensive Plan, the Commission include improvements to Ocean Hammock Park, consisting of trails, porous brick pavers for the temporary parking lot, and a nature center, as the inclusion of such improvements in the Comprehensive Plan may help the City get future grant money to implement them.

Ms. Zander MADE A MOTION TO RECOMMEND THE CITY COMMISSION APPROVE AMENDMENTS TO THE CAPITAL IMPROVEMENTS ELEMENT OF THE CITY'S COMPREHENSIVE PLAN, PER ADOPTION BY ORDINANCE TO INCLUDE THE ST. JOHNS COUNTY SCHOOL DISTRICT'S FIVE-YEAR CAPITAL IMPROVEMENTS PLAN, AND THE PROPOSED IMPROVEMENTS TO OCEAN HAMMOCK PARK. The motion was seconded by Mr. Mitherz and passed 7-0 by unanimous voice-vote.

3. DISCUSSION OF CITY'S NOISE REGULATIONS PERTAINING TO OUTDOOR MUSIC, for the Board's recommendations to the City Commission as to whether the City's noise regulations, per Sections 9.02.01—9.02.16 of the City of St. Augustine Beach Land Development Regulations, should, or should not, be amended.

Mr. Guido said aside from the noise regulations in the Land Development Regulations, this Board and the City Commission can set any conditions they want, within reason, on approvals of conditional use permits, including prohibiting outdoor music.

Mr. Whitehouse said conditional use permits are granted for a special use, usually in a commercial zoning district, or a use by exception, by the City Commission, which has the ultimate authority to put reasonable conditions on this approval. Some of the reasonable conditions that have been added to conditional use approval orders have prohibited outdoor music to applicants asking for a special use or a use by exception adjacent to a residential district. He thinks the question staff is bringing to the Board is whether the Board wants to recommend to the City Commission that there should be an ordinance

regulating outdoor music in all zoning districts, so it would apply to everyone, not just those who are granted a conditional use permit or a special use by exception.

Ms. Zander asked if the current noise regulations prohibit someone who doesn't have a special use permit or a use by exception from having outdoor music or speakers.

Mr. Larson said no, as long as the music is below the maximum decibel levels.

Mr. Mitherz disclosed he discussed this agenda item with Ms. Miller and Mr. Glenn Brown in the Building and Zoning Department.

Mr. Guido asked for any other ex-parte communication disclosure from the Board members. There was none. He said what they now have up and down A1A Beach Boulevard is a mix of some businesses that have been grandfathered-in, and some that have come before the Board and the City Commission for a special use permit. This Board has almost exclusively asked applicants applying for a special use permit whether they planned to have outdoor music or speakers of any kind, and in most cases, has recommended to the City Commission that outdoor music or speakers not be allowed.

Mr. Bradfield asked how they've gotten to the point, after setting a standard to allow businesses up and down the Boulevard to have outdoor music and speakers and establishing a maximum decibel level, of suddenly considering prohibiting outdoor music altogether. He asked why the City has a maximum decibel level if music and speakers aren't allowed, as a maximum decibel level means there's a clear intent to allow music to be played, as long as it doesn't exceed a specific decibel level and it's not problematic to the surrounding neighborhood or the good of the public. Mr. Larson has reported two noise complaints in the last 10 years, so 99.99% of the time, there aren't any problems.

Mr. Guido said he has a problem with assuming that just because there's a lack of complaints, there aren't any problems, as most people will not complain. He can sit on his porch on Wednesday nights and hear the music from the concerts at the pier, and he lives more than a quarter-of-a-mile away from the pier.

Mr. Bradfield said that's a very good point, because the standard that's established by that makes this discussion seem a bit outlandish. He disclosed that he and Chris Way are friends and business partners, but his business relationship with Mr. Way does not involve his restaurant, Coquina Beach Surf Club, or any business in this City.

Mr. Guido said he doesn't know if they should specifically be discussing issues with Mr. Way and his restaurant. Mr. Way has been before the Board and City Commission for conditional use permit approval, and the problem there was the proximity of Mr. Way's restaurant to neighboring residential properties. The Board listened to a 45-minute presentation made by residents who lived across the street from the restaurant.

Mr. Bradfield asked if any formal complaints have been made by these residents to the City's Police Department regarding noise or music.

Mr. Whitehouse said this discussion is not about this, not only because it concerns an individual case, but because Mr. Way needed a special use permit for what he wanted to do at his restaurant, and per the conditions of the order granting this special use, it was decided to prohibit outdoor music at his restaurant. Aside from that, this topic has been brought before the Board as a general matter for discussion, and as it is a legislative matter which does not concern any particular application, the Board should probably refrain from discussing specific applications. For clarification, this discussion is about properties that don't need any kind of a special use permit or a use by exception.

Ms. England said as long as the City has an appropriate noise ordinance that regulates noise levels, if a resident feels noise levels have been exceeded, he or she can file a complaint. If the City tries to prohibit outdoor music and speakers across the board, it may get to the point where someone can't take a radio outside while they're washing their car. The City's Vision Plan proposed that A1A Beach Boulevard in general should be pedestrian-friendly and have outside seating, so she doesn't see any problem with outdoor music being played at the appropriate decibel level, because if they try to put something in place to prohibit outdoor music, it will take away from the ambience of the Boulevard as proposed by the Vision Plan. She thinks they have what they need in the City's current noise ordinance, unless someone thinks there's a deficiency in keeping noise levels down.

Mr. Mitherz said Mr. Brown, the City's Code Enforcement Officer, told him the City's Police Department is supposed to investigate noise complaints and violations of maximum decibel levels, but he said the Police Department doesn't have anyone trained to do this, and their decibel meter is not properly calibrated to measure decibel levels, so right now, there's no legal way to measure noise levels or enforce the ordinance.

Mr. Bradfield said it's clear they need a way to monitor decibel levels in order to enforce the noise regulations, but for the most part, over the past 10 years, noise complaints have not been a major issue. If the decibel levels of the concerts at the pier were to be compared to decibel levels of other venues with outdoor music along the Boulevard, he thinks they'd find these decibel levels to be a fraction of those of the concerts at the pier.

Mr. Guido said he tends to agree that basically what they have in place now to regulate noise is sufficient, and if they were to further regulate outdoor music, they'd be doing the City a disservice. However, the City's decibel level maximums are not enforced, so maybe the reason they're not getting complaints is because the City can't act on them.

Ms. Zander said if the City isn't getting complaints about noise, she thinks this is indicative that no one has a problem, rather than assuming people have complaints but the City isn't getting them because the Police Department can't act on them.

Mr. Whitehouse said he thinks one of the reasons staff brought this to the Board was to bring to the Board's attention that there are no specific regulations prohibiting outdoor music on properties that do not have a special use permit or a use by exception.

Ms. England said she appreciates this clarification, because she thinks maybe some of the

Board members were under the impression that outdoor speakers are prohibited per se.

Ms. Sloan said if they're looking at the current regulations, Section 9.02.12.A.7, which refers to loudspeakers, states, "No person shall operate, or permit the operation of, any loudspeaker, public address system or similar device, for any commercial purpose."

Mr. Bradfield said he thinks they're identifying loudspeakers and speakers as being one and the same thing, which they're not. If anyone were to complain about the noise levels of entertainment in this City, he's certainly almost positive they're not going to be talking about speakers, but about live music, as when you're talking about decibel levels, music from speakers is something that can easily be controlled. It seems it would be in the best interest of the public to allow outdoor music and speakers, at least on some level, because if it's the intent of the noise regulations that no one shall be permitted to have them whatsoever, why do the regulations have maximum decibel levels, he asked? They can create rules to govern every single thing everyone does, but in the context that there are already pre-existing uses of speakers and outdoor music up and down the Boulevard and a lack of complaints, he thinks it'd be very indifferent of them to consider prohibiting this across the board, and it would also be very inconsistent with every other general marketplace he's ever been around where reasonably-played outdoor music is allowed.

Ms. Zander said she agrees, but doesn't think they can distinguish, at this point, between amplified music and live music, as it really doesn't matter if there's one person or six people playing guitars and singing, as long as the music complies with the decibel levels.

Mr. Guido said he thinks they're missing why Mr. Larson brought this before the Board, which was because he basically wanted them to know there are no regulations on outdoor music in the Land Development Regulations, except with conditional or special use permits, and amendments to these regulations are within the purview of this Board.

Mr. Bradfield said Mr. Larson's memo on outdoor music specifically states, "No text can be found saying that restaurants, etc., cannot have speakers outside." That's a clear and concise opinion that speakers are allowed for a standard property, which is what they're talking about here, not an exception for a special use permit, which may prohibit them.

Ms. England said she thinks they're beating this to death. She has no recommendation to make to the Board or City Commission that the current ordinance should be changed or amended at this time, as it seems to be sufficient as a good noise ordinance as it is.

Mr. Guido said the only thing he'd like to add is that if the Board does make a recommendation to the City Commission, it should be that the Commission do something about getting the necessary equipment to enforce the City's existing noise ordinance, which cannot now be enforced because of a lack of proper equipment. He's hearing a basic consensus from the Board that there's really no reason to adopt new regulations for outdoor music, as this would only compound an existing situation in which some businesses are allowed to have outdoor music and some are not, based on whether or not they've applied for a special use permit which may prohibit outdoor music.

Ms. Sloan said there are some other things in the noise ordinance which she certainly has questions about, but they don't relate to outdoor music. If outdoor music is the only issue they're discussing tonight, she thinks they've discussed it.

Mr. Bradfield said he recommends the Board make no recommendation to the City Commission on this issue.

Mr. Mitherz said he can certainly go along with that, but thinks if the City has a noise ordinance based on decibel levels, a functioning decibel meter and an employee trained and responsible for using it is needed in the Police Department or Code Enforcement Department. Otherwise, the decibel levels should be taken out of the noise regulations.

Mr. Guido suggested several of the Board members could bring this to the attention of the City Commission at the Commission's next meeting, so the Commission can discuss this.

Mr. Bradfield said there definitely needs to be a way to enforce and regulate the noise ordinance, given the fact that it specifies decibel parameters. Without a way to enforce the decibel levels, the noise regulations are pointless.

VII. OLD BUSINESS

There was no old business.

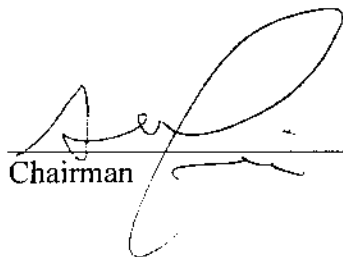
VIII. BOARD COMMENT AND DISCUSSION

Ms. Zander said at the Board's January 21, 2014 meeting, the Board looked at a request to extend the Maratea Planned Unit Development Narrative. She attended the following City Commission meeting of February 3, 2014, at which the Maratea PUD extension request was to be heard by the Commission, but this item was removed from the agenda, because the applicant did not provide authorization for him to appear before the Commission to speak on behalf of the Maratea development corporation's ownership.

Mr. Guido alerted the Board members to be very careful of any ex-parte communication concerning the proposed Maratea PUD extension, as this will come back before the Board, in one form or another.

IX. ADJOURNMENT

The meeting was adjourned at 7:45 p.m.


Chairman
Recording Secretary