



City of North Port

4970 CITY HALL BLVD
NORTH PORT, FL 34286

Meeting Minutes City Commission Joint Meeting

Thursday, January 28, 2016

9:00 AM

Morgan Family Community Center

Joint Meeting with Planning and Zoning Advisory Board

CALL TO ORDER/ROLL CALL

The North Port City Commission Joint Meeting with Planning & Zoning Advisory Board was called to order at 9:03 a.m. in the Morgan Family Community Center by Mayor Moore.

Present: Mayor Moore; Vice-Mayor DiFranco; Commissioners Cook, Jones and Yates; City Manager Lewis; Assistant City Manager Schult; City Attorney Moriarty; City Clerk Raimbeau; Recording Secretary Hale and Police Chief Vespia.

Planning & Zoning Advisory Board: Chair Tower; Vice-Chair MacKenzie; Patricia Tantum; William Housholder; Walter Grzesnikowski and Norbert Schneider.

The Pledge of Allegiance was led by the Commission.

APPROVAL OF AGENDA – COMMISSION

A motion was made by Commissioner Jones, seconded by Commissioner Cook, to approve the Agenda as presented. The motion carried by the following vote:

Yes: 5 - Mayor Moore; Vice-Mayor DiFranco; Commissioner Cook, Commissioner Jones and Commissioner Yates.

- A. [14-1432](#) Agenda for joint workshop/meeting with City Commission, Planning and Zoning Advisory Board and the University of Florida which falls under the provisions of "Appendix C" of the executed interlocal agreement, Detailed Work Assignment C-1:, Task 1, Schedule Planning Officials Training.

City Manager Lewis introduced Planning Division Zoning Coordinator Willette-Grondin who provided a review of the theme of the meeting and welcomed presenters Mr. Jerry Murphy, JD, AICP, CFM, and Mr. Wayne Daltry from the University of Florida.

Mr. Murphy provided a PowerPoint introduction entitled Building Your Community which outlined the components of today's meeting: (A) Powers and Responsibilities;(B) The Community Building Process; and (C) Decision-making.

BUILDING YOUR COMMUNITY

Our Challenge: How do we build the community we can live in?

Begin with the public by listening.

Establish a common Vision, working together to identify shared goals.

Be proactive in the planning process and seek sustainable outcomes.

Be thorough, and consistent and predictable because every decision is important and will affect the community.

Make it easy to Do the Right Thing.

The community building process is like a symphony coordinated through a City's comprehensive plan.

Make development decisions predictable, fair and cost effective.

The Development Decision-making Process in connection with Progressive Regulatory Approval.

POWERS AND RESPONSIBILITIES

Local governments have broad authority to plan and manage growth.

Local governments in Florida have broad home rule powers.

Decision-making regarding legislative (making the law) and quasi-judicial (applying the law).

The Community Planning Act

FS Chapter 163.3161(9)

Intent: not interpreted to limit or restrict local government but interpreted as a recognition of broad statutory and constitutional powers to plan and regulate the use of land.

FS 163.3161(2)

Purpose: utilize and strengthen existing roles, processes, and powers of local governments to guide and manage future development consistent with the proper role of local government.

FS 163.3167(1)

Scope of the Act: municipalities and counties shall have powers and responsibility to plan for future growth and development; adopt/amend comprehensive plans; adopt land development regulations; and establish administrative instruments.

FS 163.3167 (2)

Scope of the Act: each local government shall maintain a comprehensive plan.

Primacy of the Comprehensive Plan

The Comprehensive Plan is legislative; all development shall be consistent with the Plan; all land development regulations shall be consistent with Plan; the local Planning Agency must review land development regulations for consistency with the Plan.

Constitutional and Legal Foundations

The Constitutional Framework

US Constitution, First Amendment: Congress shall make no law respecting or establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech.

The Development Review Process

"You have no entitlement rights and you won't have any rights until and unless we give them to you." This is an attitude held by some municipal governments but people do have entitlements and legal recourse if redress is sought (see previous slide, above).

The Constitutional Framework

US Constitution, Fifth Amendment: No person shall be deprived of property, without due process of law; nor shall private property be taken for public use without just compensation.

Fourth Amendment: nor shall any State deprive any person of property, without due process of law.

Florida Constitution, Article I, Section 9: Due Process: No person shall be deprived of property without due process of law.

Article X, Section 6: Eminent Domain: No private property shall be taken except for a public purpose and with full compensation therefore.

Property Rights

FS 163.3161(10)

Intent: recognize and respect constitutionally protected private property rights, all rules, ordinances, regulations, plans, programs, must be applied with sensitivity to private property rights and not be unduly restrictive.

Bert J. Harris, Jr. Private Property Rights Protection Act

Regulations or other government actions may "inordinately burden," restrict or limit private property rights, without accounting to a taking, and create a claim for damages in such cases . . . "inordinately burdened" means an action of government has restricted the use of property such that the property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use or a vested right to a specific use or . . . the property owner bears a permanent disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large.

Substantive Due Process

Proper Exercise of Police Power

Does the regulation seek to achieve a "legitimate public purpose"?

Is there a rational basis to think that the means used to accomplish the lawful purpose are "reasonably related" to achieving that purpose?

Rational Nexus: *Nollan v. California Coastal Commission* (US Supreme Court, 1987)

Rough Proportionality: *Dolan v. City of Tigard* (US Supreme Court, 1994)

. . . There must exist some logical connection between the problem identified, the government interest, and the solution proposed.

Procedural Due Process

The Vagueness Inquiry: any law is facially invalid if persons of common intelligence must necessarily guess as to its meaning and differ as to its application.

. . . to avoid a claim of vagueness, government must create a standard (in words and pictures) that permits those involved to understand what is expected or required.

Legislative (making law) vs. Quasi-judicial (applying law)

Procedural due process is intended to ensure that government acts in a fundamentally fair and reasonable manner when making decisions that affect private individuals.

Quasi-judicial Decisions

Most land use decisions implement previously determined policy decisions made in the comprehensive plan and are considered quasi-judicial.

Brevard Co. v. Snyder (1993) helped define all the quasi-judicial descriptions

Zoning is quasi-judicial if it affects a limited number of properties.

A petitioner must demonstrate consistency with the Comprehensive Plan even if the petitioner is the local government.

The local government must show that denial serves a legitimate public purpose, and is not arbitrary, unreasonable or discriminatory.

Decisions must be based on substantial competent evidence.

If the decision that is reached is a tie; the decision goes to the government.

The Quasi-judicial Process

Ex parte communication: is communication outside the hearing; may prevent parties from knowing the basis of a decision; and must be disclosed.

Substantial competent evidence: 1) is expert opinion based on education and experience; 2) is the application of education and experience to the case at hand; 3) must have a factual basis. Factual or expert testimony by laypersons as an eye witness is also acceptable.

Who are Decision Makers? Guardians of the public welfare.

1) the governing body of a city or county; 2) a planning commission or local planning agency; 3) a zoning board; 4) a development review board; 5) board of adjustment; 6) any other commission or board that oversees planning-related issues; 7) professional staff; 8) city/county attorney.

Decision-makers

The elected body (city/county commission/councils).

As the ultimate legislative authority, the Commission: (1) appoints the local planning agency; (2) adopts/amends the Comprehensive Plan; (3) is the final determination of consistency; (4) adopts/amends the Land Development Code (text).

As the ultimate quasi-judicial authority the Commission: (1) adopts/amends the zoning map; (2) delegate administration and enforcement authority to the Administrator, hearing officers and appointed boards or commissions.

As the ultimate fiscal authority the Commission: (1) approves development agreements; (2) adopts/amends the Capital Improvement Program; (3) adopts/amends fees, assessments and security instruments; (4) accepts dedication of lands and infrastructure; (5) initiates legislation.

The Local Planning Agency (Planning Commission)

As the keeper of the Comprehensive Plan, the Planning Commission: (1) actions are legislative; (2) initiates text and map amendments to the Comprehensive Plan; (3) holds public hearings and workshops; (4) makes recommendations; (5) reviews implementing actions for consistency.

The Zoning Board

The Zoning Board: (1) reviews petitions under the Land Development Code; (2) actions are quasi-judicial; (3) conducts hearings and receive public comment; (4) reviews substantial competent evidence; (5) makes findings and recommendations; (6) may be delegated limited approval authority.

Development Review Board

The Development Review Board: (1) reviews actions under the Land Development Code; (2) actions are quasi-judicial; (3) conducts hearings and receives public comment; (4) reviews substantial competent evidence; (5) makes findings and recommendations; (6) may be delegated limited approval authority.

Board of Adjustment

The Board of Adjustment: (1) actions are quasi-judicial; (2) reviews variances; (3) provides interpretations; (4) hears appeals of Administrative decisions and Special Exceptions.

City/County Attorney

The City Attorney: (1) provides legal advice; (2) provides counsel and legal representation; (3) provides consultation regarding legal sufficiency of actions and interpretations related to the Comprehensive Plan, land development code and other programs and ordinances; (4) provides consultation regarding legal sufficiency of procedures related to the Comprehensive Plan, land development code and other programs and ordinances.

City/County Administrator

Is the Planning Director and is primarily responsible for: (1) implementing the Comprehensive Plan; (2) administering and enforcing the land development code; (3) supporting actions/decisions for boards/commissions; (4) supporting actions/decisions of boards/commissions; (5) he has ministerial approval authority delegated by the Land Development Code.

Recess from 10:17 a.m. -- 10:34 a.m.

PUBLIC COMMENT WAS HELD.

THE COMMUNITY BUILDING PROCESS

The Comprehensive Plan (consists of)

Land Development Code

Zoning (development standards, land use and intensity)

Development Review (a preliminary site plan, preliminary subdivision, and concurrency/development agreements)

Horizontal construction

Vertical construction

Departments:

FDOT/MPO

SWFWMD

School District

Adjoining jurisdictions

Other

The Comprehensive Plan Elements consist of mandatory elements and optional elements.

The Community Planning Act

FS Chapter 163.3177

The comprehensive plan shall provide principles, guidelines, standards, and strategies for . . . economic, social, physical, environmental, and fiscal development of the area.

The format is at the discretion of the local government and the elements of the comprehensive plan shall be consistent.

"Step out of the Box"

Guiding principles; community profile; vision; urban form and growth concept; community building blocks; governance; plan implementation.

The comprehensive plan informs, empowers and directs; but does not regulate or implement.

FS Chapter 163.3177(1)

It is not the intent . . . to require the inclusion of implementing regulations in the comprehensive plan but rather to require identification of those programs, activities and land development regulations that will be part of the strategy for implementing the comprehensive plan and the principles that describe how the programs, activities and land development regulations will be carried out.

In re-forming the Comprehensive Plan, this includes the guiding principles and considerations regarding whether the Comprehensive Plan is legally defensible and how its implementation is focused using the budget, the CIP and the Land Development Code.

Questions ensued: (1) clarification was provided that the Comprehensive Plan should set up the direction, vision, and the wide and broad criteria of how a city will grow over time; (2) the addenda are the strategies used to arrive at and set goals, and are not enforceable against the government agency; (3) roads are the impetus for increasing capacity, so one way to control future growth is not to build roads

Drafting Protocol using the following elements: 1) critical findings; 2) key issues; 3) expected outcomes; 4) and directives driven by goals, objectives, policies and strategies.

Goals: the long-term result toward which actions or programs are directed.

Objectives: the measurable and achievable outcomes associated with a goal.

Policy: a standard, intent, direction or result to advance an objective.

Strategy: an action, program or technique that implements a policy.

The Comprehensive Plan includes

Future Land Use Element and Map

Transportation Element
Sector Planning

Land Development Regulations Fundamental Requirements

Plans are implemented, in part, by land development regulations.

Land development regulations must be consistent with the plan, to further the plan.

Specific topics are required.

Regulate subdivision of land.

Regulate use of land and water.

Protect potable water wellfields.

Manage stormwater.

Protect environmental lands.

Ensure adequate public facilities.

Regulate signs.

Regulate traffic flow.

Article I: General Provisions

Article II: Zoning

Article III: Special Districts

Article IV: Natural Resources

Article V: Adequate Facilities (Concurrency)

Article VI: Development Options

Article VII: Development Standards

Article VIII: Boards and Agencies

Article IX: Administration

Article X: Equitable Relief

Article XI: Definitions

Conventional Zoning

Divides the land into districts with: 1) permissible uses in each district; 2) design standards; 3) uniform within each district; 4) districts may vary from each other; 5) includes a zoning map.

Planned Development

Provides regulatory flexibility and applies zoning by a site specific plan to: 1) allocate land uses; 2) allocate intensity; 3) set site development standards; 4) set transportation design/configurations; 5) set environmental/open space protection areas; 6) consider alternative designs; 7) insure compatibility.

Form-based Codes

Conventional zoning vs. form-based codes

Questions ensued: (1) following a concern regarding balancing property rights vs. the community vision, it was reported that a regulatory framework must be in place to guide development to the vision of the community; (2) lay out in the Comprehensive Plan vision the desired outcome and have the Land Development Code create the criteria (an overlay) for its accomplishment. This refers back to the slide: "make it easy to do the right thing."

Special Exceptions

Sometimes referred to as "special uses" or "conditional uses" or "provisional uses."

Permitted if prescribed conditions found to exist.

Code prescribes conditions.

Code prescribes procedure.

Variances

Minor exceptions to the zoning rules.

"Use" variances are not permissible.

Criteria include: 1) literal interpretation denies reasonable use; 2) causes hardship unique to the property; 3) cannot be self-imposed; 4) minimum necessary to permit reasonable use; 5) does not harm nearby properties.

Minor Subdivisions

The division of buildable lots is accomplished through the process of lot certification.

Lot splits may be done through an administrative process.

Minor plats can be done with no improvements.

The Preliminary Plat

Establishes: 1) buildable lots; 2) roadway configuration; 3) access to public roadways; 4) stormwater management; 5) common areas; 6) protects wetlands/natural areas; 7) includes the utility layout.

Includes: 1) a concurrency review; 2) developer agreements; 3) covenants.

The Preliminary Site Plan

Establishes: 1) building placement; 2) access and circulation; 3) parking layout; 4) wetland protection; 5) stormwater management; 6) landscaping; 7) setbacks and buffers; 8) utilities.

PUBLIC COMMENT WAS HELD.

Recess from 12:05 p.m. -- 12:35 p.m.

Following a concern regarding zoning requirements for a religious/church development, clarification was provided that it is a regulated activity and an applicant should comply with the city or county zoning criteria regarding how they wish to occupy the land. The city would not experience negative legal repercussions as long as everyone in that category receives equal treatment.

After a question, clarification was provided that a city's ULDC should be business-friendly, that cost-effective regulations are written and implemented to help people prosper. However, a developer must perform due diligence on a piece of property prior to its purchase to make sure the project is allowed in that zone.

MAKE DEVELOPMENT DECISIONS PREDICTABLE, FAIR AND COST EFFECTIVE

Elements of Success

Review slides containing Begin with the Public; Establish a vision; Be proactive; Be thorough and consistent; and Make it easy to do the right thing.

Review of the Comprehensive Plan chart.

Review of the Development Decision Making Process chart.

The Development Review Process

Local government's tendency to divide responsibilities among various departments without strong coordination oversight contributes to an organizational culture that impedes community development goals.

What Applicants Want

Predictability

Clear Expectations with no surprises.

Clear Process and Decision Points.

Fair Treatment

Rules are the same for everybody.

There are no "good" or "bad" developers -- offer trust and be trustworthy.

Accurate and Accessible Information

Easy to find and understand.

Clear application requirements and standards.
Timely Processing
Establish tentative dates for hearings.
Guaranteed review turn-around times.
Published meeting dates.
Reasonable and Fair Costs
Application fees.
Development commitments.
Impact fees.
Competent Staff
"Hard" technical skills.
"Soft" people skills.
Understandable Regulations
That fit.
That are easy to navigate.
That are rational.
Most desired outcomes are easy to meet.

Review of Who are decision makers.

Decision-makers

Elected Body (City/County Commission)

As the ultimate legislative authority: (1) appoints the local Planning Agency; (2) adopts/amends the Comprehensive Plan; (3) makes a final determination of consistency; (4) adopts/amends the Land Development Code text.

As the ultimate quasi-judicial authority: (1) adopts/amends the zoning map; (2) delegates administration and enforcement authority to the Administrator, hearing officers and appointed boards and commission.

As the ultimate fiscal authority: (1) approves development agreements; (2) adopts/amends the Capital Improvement Program; (3) adopts/amends fees, assessments and security instruments; (4) accepts dedication of lands and infrastructure; (5) initiates litigation.

Local Planning Agency as the keeper of the Comprehensive Plan, whose actions are legislative: (1) initiates text and map amendments to the Comprehensive Plan; (2) holds public hearings and workshops; (3) makes recommendations; (4) reviews implementing actions for consistency.

Zoning Board reviews petitions under the Land Development Code and whose actions are quasi-judicial: (1) conducts hearings and receives public comment; (2) reviews substantial competent evidence; (3) makes findings and recommendations; (4) may be delegated a limited approval authority.

Clarification was provided that in North Port, the Planning & Zoning Advisory Board is both the Local Planning Agency and the Zoning Board, therefore, holds legislative and quasi-judicial responsibilities.

Development Review Board, who reviews actions under the Land Development Code and whose actions are quasi-judicial: (1) conducts hearings and receives public comment; (2) reviews substantial competent evidence; (3) makes findings and recommendations; (4) may be delegated a limited approval authority.

Board of Adjustment, whose actions are quasi-judicial: (1) reviews variances; (2) reviews interpretations; (3) reviews appeals of Administrative Decisions; (4) reviews Special Exceptions.

Clarification was provided that a variance cannot be requested if the applicant created the problem for himself/herself.

City/County Attorney provides: (1) legal advice, counsel and legal representation; (2) consultation regarding legal sufficiency of actions and interpretations related to the Comprehensive Plan, Land Development Code and other programs and ordinances; (3) consultation regarding legal sufficiency of procedures related to the Comprehensive Plan, Land Development Code and other programs and ordinances.

City/County Administrator (the Planning Director): (1) has primary responsibility of performing the ministerial role of keeping the Comprehensive Plan accessible to the public and keeping the integrity of the plan; (2) has primary responsibility for administering and enforcing the Land Development Code; (3) supports actions/decisions of boards/commissions; (4) manages procedures; (5) prepares/reviews substantial competent evidence; (6) makes recommendations; (7) holds ministerial approval authority delegated by the Land Development Code.

What to expect from staff: (1) high ethical standards; (2) independent professional judgment; (3) full, clear and accurate information; (4) a fair and transparent input process; (5) courtesy, frankness, forthrightness, responsiveness, accountability; (6) a work program; (7) Standard Operating Procedures [SOPs]; (8) to speak true to the "power" with no reprimands for expressing truth.

Legal status of the Comprehensive Plan: (1) all development and all actions taken by government in regard to development orders shall be consistent with such Plan; (2) all land development regulations shall be consistent with the Plan; (3) local Planning Agency must review land development regulations for consistency with the Plan.

Whether in legislative law making or Quasi-judicial law application, the rules need to be followed. However, when a desired project cannot be approved due to current City Code restrictions, it may warrant a recommendation to change the Code.

Quasi-judicial Decisions: (1) most land use decisions implement previously determined policy decisions made in the Comprehensive Plan and are considered quasi-judicial.

Review of Brevard Co. v. Snyder (1993).

The 4 C's

- Consistency
- Compliance
- Concurrency
- Compatibility

Quasi-judicial levels of review: (1) ministerial for permits; (2) ministerial for plan review; (3) the delegated [appointed] body; (4) elected body.

It was reported that City policy determines where each of these processes stop. However, the further the process extends into the elected body, the less business-friendly the final decision tends to be. The expertise to make evaluations and decisions most likely resides with the professionals as opposed to elected officials, unless there is an extreme amount of competence in the particular area under scrutiny.

The Quasi-judicial Process

Hearing conducted by the following process: (1) adequate notice posted; (2) hearing by a neutral decision-maker; (3) evidence presented; (4) sworn testimony given; (5) questioning of witness; (6) rebuttal.

City Attorney Moriarty stated that North Port has an ex parte ordinance that allows communication as long as it is disclosed.

Discussion ensued: (1) Mr. Daltry recommended no ex parte communication with anyone, including public, when a quasi-judicial matter is scheduled on a commission meeting; but to invite them to attend the hearing; (2) to be legally protected, a Commissioner should request clarification from the City Attorney whether or not an issue will turn out to be legislative or quasi-judicial; (3) when there is a perception that two members are in the same room, it is always better to err on the side of caution and avoid the situation; (4) documents or email received from individuals fall under the same caveat and prior to receiving or reading, it should be answered with an inquiry as to what it is about; (5) making copies for everyone of such documents or emails makes them a public record.

PUBLIC COMMENT WAS HELD.

RECESS FROM 2:02 p.m. -- 2:14 p.m.

City Attorney Moriarty reported that North Port is growing and is by-and-large, citizen-driven. However, too much citizen involvement gives land owners ability to say they were prejudice and litigation follows. It was suggested to schedule a Commission workshop to discuss the issue of ex parte communication and consider starting a lobbyist log for Commission appointments.

The Quasi-judicial Process continued.

Ex parte communication: (1) is communication outside the hearing; (2) may prevent parties from knowing the basis of a decision; (3) disclosure.

Substantial competent evidence: (1) expert opinion based on education and experience; (2) application of education and experience to the case at hand; (3) must have a factual basis.

Factual or expert testimony by laypersons

Conduct of the hearing: (1) adequate notice is posted; (2) hearing by a neutral decision-maker; (3) evidence presented; (4) sworn testimony; (5) questioning of witness; (6) rebuttal.

Findings of fact: Decisions made by planning officials should be documented and supported by "findings of fact."

Mr. Daltry summarized that an outline will be provided as the next step in the ULDC review process and any changes will be vetted through staff. He reported that one priority of the review process is to insure that the City's Sign Ordinance passes constitutional requirements, given the recent Supreme Court decision affecting the country-wide land-use environment legislation.

PUBLIC COMMENT:

There was no public comment.

ADJOURNMENT:

Mayor Moore adjourned the North Port City Commission Joint Meeting with Planning & Zoning Advisory Board at 2:42 p.m.

City of North Port, Florida

By: _____
Jacqueline Moore, Mayor

Attest: _____
Helen M. Raimbeau, MMC, City Clerk

Minutes approved at the City Commission Regular Meeting this ____ day of _____, 2016.