

**Local Planning Agency
Thursday, June 21, 2012
8:30 A.M.
Bonita Springs City Hall
9101 Bonita Beach Road
Bonita Springs, Florida 34135
MINUTES**

I. CALL TO ORDER.

Vice Chairman Sam Vincent called the meeting to order at 8:30 A.M.

II. ROLL CALL.

Present:

Sam Vincent, Vice Chairman
Bob Mills
Bob Thinnes
Rex Sims
Fred Forbes

Absent:

Don Colapietro, Chairman
Henry Bird

III. REVIEW OF THE FOLLOWING ORDINANCES:

- A. AN ORDINANCE OF THE CITY OF BONITA SPRINGS, FLORIDA ADOPTING AMENDMENTS TO ITS COMPREHENSIVE PLAN INCLUDING AMENDMENTS TO THE FUTURE LAND USE MAP, TEXT CHANGES TO THE FUTURE LAND USE ELEMENT; CREATING THE RURAL AGRICULTURE OVERLAY DISTRICT: ADOPTING GOALS, OBJECTIVES AND POLICIES TO ENCOURAGE AND PROMOTE A LOCAL FOOD SYSTEM APPROACH; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY; PROVIDING A CONFLICTS CLAUSE AND SEVERABILITY CLAUSE, PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

8:32:44 AM Jackie Genson, Community Development, addressed this Ordinance, which is to add text to the Comprehensive Plan, and a figure to the Future Land Use Map series. This is in response to Council direction to Staff to reestablish some agricultural rights to San Carlos Estates. This was addressed by the LPA last year, at which time a discussion was held to also include the area of Tropic Acres. Policy 1.1.26 is the proposed text to create the Rural Agricultural Overlay. Overall, this is to recognize areas that have larger lots with lower density residential, to allow them ancillary agricultural uses.

8:35:31 AM City Attorney Audrey Vance explained that the first part entails Policy 1.1.26, which creates the Rural Agricultural Overlay, along with the map. The next portion (Objective 1.16, and Policies 1.16.1 thru 1.16.5) addresses policies for the local food system approach - community gardens and farmer's markets. The intent is to keep sustainable food within this area as opposed to being reliant on food from all over. Back-yard hens is not included, and will be addressed at a later date. Ms. Genson explained that Staff discussed this morning about removing Policy 1.16.3, since the Comprehensive Plan is intended to be very general. Board Member Bob Thinnes agreed, as it seemed to be incorporating some zoning in the Comprehensive Plan.

8:38:06 AM Board Member Rex Sims referred to Policy 1.16.4, which approves these uses in the DRGR. Ms. Genson explained that the DRGR currently allows farms by right, however, there are a lot of non-conforming properties with single-family residential in the DRGR. Board Member Sims stated he didn't recall discussing the DRGR in the past, noting it was, however, fine with him. Board Member Fred Forbes questioned a qualifier to ensure they are only giving these rights to what's existing now. His concern is that there's a movement all the time to build in the DRGR, i.e. kennels, vet clinic, etc. Ms. Genson noted that entailed a different section; not the DRGR.

- B. AN AMENDMENT TO THE BONITA SPRINGS LAND DEVELOPMENT CODE CHAPTER 3 (DEVELOPMENT STANDARDS); AMENDING SECTIONS 3-154, ADDITIONAL REQUIRED SUBMITTALS; §3-183. FINAL INSPECTION AND CERTIFICATE OF COMPLIANCE; §3-416, LANDSCAPE STANDARDS; AND §3-420, PLANT MATERIAL STANDARDS; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, INCLUSION IN CODE AND AN EFFECTIVE DATE.

8:40:43 AM City Attorney Vance noted this entailed changes to Chapter 3, most of which are related to recent changes that have occurred in the Building Code. She next furnished an overview of the changes, as reflected on page 3 regarding a clarification on the floor and base flood elevation; page 7 requiring developments to remain consistent with its development order; and the last change was made to page 13 to correct the scientific name for Seaside mahoe.

8:43:10 AM Board Member Sims referred to page 10, paragraph D., which he feels is in conflict with the Economic Development program, in that it states when there's been a discontinuance of use for a period of one year or more, and when a request for an occupational license to resume a business is made, they have to comply with numerous requirements regarding buffering. He feels this may be a detriment, in that if someone rents an empty building they don't want to punish

them, but rather assist them. He suggested the inclusion of deference so they don't have to do this for six months or so. City Attorney Vance stated that it does say "to the maximum extent possible," which provides the ability for some flexibility. The problem is that if this language is not included, some people won't put in even one tree. Ms. Genson referred to the now empty Bonita Bargain store, where Community Development worked with the owner and the applicant to allow the business to operate but still bring back the landscape requirements as required in the development order. Overall, they do try to work with the applicants.

John Dulmer, Community Development, explained this is actually a "carry over" from Lee County. This particular section was put in place for properties that were built between the 1950's to late 1980's. As the County modified its landscape standards, properties were redeveloped, at which time they realized there wasn't much in the code that would help them provide some sort of consistency in terms of landscaping. This section was one of the ways Lee County addressed that. He further explained that Community Development has modified the standards to fit particular lots. Discussion followed. Board Member Sims stated if there's some way this could be softened or phased in over a period of time, that would be fine. City Attorney Vance suggested adding a sentence to state "Staff may defer or phase as necessary for economic development." Mr. Dulmer stated they are going to be looking at Chapters 3 and 4, noting that if this is something the Board would like them to do now, they can. Board Member Sims stated it's something they just need to be aware of. Mr. Dulmer suggested modifying the language to reflect the fact that they do work with property owners.

8:50:21 AM Board Member Bob Mills stated he has a concern with putting alternative language in, as the intent is to improve the City in all cases.

8:51:29 AM Board Member Fred Forbes stated he feels that from the examples of what Community Development has done by Mr. Dulmer, he feels they are covered. His concern is that if you say too much then everyone will be requesting it.

8:53:10 AM City Attorney Vance explained that no changes were being proposed for this part of the code right now. Vice Chairman Vincent stated he didn't feel they should change a thing right now.

PUBLIC COMMENTS:

8:53:23 AM Deborah Maclean feels the roadways should be the most guarded via architectural guidelines, buffers and setbacks.

C. AN ORDINANCE OF THE CITY OF BONITA SPRINGS; AMENDING CERTAIN SECTIONS OF THE ZONING ORDINANCE; AMENDING 4-377, PUBLIC HEARINGS; 4-381 DURATION OF RIGHTS CONFERRED BY ADOPTED MASTER CONCEPT PLAN; AMENDING THE FOLLOWING USE TABLES: 4-653, 4-694, 4-714, 4-735, 4-791& 4-934; AMENDING 4-1294 NONCOMMERCIAL POULTRY RAISING TO PERMIT RESIDENTIAL LAY HENS; AMENDING 4-1297 TO REQUIRE A SPECIAL EXCEPTION FOR ALL KEEPINGS OF ALLIGATORS AND OTHER CERTAIN ANIMALS; AMENDING DIVISION 16. FARM PRODUCE STANDS, U-PICK OPERATIONS, ROADSIDE STANDS TO PERMIT FARMER MARKETS AND COMMUNITY GARDENS BY AMENDING 4-1711 - 4-1715 RELATING TO FARM PRODUCE; CREATING 4-1716 FARMERS MARKETS AND 4-1717 STANDARDS FOR COMMUNITY GARDENS; DIVISION 17. FENCES, WALLS, GATES AND GATEHOUSES, SECTIONS 4-1741 THROUGH 4-1744; AMENDING 4-2020 PARKING; AMENDING SECTION 4-2191, MEASUREMENT, PERMITTED ENCROACHMENTS TO PERMIT OPEN DECKS; AMENDING 4-2194 RELATED TO SETBACKS FROM BODIES OF WATER; AMENDING 4-3041 TEMPORARY USES AND CREATING 4-3105, TO PROHIBIT LARGE METAL BUILDINGS (SUPER SHEDS) IN RESIDENTIAL DISTRICTS; PROVIDING FOR CONFLICT, SEVERABILITY, CODIFICATION, INCLUSION IN CODE, SCRIVENER'S ERRORS AND AN EFFECTIVE DATE.

8:54:31 AM Ms. Genson addressed revisions made, which begin on page 4, explaining Staff's recommendations on including items 6 through 8, of which 6 addresses changes resulting from City Council's meeting, and 7 development orders.

8:56:15 AM In response to the City Attorney's example of Council granting waiver to allow the Applicants to move forward before 30 day effective day of the adopted Ordinance, Board Member Sims addressed a concern he had with item 7, because in essence Council is granting a waiver of the 30 day effective date for ordinances as established in the City Charter. City Attorney Vance explained that this just entailed the application of the development, as it's not for the actual approval of the development order. Board Member Forbes questioned the risk. Ms. Genson referred to the Family Dollar CPD case, who filed their development order after they filed their zoning, and so at their own risk they submitted a development order application, and paid an engineer to do the civil plans, and pay the application fee, not knowing if their zoning was going to get approved. Overall, they filed them concurrently at their own risk, and the zoning did get approved, but they cannot be issued until 30 days after the effective date of the ordinance. This is all that item 7 is saying - Staff cannot issue a development order until after the effective date of the Ordinance. City Attorney Vance explained that if the City issues something that's inconsistent with the Comprehensive Plan is the biggest risk, with the risk being that the building would have to come down. Her concern is that this could create a situation for an equitable estoppel argument if the

government decided to go forward - if the government's not changing it's not an issue. Mr. Dulmer explained that the only thing this does is change the effective date, the review, or the process in which the development has to proceed for the approval. All it does is allow the developer to take a risk; it doesn't change anything else.

9:02:54 AM Board Member Sims stated that to him this is an avenue to get around the 30 day waiting period, which was now in writing. City Attorney Vance disagreed, explaining that Staff likes things in writing because it provides comfort to people. Sometimes you can have retro-active applications in building so that you have legal buildings as opposed to them being legally non-conforming.

9:05:40 AM Board Member Sims next referred to Section 4-381, titled "Duration of rights conferred by adopted master concept plan" which is proposed to be entirely replaced. He explained that in the past the LPA addressed serious questions relating to vested rights. He questioned whether they were making vested rights retro-active. City Attorney Vance explained that what determines vested rights regards what actions have been taken by either the Applicant or the City to provide those vested rights. Discussion followed.

9:07:33 AM Board Member Sims questioned the effect to people's rights by changing this - those who have development orders. Ms. Genson explained one of her issues with this section was that there was no process or language that tells her what to do with a vacated MCP for those pre-1991. Post 1991 there's not much information on how Staff is to extend MCPs through City Council. This would allow Staff to do an administrative extension of MCPs - 5 years for small projects and 7 years for large projects. Currently, Council can provide a 5 year extension. There is criterion that needs to be met, noting that Staff can extend MCPs to what they feel is appropriate. They can also make applicants go through the public hearing process instead of the administrative process if they feel the need. With respect to vesting, the 20% rule has not changed.

9:13:59 AM Board Member Forbes addressed a concern he had with administrative approvals in that things can occur in the surrounding area in five or seven years that makes some of the uses incompatible with what's now there, or approved to be there. He feels it's much easier to deal with that by letting Council address it rather than Staff. Ms. Genson referred to page 7 and criteria reflected under (c)(1)b. that Staff has to review, and page 9, under (d)(1) b., the criteria which is essentially the same, which is where Staff and Council would look at the MCP to see if it's consistent with the Bonita Plan and compatible with the existing and proposed uses. Board Member Forbes stated that there are many instances where the Zoning Board's decision is different than Staff's, or what the Zoning Board and Staff agrees upon is different than what Council approves. Discussion followed on the 5 and 7 year MCP extensions, with Board

Member Forbes stating he could accept a 1, 1 ½ or 2 year extension period maximum.

PUBLIC COMMENTS:

9:22:48 AM Deborah Maclean explained that she felt the purpose of the sunset rule is to ensure the developer is not just getting zoning for the purpose of flipping the property, and that they don't have fallow expanses of land, or non-committed property owners in the Old 41 corridor - from Rosemary to Bonita Beach Road. It is to protect the community.

9:25:38 AM Board Member Bob Thinnes referred to page 6 and suggested changing the word "issued" to "submitted" in section (a)(1)(2).

9:42:50 AM Board Member Forbes motioned to limit the initial approval period of Master Concept Plans to five years, and allow the granting of one administrative approval extension of up to two years, after which time they must go through the public hearing process; Board Member Bob Mills seconded; and the motion carried unanimously.

City Attorney Vance cautioned that the only negative regards developers who rush to put up buildings. She explained that the reason you see empty shopping centers is because people rush and put up the buildings when they know road impact fees were going to increase exponentially, which in turn results in shell buildings that never had an end user.

9:47:07 AM Board Member Sims referred to page 14, and the word "other," under AG-2, under "Lee County School District" of which he didn't know what "other" meant. His question is whether "other" permits a school bus repair shop, and if so, he didn't feel administrative approval is the answer. Mr. Dulmer explained "other" entailed any other type of trade/school. The Board can provide boundaries as to what they want to consider "other," or Staff can define it, or Staff can bring it back with a definition of "other." Discussion was held on Note 15, which involves a use that would require a special exception if located outside of the DRGR and Rural Agricultural Overlay District, unless lawfully existing prior to September 1, 2012. A lengthy discussion ensued.

10:00:20 AM Board Member Forbes asked if the City would be granting people more rights to get uses administratively approved in the DRGR than they currently have per the State Statutes. Ms. Genson explained that they did add uses for administrative approval, i.e., animal kennels, community gardens, fire station/forestry tower, model homes. Board Member Forbes questioned the inclusion of a size requirement, which, if exceeded, would require them to go through the special exception process. Discussion followed on the various uses.

Board Member Sims referred to page 52, item 3, stating that he felt the 20 square feet was supposed to be 200 square feet. Staff to check.

Board Member Forbes referred to "recreational private on site," to which Ms. Genson addressed the definition of Recreation Facilities Private On-site, which means recreation equipment or facilities, i.e., swimming pools, tennis courts, shuffleboard, hand ball, etc., which are owned, leased or operated by a Homeowners Co-op or Condominium Association and located in the development or neighborhood controlled by the Association - it is owned by a HOA or Co-op and located in the development or neighborhood controlled by the Association. Recreational Facilities Private Off-site is different.

Board Member Bob Thinnes referred to (5)d., Planting Beds raised three feet or more above grade. . ." and questioned whether this was a standard, to which Staff responded yes. Board Member Thinnes referred to page 37, to which City Attorney Vance stated that the new draft of the Ordinance removes Section 4-1294 relating to chickens in its entirety. The intent is to set up a pilot program for backyard hens at a later date.

10:16:00 AM Vice Chairman Vincent referred to page 45, Community Gardens, which addressed the criteria for approval, which he feels entails a lot of criteria for a small community garden. Ms. Genson explained that a hand drawn site plan would be sufficient. Staff to remove "drawn to scale." Board Member Thinnes suggested adding "aerial" in addition to site plan.

- D. AN ORDINANCE OF THE CITY OF BONITA SPRINGS; RELATING TO BUILDING AND CONSTRUCTION CODES AND TO THE ESTABLISHMENT OF THE WIND BORNE DEBRIS REGION AND WIND SPEED ZONES IN LEE COUNTY; CREATING BONITA SPRINGS LAND DEVELOPMENT CODE SECTION 5-112 TO DESIGNATE WIND SPEED LINES AND A WIND BORNE DEBRIS REGION THAT COINCIDES WITH FIGURE 1606 OF THE FLORIDA BUILDING CODE; CREATING BONITA SPRINGS LAND DEVELOPMENT APPENDIX RELATED TO WIND BORNE DEBRIS REGION; RESERVING LDC SECTIONS 5 - 113 THROUGH 5-330; PROVIDING FOR CONFLICT, SEVERABILITY, CODIFICATION, INCLUSION IN CODE, SCRIVENER'S ERRORS AND AN EFFECTIVE DATE.

10:21:27 AM Board Member Sims referred to the map, to which City Attorney Vance explained entailed a small map of the overall state of Florida map. Board Member Sims stated his concern regarded the fact that this map will be included in the City's requirements, and yet the City doesn't have any control over the map. Mr. Dulmer explained that the only time this map would change is if there's a change in the Florida Building Code that approved a change to the map. He further explained. The changes make it easier to predict the standards. It also

makes it easier when trying to design a house. City Attorney Vance stated the only change is to Category 2; not Categories 1 or 3.

- E. AN ORDINANCE AMENDING AND RESTATING CITY OF BONITA SPRINGS ORDINANCE NO. 08-17, THE CITY OF BONITA SPRINGS FLOOD DAMAGE PREVENTION ORDINANCE; REFLECTING CHANGES BY THE FLORIDA BUILDING CODE; PROVIDING FOR STATUTORY AUTHORIZATION AND FINDINGS OF FACT; PROVIDING A STATEMENT OF PURPOSE AND OBJECTIVE; DEFINITIONS; ADMINISTRATION OF THE ORDINANCE; PROVIDING GENERAL STANDARDS FOR FLOOD HAZARD REDUCTION; PROVIDING FOR STANDARDS FOR AREAS IN THE B, C, AND X ZONES; PROVIDING FOR SEVERABILITY, REPEALER; CONFLICTS OF LAW, AND INCLUSION IN CODE, CODIFICATION AND SCRIVENER'S ERRORS AND AN EFFECTIVE DATE.

10:29:04 AM City Attorney Vance addressed revisions to this Ordinance, as underlined, which begin on page 4. Additional changes are on page 12 relating to elevation, page 14 to remove the requirement for construction variances and the Board of Adjustment and Appeals, and page 18 to address substantial improvements.

ADDITIONAL DISCUSSION:

10:36:36 AM Ms. Genson referred to the Ordinance in Item C. above to address inquiries City Council Member Martha Simons had regarding produce stands and seeing if it would be appropriate to expand how they can operate. City Attorney Vance explained that Council Member Simons' concern was that a produce stand, while selling things, that there might be one produce ancillary to the ingredients that was not grown locally or within the City, to allow additional items. Mayor Nelson commented that, in essence, would create a mini grocery store. The question regards allowing products that are not from the area. Ms. Genson explained that the intent of produce stands are for farms and u-pick operations, and if they want to set up a roadside stand, it is to sell the produce that's generated on that site. If they want to sell their produce off site, i.e., at a farmer's market, it would be appropriate and be in more of a commercial setting. Overall, the question regards if the Board wants to amend this section to allow some off-site produce to be sold as well at the produce stand.

Board Member Sims stated he sees it as involving produce grown in that immediate area. Vice Chairman Vincent stated it also allowed for produce grown or produced on other farms in the City. One cannot go to Immokalee to get goods to sell.

10:42:12 AM Ms. Genson addressed another inquiry as reflected on page 41, under Farmer's Market, item (g), to make the language less restrictive in terms of regulating when vendors should show up and break down, and leaving it up to the discretion of the operator of the farmer's market. This is fine with Staff as long as the operator has

the site neatly maintained. The objective is to keep it from becoming a nuisance. Consensus to leave as is.

IV. PUBLIC COMMENTS: Reflected above.

V. NEXT MEETING: July 19, 2012

VI. APPROVAL OF MINUTES: 04/12/12

Board Member Sims motioned approval of the minutes; Board Member Forbes seconded; and the motion carried unanimously.

VII. ADJOURNMENT.

There being no further items to discuss, the meeting adjourned at 10:46 A.M.

Respectfully submitted,


Debra Filipek, Recording Secretary

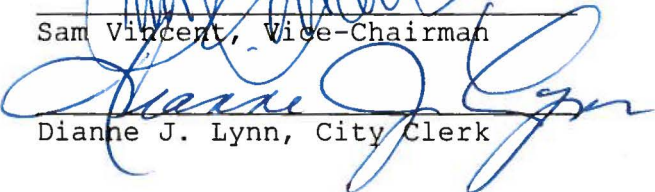
APPROVED:

LOCAL PLANNING AGENCY:

Date:

AUTHENTICATED:


Sam Vincent, Vice-Chairman


Dianne J. Lynn, City Clerk