

CITY OF BONITA SPRINGS  
PUBLIC WORKSHOP  
JOINT CITY COUNCIL / ZONING BOARD WORKSHOP  
MONDAY, APRIL 30, 2018  
8:00 A.M.  
BONITA SPRINGS CITY HALL  
9101 BONITA BEACH ROAD  
BONITA SPRINGS, FLORIDA 34135  
MINUTES

I. CALL TO ORDER

Mayor Peter Simmons called the joint City Council and Zoning Board workshop to order at 8:04 AM.

II. PLEDGE OF ALLEGIANCE

Board Member Roger Brunswick led in the Pledge of Allegiance

III. ROLL CALL

Mayor Simmons and all Council Members; and Zoning Board Chairman Larry Kurlander and all Board Members were present except for Council Member Greg DeWitt and Board Member Robert Incerpi.

IV. OPENING COMMENTS AND STATEMENTS FROM MAYOR PETER SIMMONS AND ZONING BOARD CHAIRMAN LARRY KURLANDER

8:08:36 AM Mayor Simmons and Chairman Kurlander made opening remarks regarding the Workshop and what they hoped to accomplish.

V. PRESENTATION BY DAVID THERIAQUE ESQ., SPECIAL LAND USE COUNSEL

8:10:02 AM David Theriaque, Theriaque and Spain, discussed what he wished to accomplish in the workshop and wanted an interactive discussion with Council and the Zoning Board. He discussed his education and experience in Land Use Planning. He first addressed the relationship between the Comprehensive Plan and the Land Development Code (LDC), and how the law applied to both.

8:23:41 AM City Attorney Audrey Vance stated that there were some applicants that applied for Conventional Zoning and their applications were denied.

8:25:30 AM Council Member O'Flinn wanted to know what the purpose of a Planned Development (PD) was. Mr. Theriaque defined a PD as a zoning category where there was flexibility in a mixture of uses.

8:30:03 AM Mr. Theriaque addressed Council Member Forbes' question and stated that Walton County did not have a design review board. Mr. Theriaque addressed Chairman Kurlander's question as well and stated that there was some level of specificity in the PD Regulation.

8:35:11 AM He further discussed the difference between the Old PD and New PD.

8:36:40 AM Board Member James Wurster asked whether a Quid Pro Quo could be asked directly to the developer. Mr. Theriaque stated that the Quid Pro Quo needed to have a rational relationship.

8:39:05 AM Mr. Theriaque addressed Board Member Barbara Craig's question and stated that there was no quid pro quo in a variance.

8:45:02 AM Board Member Brunswick asked whether 5 years was a normal time period. Mr. Theriaque stated that it was a longer than normal.

8:51:59 AM Council Member Quaremba asked whether DRI's work the same and PD's. Mr. Theriaque stated that DRI's were separate entities from PD's.

8:53:00 AM Mayor Simmons asked for the definition of surrounding area. Mr. Theriaque stated that it was a subjective term and that depending on the risk, there may be a sunset review. City Attorney Vance stated that it would need to be a city initiated process. Mr. Theriaque stated that it could go directly to the City Council for a hearing.

9:02:34 AM Mr. Theriaque discussed an alternative approach of not using PD as a zoning district which would create a Planned Unit Development (PUD) process. He stated that the level of specificity would be gained at the conceptual PUD stage. He stated that it would move towards a development project rather than a zoning entitlement.

9:07:51 AM Mr. Theriaque next discussed the staff report. Board Member Brunswick stated that he wanted a clearer photograph or map of the area being affected. Board Member Richard Donnelly suggested to have an executive summary instead of a copious amount of pages. Board Member Wurster suggested a comprehensive description of the quid pro quo for setback deviations. Mr. Theriaque clarified that a justification for granting the deviation would be more appropriate.

9:14:03 AM Chairman Kurlander suggested to have the statutes staff was basing their decision on referenced in the staff report.

9:18:56 AM Council Member O'Flinn suggested for the Zoning Board decision and reasoning be more pronounced in the staff report. Mr. Theriaque provided examples of what certain jurisdictions do.

9:27:25 AM City Attorney Vance stated that the City did not formally transcribe the Zoning Board Meetings although there was a court reporter present who attend the meetings. Mr. Theriaque provided options as a vote where the Zoning Board Members conveyed to the City Council what their thoughts were or to have staff members convey what each Board Member thought. Council Member O'Flinn stated that he felt that key concerns the Zoning Board had should be incorporated into the packets given to Council. Mr. Theriaque further provided examples of what could be conveyed to Council from the Zoning Board.

There was a short break at 9:33 a.m.

9:53:54 AM Council Member Forbes suggested to have a design review. Council Member O'Flinn suggested to have the best quality drawing from developers of what the project would be so that Council could get a better sense of what the project would look like.

9:58:54 AM Mr. Theriaque then discussed architectural guidelines and architectural review committee strengths and weaknesses. He reviewed what the typical architectural review committee composed of including a staff member, planners, architects, engineers, and a representative of the general public. Board

Member Wurster asked whether someone with an inactive architectural license still serve on the architectural review committee. Mr. Theriaque stated that there were no standards for what the committee would consist of. He further discussed issues he saw with the Architecture Review Board including the process taking a longer period of time to review and filling the Board. He stated that he did not believe that there were any best practices regarding it.

10:06:55 AM Council Member Forbes suggested to have an architectural review committee involved in certain applications and not others. Mr. Theriaque stated that he felt the architectural review process incorporates the PD. Mr. Theriaque stated that it depended on the developer and on whether there could be a collaborative approach.

10:13:15 AM Chairman Kurlander suggested to have an architectural review incorporated into the decision process for the Zoning Board. Board Member Brunswick stated that he felt once there were good renderings presented to the Board, then they should be able to make the decision. Council Member Forbes stated that there should be multiple architects if the architectural review committee were established because the decision should be based on more than one person's opinion. City Attorney Vance stated that there were other Boards that did reviews and provided examples.

10:20:28 AM Council Member Amy Quaremba asked whether there were design standards for conventional zoning.

10:26:58 AM Mr. Theriaque next discussed neighborhood meetings. He felt that it accomplished many things and recommended for it to be mandatory. He felt if there was a meeting with those in the surrounding area then the residents would be better informed and there may not be as much opposition if any. If the project changed substantially, he suggested to have another neighborhood meeting to keep neighbors informed. He did not feel that having a neighborhood meeting after submitting the application would be as effective as having the meeting prior to filing the application. He provided an example of what he has done with previous projects and suggested that only the applicant and residents participate in the neighborhood meetings.

10:35:13 AM Board Member Craig asked what would be defined as a neighborhood. Mr. Theriaque stated that he preferred to be overbroad with his definition of neighborhood because he did not want people to feel left out if the neighbors happened to be in a community. He further explained the concept of due process and ex parte communication.

10:40:38 AM Board Member Craig asked whether staff could investigate a claim based on what was discussed during an ex parte communication. Mr. Theriaque stated that if it was written in a letter or an email, then place the document within a file. If the discussion was on the phone, then write a memo regarding that discussion and place it in the file. Council Member O'Flinn expressed concern regarding ex parte communication.

10:46:19 AM Council Member O'Flinn suggested to have ex parte communication with staff. Council Member Quaremba stated that she wanted to know what the ex parte communication with other Council Members consisted of. Board Member Brunswick stated that many people are seasonal in Bonita Springs and it would create problems if neighborhood meetings happened when they were not here. Mr. Theriaque stated that there were some Local Governments have their meetings in the fall when the seasonal residents were present and there were less scheduling conflicts.

10:54:31 AM Mr. Theriaque addressed Board Member Craig's comment Council Member Forbes stated that he supported neighborhood meetings. Council Member O'Flinn expressed concern over having certain

Council Members having ex parte communications and other not participating in them. He felt all the information should be presented during Council Meetings.

11:00:50 AM City Attorney Vance provided an example previous practices where Council was not able to have any form of ex parte communication. She stated that it would cause an issue where Council only chose to hear from applicants or residents and not both parties.

11:04:45 AM Mr. Theriaque next discussed storm water regulations. He felt that the law gave the City home rule authority. Council Member Quaremba asked about 100% retention and establishing its standard. She stated that many gated communities had storm water management systems and asked how integrating utility fees within those communities. Mr. Theriaque stated that an engineer should review the communities storm water to confirm that water was not being added into the City's storm water. He further stated that the storm event needed to be determined and then user fee would be based on that.

11:14:14 AM John Dulmer, Community Development, elaborated on the water management standard and proceeded to explain the process. Chairman Kurlander asked at the Zoning and City Council level whether there was information disclosed regarding water management. Mr. Dulmer stated that it was not a plan but a narrative. City Attorney Vance stated that the Water Strategy Task Force recommended to have a higher standard.

11:18:17 AM Mayor Simmons asked whether there was a way to review what the County and State did to rectify the water issue. Mr. Dulmer stated the Jim Beever, South Florida Regional Planning Council, created a report which identified the water flow. He further discussed how the water flow issue could be resolved. Mr. Dulmer stated that it was difficult to establish a standard. He suggested to take the report and work with other agencies. Mr. Dulmer stated that developers provide flexibility within their plans where it is reviewed on the administrative level and few times would it reach the Development Order Level. Council Member Forbes recommended to adopt standards set by Collier County because they had much lower release rates. He also suggested to hire a hydraulic storm water management firm to see how the release rate could be reduced. Mr. Dulmer suggested to review how the new standards could be compatible with the old standards.

11:28:13 AM Mayor Simmons asked how the costs could be shared if it was proven that other entities had their storm water into the City. Mr. Dulmer stated that the study done by Jim Beever, Southwest Florida Regional Planning Council, identified water sheds and where water was currently flowing. Council Member Forbes suggested to adopt Collier County water flow standards as a short term resolution. Board Member Wurster suggested to increase storm event or to lower the intensity of the storm event over time. He felt that the standards should change on an interim basis for all future events.

11:42:09 AM Mr. Theriaque asked for direction on addressing PD revisions. Council Member Council Member Forbes wanted to discuss proper notice and neighborhood meetings further. Mayor Simmons asked what additional notification would be available to surrounding areas affected by the projects other than the signs placed. City Attorney Vance stated that the City did direct mail outs as well as public notices in the newspaper. Mr. Dulmer further discussed best practices in other jurisdictions.

11:48:59 AM Mr. Theriaque discussed the timeframe of rewriting the PD zoning to incorporate the architectural standards. Council Member Forbes referenced a residential property and the design. Mr. Dulmer further provided detail on the subject property. Board Member Brunswick asked whether as a city there could be some buffer. Mr. Dulmer stated that the property owner had to agree on the buffer. Council Member Forbes provided an example of one jurisdiction abutting another.

11:54:49 AM Council Member O’Flinn suggested to follow up on consensus items. Mr. Theriaque asked whether there was a consensus as to looking into neighborhood meetings. Council Member O’Flinn wanted more clarity on ex parte communication. Board Member Craig stated that she did not feel that there was a balanced judicial process with ex parte communication. Mr. Theriaque stated that the application of the adopted rules and regulations to a property made it quasi-judicial. Mr. Theriaque stated that the role of staff was to do an independent analysis regardless of what the developer says. Council Member Forbes suggested to have staff present if Council wanted to meet with the developer so that there can be a record of what was discussed. City Attorney Vance explained the definition of substantive competent evidence. Mr. Theriaque stated that it was appropriate to ask questions during the hearing but should not conduct their own independent research before the hearing. The Board Members and Council should base their decisions on what was presented by the applicant and staff. Mr. Theriaque stated that questions asked by Council and the Zoning Board were not competent substantial evidence. Council Member O’Flinn wanted information for and against a project so that Council could weigh their decision.

12:09:56 PM City Attorney Vance stated that neighbors could be used as fact witnesses. Council Member O’Flinn asked whether residents needed to be experts to speak about their observations. Mr. Theriaque explained that factual information and personal observation could be used.

12:16:19 PM Council Member Forbes referenced a development where there was a plan to widen US 41 and the construction of a privacy wall.

There was a lunch break at 12:15 PM.

12:56:54 PM Chairman Kurlander clarified that himself and a few other Zoning Board members would meet and discuss specific issues presented at the Joint Workshop. Council Member Forbes wanted to have Mr. Theriaque review what he believed the Architectural Review Committee (ARC). Mr. Theriaque stated that he would present to Council his recommendation to have an ARC but did not know whether Council also wanted a design review board. Council Member Forbes discussed the composition of the Design Review Board and recommended that there be multiple architects on the Board. Council Member Forbes suggested that the design review only be applied to developers that did not have a clear idea of what their project would be. City Attorney Vance asked whether Council wanted a pre-hearing. Council Member Quaremba stated that she did not agree with the idea of some developers having a design review and others not. She felt that if the developer’s idea did not align with Council’s they should be subject to the design review as well. Council Member O’Flinn suggested that the developer should have a clear rendering presented to show what their idea was. Council Member O’Flinn explained his reasoning for suggesting it. Board Member Brunswick expressed concern on whether the standard would be too restrictive. Chairman Kurlander wanted clarification on where residents felt the City was anti-development.

1:10:55 PM Council Member Forbes stated that there were strides made in the last few years on certain developments. Board Member Donnelly referenced form zoning and asked how the City’s current planned development related to it. Mr. Theriaque stated that the City did not have that currently but suggested to look at what was being proposed and how it compared to Council’s vision to get the result Council wanted. Discussion ensued regarding form based zoning.

1:20:14 PM Chairman Kurlander made closing remarks and thanked Mr. Theriaque for his contribution. Council Member O’Flinn thanked Council Member Forbes for initiating the workshop.

## VI. DISCUSSION BY CITY COUNCIL AND BOARD MEMBERS

## VII. PUBLIC COMMENT

There were no members of the public present.

VIII. ADJOURNMENT.

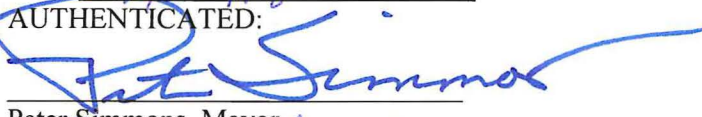
There being no further items to discuss, the meeting adjourned at 1:21 PM.

Respectfully submitted,

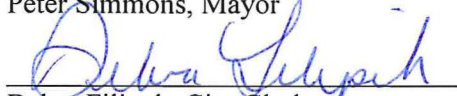
  
Charlen Wade, Deputy City Clerk

APPROVED:  
ZONING BOARD

Date: 7/20/18

AUTHENTICATED:  


Peter Simmons, Mayor

  
Debra Filipek, City Clerk