

MINUTES, October 1, 2008: Manasota and Sandpiper Key Advisory Committee.

The meeting was called to order at 9:35AM by BJ Galberaith, Chairman. In attendance were Committee members Betty Sue Carroll, Randy Dahl, John Dubowik, BJ Galberaith, and Steve Stump. Also in attendance were Tom Moore, County Commissioner for District 3, Roxann Read and Inga Williams from Growth Management, Derek Rooney from the Charlotte County Legal Department, and members of the press and public.

Welcome

The Chairman introduced Tom Moore, Commissioner from our district, Roxann Read, the Advisory Committee's Staff liaison, Inga Williams, Charlotte County Principal Planner, and Assistant County Attorney Derek Rooney. She thanked the guests, press, and members of the public for attending. She then asked that all stand to recite the Pledge of Allegiance.

Secretary's Report

The minutes were read and accepted.

Citizen Input

None

Architectural Review Committee

(Sept. 19, 2008. All preliminary)

1. Sept. 19: 2406 N. Beach Rd. (Bougainvillea). Motel.
2. Sept. 19: 1080 Shoreview. Non-conforming hotel – reconstruction.
3. Sept. 19: 955 Gulf Blvd. Single family Variance and final review.
4. Sept. 19: 1465 Gulf Blvd. Single family preliminary.
5. Sept. 19: 1286 Shoreview. Single family.
6. Sept. 19: White Elephant, 1855 Gulf Blvd., Review, request for variance, fabric cover for patio.

(Oct. 3, 2008. Scheduled)

1. 955 Gulf Blvd. Single family.
2. 1255 Gulf Blvd. Carport enclosure
3. 1975 Beach Rd. Sunset Grill remodel

Old/New Business

The Chairman made reference to the positive benefits from the reorganization of the Overlay Code, which had been posted in the meeting agenda and explained at the previous meeting. She then turned the meeting over to Attorney Derek Rooney who had been provided with lists of questions from the citizens and Committee.

Attorney Rooney apologized for his absence from the last meeting and thanked everyone for sending him their questions, so that he could accurately answer or explain the legal points. The answers and explanations follow:

Regarding a “taking”, Attorney Rooney explained that a taking originated in the actual seizure of property without just compensation, generally for eminent domain, while the Bert Harris Act is a remedy for owners of properties which have been adversely affected because of some government action that is less than a “taking”. If a government action places an inordinate burden on an existing use or vested right, the landowner may request/receive compensation. This “inordinate burden” could be demonstrated by dates of purchase or application for a building permit or by demonstration of funds spent planning a development.

Removal of PD or MPD zoning districts from the list of zoning districts appropriate for Manasota and Sandpiper Keys would be legally defensible, since PD/MPD would require a zoning change and is not a presumed property right. A property is purchased based on current zoning and is subject to regulations in effect at the time of purchase. It is up to the residents and their Advisory Committee to balance the flexibility to be gained by allowing PD/MPD zoning against the possible loss of some land-use requirements.

In response to the question of single family owners being harmed by construction of a condo on previously single family zoned adjacent land, Attorney Rooney explained that the County regulations offer little protection from compatible uses (residential to residential). There are avenues to request protection for residential owners threatened by adjacent zoning changes to more intensive uses, such as a change from residential to Industrial. However, a properly worded restriction against rezoning from MSF to MMF might solve the problem. Inga Williams agreed to assist the Committee in rewriting the section.

The question of whether restricting a provision in one subsection of County Code would imply permission of another provision in that subsection was addressed, along with the concern that changes in County Code regulations would impact assumed regulations of the Overlay Code. Attorney Rooney said that the County Codes are to be read as a whole, and if there is an intention otherwise, it must be stated specifically. He advised the Committee to keep up with pending changes in County Code in order to prevent such situations, and to spell out important restrictions along with their reasons and justification.

To the question of the “Severability” clause (illegality of or conflict with law invalidating one section does not invalidate the whole ordinance) Attorney Rooney said that is still in effect, although it is only shown in the body of the Ordinance when it is sent to the BCC for passage.

As for the legal strength of the Comprehensive Plan and FLUM, Rooney explained that the Comprehensive Plan is a statement of growth and land use policy which has then to be addressed in local Ordinances. He further explained that the law requires that all development decisions and ordinances must be consistent with the Comprehensive Plan. Often these policies appear to be contradictory when viewed narrowly. The FLUM (Future Land Use Map) is clearer, as it maps out areas for various uses, and changing it requires permission from the State.

Addressing the issue of the Overlay Code's restriction against the pounding of pilings, Rooney explained that methods of construction are set by the Florida Building Code. While the local restriction has been a provision of the Overlay since 2005, it would probably not be defensible in Court. Recognizing the seriousness of the issue to residents, their property, and the tourist industry, he agreed to pursue other ideas for achieving the goal. Substantiating damage to adjacent buildings might help, and there is a possibility of approaching the issue from a cost or fee incentive approach. The health and welfare issue was also discussed.

Attorney Rooney then explained that our Signage section had not been permanently eliminated from the Overlay Code, but it did need revision. First, it was too complex, detailed, and confusing and would be more useful with a simple list of differences from the County code, along with the reasons for those differences. Second, both the County Sign Code and ours need to be crafted to avoid content-based regulation, as that can be a freedom of speech issue. There are a number of ways to discourage Class B signs (advertising off-site businesses or products), such as limiting the number and size of allowable signs.

In summary, Attorney Rooney cautioned the group that the Law is ever-changing and that the best, most effective way of retaining the community's desired standards was to pay strict attention to consistency. He added that dealing with legal issues in Charlotte County were particularly complex, with a large, diverse, unincorporated area and smaller layers of local regulations. He then offered to return to our group to answer more questions or to respond to phone requests for specific questions.

Tom Moore added that the County Commissioners had always been in full support of our area's Community Plan and the various ordinances evolving for its implementation. He added that he saw no reason for concern over the continuing support of the BCC.

Committee/Citizen/Advisory Input, Comments

There were a number of questions about the possibility of adding density through combining lots, and Attorney Rooney and Inga Williams discussed the issues and the possible relief through TDU. There was general agreement that the piling problem needs a valid solution before going forward. More than one person suggested leaving the pilings restriction as written because it would probably not prompt a legal challenge. One resident commented that prolonged pounding could be a health issue for elderly house-bound residents.

Steve Stump reported that he had met with Englewood Water on the Fire Hydrants issue, another important Overlay provision that was deemed not appropriate for a land-use code. According to Jay Linden, Englewood Water District owns both the hydrants and the main. There are future plans to install a new main to the south end of the island, but the District is currently focused on attempting to reduce their debt. They are required to confirm adequate water supplies for new developments and would probably ask any large new project to help with the cost of upgrading the system. Hydrants are a minor expense

compared with the need for an improved water main. They anticipate a time line of 6 to 8 years before the problem is solved.

Again, Derek Rooney apologized for appearing to “slash” whole sections of the Overlay Code, but said it was his duty to point out potential problems. He reiterated his willingness to come back to the next meeting or to help us in the future.

Special Reports and Administration

Because the meeting had run over the allotted time, the Chairman tabled further discussion and all other agenda items for the next meeting.

She expressed appreciation on behalf of the citizens and Committee to our guests, and thanked Attorney Rooney for his offer to attend the next meeting. It was her belief that a more productive approach would be for the Committee to take at least one future meeting to consider what had been discussed today before taking up more of his time.

As there was no further business, the meeting was adjourned at 12:20PM.
The next meeting will be October 15, 2008.

Respectfully submitted,
Betty Sue Carroll, Secretary