

**PLANNING COMMISSION
MEETING
AUGUST 22, 2011**

MEMBERS PRESENT: Lynne Matthews, Acting Chairman
John Burrage, Thomas Feneran, Massey Loughman,
Bill Schindler, Charles Thomas, Charles Zajicek

MEMBERS ABSENT: Edward Zapke

OTHERS PRESENT: David Hilston, Urban Design Manager
Teri Tubbs, Zoning Official
Lisa Hannon, Zoning Coordinator
Joan LeBeau, Chief Planner
Donna Aveck, Alternate Commission Member
John Chalifoux

CALL TO ORDER/ANNOUNCEMENTS

- A. Roll Call
- B. Next Scheduled Meeting
 - 1. September 26, 2011

APPROVAL OF MINUTES

- A. Meeting of July 25, 2011
 - Mr. Burrage MOVED, Mr. Zajicek SECONDED approval of the July 25, 2011 minutes.
MOTION CARRIED UNANIMOUSLY.

PUBLIC HEARINGS

- Recording Secretary Kelly swore in all participants.
- A. GA-14-11 - An Ordinance of the City of Punta Gorda, Florida, Amending Chapter 6, "Boats, Docks and Waterways," Punta Gorda Code, amending Section 6-22, "Interference with Navigation Prohibited, Exception," due to legislative changes; amending Chapter 26, Punta Gorda Code, also known as the Land Development Regulations, amending Section 26-3.3, "MP, Marina Park District," Subsection 26-3.3(d), "Prohibited Uses and Structures," removing the defined anchorage area off Gilchrist Park; providing for conflict and severability; and providing an effective date.
 - Mr. David Hilston, Urban Design Manager, announced the Florida Legislature had made significant changes to Florida Statute (FS) 327 regarding vessels, expressly prohibiting a municipality from enacting, continuing in effect or enforcing any ordinance or local regulation on certain identified subjects, including the regulation of the anchoring of vessels other than live-aboards outside the marked boundaries of mooring fields. He clarified the provisions of Section 6-22 of the City Code had been found to be in conflict with the provisions of State Statutes and must be deleted in its entirety. He

further explained the provisions of Section 26-3.3(d) of the City Code, which provided for an anchoring area for live-aboard vessels, was not an approved mooring field and therefore was in conflict with State Statutes and must be deleted. He concluded staff recommended approval of GA-14-11, offering to answer any questions.

- Mr. Burrage clarified this action was essentially a housekeeping measure.
- Ms. Matthews commented Mr. John Dauster had expressed some concerns, as outlined in the agenda material, with regard to the proposed ordinance, stating she had experienced some difficulty when boating near his home.
- Mr. Hilston confirmed the City Attorney had spoken directly to those concerns. He clarified the City would retain the ability to enforce regulations through a separate section of City Code.
- Ms. Matthews confirmed Mr. Dauster was satisfied.
- Mr. Thomas interjected he understood the Punta Gorda Isles Canal Advisory Committee (PGI CAC) was not in favor of the ordinance language. He commented there were other communities experiencing the same problems, suggesting Punta Gorda's ordinance emulate the language of those other regulations.
- Mr. Hilston reiterated the ordinance reflected exactly what was required by State Statutes. He confirmed the concerns raised by the PGI CAC would be made a part of staff's presentation to City Council as would Mr. Dauster's letter and the Commission's concerns.
- Mr. Schindler asked how any enforcement agency, whether private or governmental, would determine whether a boater was anchored unsafely, particularly in the area of Ponce de Leon Inlet.
- Mr. Hilston replied sworn law officers had the ability to make such determinations utilizing their discretion.
- Mr. Schindler contended there would be significant discussion at the public hearing before City Council.
- Ms. Matthews interjected the correspondence from City Attorney David Levin to Vice Mayor Bill Albers specified the portion of City Code which was enforceable. She opined the "powers that be" would simply need to be trusted to perform their duties as they were sworn to do.
- Mr. Thomas questioned the statutory definition of "live-aboard."
- Mr. Hilston replied he did not have that information in hand.
- Mr. Thomas commented some municipalities established mooring fields and then subsequently outlawed anchoring outside of same.
- Ms. Matthews called three times for anyone to speak on GA-14-11.

- Mr. Burrage MOVED, Mr. Zajicek SECONDED to close the public hearing. MOTION CARRIED UNANIMOUSLY.
 - Mr. Burrage MOVED, Mr. Loughman SECONDED to find GA-14-11 consistent with the Comprehensive Plan and to recommend approval of same based upon the evidence and testimony presented.
 - Mr. Zajicek expressed concern with taking any action at this time in light of the PGI CAC's opposition to the ordinance.
 - Mr. Hilston responded the Commission's responsibility was to act as the City's land use planning agency, therefore requiring reviews of ordinances such as GA-14-11. He explained the PGI CAC's jurisdiction was specific to the PGI canal system.
 - Ms. Matthews reminded members the Commission could base their recommendations only on the information presented at this hearing.
 - Mr. Burrage concurred.
 - VOTING AYE: Burrage, Loughman, Schindler, Zajicek, Matthews.
 - VOTING NAY: Feneran, Thomas.
 - MOTION CARRIED.
- B. ZA-11-11 – An Ordinance of the City of Punta Gorda, Florida, Amending Chapter 26, Punta Gorda Code, known as the Land Development Regulations, rewriting in its entirety Article 8, Section 26-8.1, "Demolition and Relocation of Historic Buildings," Punta Gorda Code, to encourage the relocation of historic buildings sought to be demolished; providing for conflict and severability; and providing an effective date.
- Mr. Hilston stated following the recent demolition of a historic structure off of East Olympia Avenue, the Historic Preservation Advisory Board (HPAB) had taken steps to assist in saving structures from future demolitions. He explained the proposed ordinance provided adequate time and financial assistance for local civic groups to move threatened and endangered historic structures. He clarified the ordinance would provide for establishment of a relocation fund/interest bearing account in which the property owner/applicant would deposit funds which were already slated for demolition, adding effort would then be made to find an individual/organization who wished to purchase and relocate the structure within a specific time frame. He stated those deposited funds would be refunded to the property owner in the event no such person/organization was found, adding the applicant would then proceed with the application for a Certificate of Appropriateness (CA)/demolition. He concluded both the HPAB and staff recommended approval of ZA-11-11.
 - Mr. Zajicek questioned the basis for a structure to be considered a historic landmark based solely on being in existence for 50 years.

- Mr. Hilston replied same was a State and National standard.
- Mr. Burrage questioned the reason for the provision which allowed delaying the effective date of a CA for up to 18 months.
- Mr. Hilston noted the HPAB Chairman was present and available to answer any questions of the Board.
- Mr. John Chalifoux, HPAB Chairman, displayed a photograph of the above mentioned East Olympia Avenue structure, stating the ordinance was devised at the direction of City Council following the unfortunate demolition of same. He announced HPAB denied the property owner's CA application for demolition, adding the applicant then appealed that decision to City Council. He reported City Council approved the demolition application based on the City Attorney's conclusion, specifically there had been no need for a CA as the structure had been located just outside of the National Historic Register District (NHRD). He pointed out the home was constructed in 1926 and was considered a community landmark, adding Team Punta Gorda (TPG) had considered utilizing same for a history museum; however, City Council had been required to base their decision on the City Code in effect at that time. He clarified the HPAB did not base their decisions solely on the age of a structure but rather considered its historical significance. He continued the HPAB also felt funds which were intended to be expended for demolition could certainly be utilized to save a historically significant structure. He mentioned he had purchased and relocated the home in which he currently resided, noting the former property owner benefited from the transaction. He explained he and his spouse paid for the home, adding the former owner had not been required to pay for a demolition and now enjoyed a much reduced tax liability.
- Ms. Matthews asked if HPAB was satisfied with the proposed ordinance language.
- Mr. Chalifoux replied the HPAB had not met since the actual ordinance was written. He questioned the requirement for a party interested in relocating a structure to enter into an agreement with the City, asking why the City must hold those funds.
- Mr. Hilston explained the final disposition of the case would be relative to the recipient of such funds, questioning the wisdom of allowing those funds to be held by a third party in that the final action was taken by the City, i.e., issuance of the CA. He further noted the City already had the correct financial systems in place.
- Mr. Feneran applauded the concept of protecting the City's older, landmarked structures; however, he opined this was a poorly compiled idea. He stated any structure over 50 years old would be subject to this ordinance, questioning whether same removed an owner's private property rights after having purchased a home with

a free and clear title. He further asked if the proposed ordinance would remove his right to do as he wished with his own property. He commented on Section 26-8.1(a), specifically "... the owner would suffer extreme hardship ... or be permanently deprived of all beneficial use of ...," asking who determined same. He spoke in opposition to allowing a demolition application to be delayed up to 18 months. He suggested perhaps this could apply only to structures which had been designated as historic landmarks; thus, purchasers of such properties would be aware of the issues associated with same.

- Mr. Chalifoux responded "historic" structures must also be listed on the Florida Master Site File (FMSF), stating those files were updated every ten years. He noted the HPAB requested funding to conduct the survey necessary to update the FMSF but were denied same by City Council. He acknowledged staff had offered to step up and conduct the survey. He reiterated the ordinance was being proposed per the recommendation of the City Attorney and City Council.
- Mr. Hilston interjected staff understood the balancing act which must be maintained between historic preservation and personal property rights, thus the reason behind holding public hearings such as this. He confirmed the Commission's concerns would be provided to City Council.
- Mr. Schindler stated he believed the ordinance represented a situation where government was getting involved where it had no business doing so, specifically personal property rights.
- Mr. Hilston reminded members historic preservation had been verified to be in the public's interest; thus, the Courts allowed government to move forward on such initiatives. He reiterated applicants had the ability to appeal to City Council at any time during the above described 18 month period.
- Discussion ensued with regard to the establishment of historic districts and the particulars which determined the historical significance of a structure.
- Ms. Matthews called three times for anyone to speak on ZA-11-11.
- Mr. Zajicek MOVED, Mr. Feneran SECONDED to close the public hearing. MOTION CARRIED UNANIMOUSLY.
- Mr. Burrage MOVED to find ZA-11-11 consistent with the Comprehensive Plan and to recommend approval of same based upon the evidence and testimony presented.
- MOTION DIED FOR LACK OF A SECOND.
- Mr. Zajicek MOVED, Mr. Thomas SECONDED to find ZA-11-11 consistent with the Comprehensive Plan and to recommend denial of same based upon the evidence and testimony presented.

- VOTING AYE: Feneran, Loughman, Schindler, Thomas, Zajicek, Matthews.
- VOTING NAY: Burrage.
- MOTION CARRIED.

QUASI-JUDICIAL PUBLIC HEARINGS

- A. SE-04-11 – A Special Exception request by Thomas A. Huff, AIA, Agent for the Charlotte County Board of County Commissioners, per Chapter 26, Section 26-16.8, Punta Gorda Code, to allow a single use residential project to be constructed on Lots 16 and 17, Block 67, PUG, a/k/a 321 and 328 Fitzhugh Avenue, Punta Gorda, Florida, in the City Center (CC) zoning district, which is a use permitted by Special Exception approval pursuant to Chapter 26, Section 26-3.9(f)(5).
- Mr. Hilston displayed an overhead of the subject location, as delineated in the agenda material, stating approval of this request would result in the construction of two, two-unit, two-story duplexes which would be made available as low to moderate income housing rentals. He explained upon completion, the properties would be conveyed to a not-for-profit agency which would retain responsibility for upkeep and maintenance as well as keep the affordability for a minimum of 20 years. He noted the proposed use was compatible with neighboring uses and was in compliance with the 2000 Eastside and Downtown Planning Study. He advised the proposed design met the requirements of the Land Development Regulations (LDRs). He mentioned the City and Charlotte County traded lots in order to make this more cost feasible for development. He concluded the Development Review Committee (DRC) and staff recommended approval of SE-04-11.
 - Mr. Zajicek asked if the property was owned by the City or Charlotte County.
 - Mr. Hilston explained the City and Charlotte County had owned two, side-by-side lots, adding the County had originally intended to build on another lot which they already owned in addition to the subject lot. He clarified the two lots would have been separated geographically by approximately a half mile. He continued the City suggested the above mentioned trade, thus eliminating the need for a separation.
 - Mr. Feneran questioned the need for a special exception.
 - Mr. Hilston explained the CC zoning district regulations required same.
 - Ms. Matthews called three times for anyone to speak on SE-04-11.
 - Mr. Burrage MOVED, Mr. Zajicek SECONDED to close the public hearing. MOTION CARRIED UNANIMOUSLY.
 - Mr. Burrage MOVED, Mr. Schindler SECONDED to find SE-04-11 consistent with the Comprehensive Plan and to recommend approval of same based upon the evidence and testimony presented. MOTION CARRIED UNANIMOUSLY.

UNFINISHED BUSINESS

- A. 2012 Strategic Plan
- Mr. Hilston reminded members the 2012 Strategic Plan (Plan) was distributed at the Commission's previous meeting, reiterating City Council was seeking input no later than August 31, 2011.
 - Mr. Thomas questioned the outcome of SV-01-11.
 - Ms. Teri Tubbs, Zoning Official, replied City Council denied the application but had advised the applicant they would consider occupation for a defined timeline.
 - Mr. Loughman asked if the Carmalita Street extension was mentioned in the Strategic Plan.
 - Mr. Hilston replied in the negative, expressing uncertainty how same related to the Strategic Plan.

STAFF COMMENTS

- A. Community Redevelopment Agency (CRA) Project Status Report
- Ms. Matthews drew members' attention to the August 1, 2011 update of the subject report, as delineated in the agenda material, stating same was provided for informational purposes.

ADJOURNMENT

- Meeting Adjourned: 2:57 p.m.

Lynne Matthews, Acting Chairman

Mary Kelly, Recording Secretary