

**PLANNING COMMISSION
MEETING
NOVEMBER 28, 2011**

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

OTHERS PRESENT: David Hilston, Urban Design Manager
Joan LeBeau, Chief Planner
Teri Tubbs, Zoning Official
Lisa Hannon, Zoning Coordinator
Thomas Feneran

CALL TO ORDER/ANNOUNCEMENTS

- A. Roll Call
- B. Next Scheduled Meeting
- 1. Tuesday, December 20, 2011

APPROVAL OF MINUTES

- A. Meeting of October 24, 2011
- Mr. Burrage MOVED, Mr. Loughman SECONDED approval of the October 24, 2011 minutes. MOTION CARRIED UNANIMOUSLY.

PUBLIC HEARINGS

- Recording Secretary Kelly swore in all participants.
- A. CP-03-11 – An Ordinance of the City of Punta Gorda, Florida, Adopting an Amendment to the City of Punta Gorda Comprehensive Plan 2025 for the purpose of updating the Capital Improvements Element to be consistent with 2011 Legislative changes to Chapter 163, Florida Statutes; providing for conflict and severability; and providing an effective date.
- Mr. Burrage pointed out the public hearing notice provided in the agenda material indicated a time of 9:00 a.m. this date as opposed to the correct time of 2:00 p.m.
- Mr. David Hilston, Urban Design Manager, recommended the Commission proceed with the public hearing, confirming he would obtain an opinion from the City Attorney regarding the legality of same.
- Ms. Joan LeBeau, Chief Planner, announced all local governments were required to annually review and update, as necessary, their Comprehensive Plan's Capital Improvement Element (CIE). She advised the following changes had been made: (1) include new Statutory language and delete outdated Statutory language; (2) deletion of a majority of the tables which had been coalesced into a single appendix. She mentioned the amended CIE continued to require concurrency management for roads,

- parcs and schools. She concluded staff recommended approval and transmittal of the CIE annual update.
- Mr. Zapke clarified the document had been amended so as to be in conformance with State Statutes. He then called three times for anyone to speak on CP-03-11.
 - Mr. Zajicek MOVED, Ms. Matthews SECONDED to close the public hearing. MOTION CARRIED UNANIMOUSLY.
 - Mr. Zajicek MOVED, Mr. Burrage SECONDED to find CP-03-11 consistent with the Comprehensive Plan and to recommend approval of same based upon the evidence and testimony presented contingent upon the City Attorney's opinion relative to the above mentioned error in the public hearing notice. MOTION CARRIED UNANIMOUSLY.
- B. AX-01-11 - An Ordinance of the City of Punta Gorda, Florida, annexing within the corporate area of the City of Punta Gorda, Florida, property described as Lots 28 & 29, Block A, Unit 1, Aqui Esta Subdivision as per plat thereof, recorded in Plat Book 3, Pages 11 and 12, of the Public Records of Charlotte County, Florida, less State road right of way as described in O.R. Book 500, Page 398, and generally described as 3225 Tamiami Trail, Punta Gorda, Florida, as more particularly described in attached Exhibit "A", in accordance with the voluntary annexation provisions of Section 171.044 Florida Statutes; redefining the boundary lines of said City in conformance therewith; amending the Official Boundary Map of the City of Punta Gorda, Florida; providing for conflict and severability; and providing an effective date.
- Ms. LeBeau announced Mr. Alvin Saxonberg and Ms. Beverly Saxonberg had submitted a petition for voluntary annexation of the subject property into the City. She stated the property was currently being operated as a commercial business, Goodyear Tire & Rubber, adding no redevelopment or expansion of the site/business was anticipated. She reported the following findings: (1) property was contiguous to current City boundaries; (2) property, when annexed, would not create an enclave; (3) an expedited State review Comprehensive Plan amendment pertaining to a small scale land use change will be required; (4) applicant does not propose any site changes. She concluded with a recommendation for approval of AX-01-11, offering to answer any questions.
 - Mr. Zajicek drew members' attention to page 173 of 279 of the agenda packet, asking if the City's reimbursement to the property owner of up to 50% of the City's millage rate for the first 2 years after annexation was standard in annexation agreements.
 - Mr. Hilston replied it was not typical but rather same had been worked out in the pre-annexation agreement. He clarified AX-01-11 would be presented to City Council with that request, concluding Council would have the final say.

- Mr. Schindler asked if the stated 25% reduction in utility rates would be in effect in perpetuity.
- Mr. Thomas explained any property receiving City water and/or sewer service but located outside of the City's incorporated limits paid an additional 25% surcharge.
- Mr. Hilston clarified that surcharge would no longer apply upon annexation.
- Mr. Schindler asked if other concessions would eventually expire such as those for taxes.
- Mr. Thomas noted the agreement provided in the agenda material indicated the reduction in taxes would cease after two years.
- Mr. Schindler asked if such incentives would be offered to adjacent property owners.
- Mr. Hilston replied each annexation agreement was a separate, stand-alone document.
- Mr. Zapke commented favorably on annexation in general, confirming a number of aspects were negotiable. He asked if City Council had begun those negotiations as of this time.
- Mr. Hilston expressed uncertainty regarding the level of negotiations at this time.
- Mr. Zapke asked if the Commission could recommend approval of the annexation in concept without becoming involved in the negotiation particulars spelled out in the agreement.
- Mr. Hilston responded the pre-annexation agreement had already been executed; however, the Commission could certainly express their disfavor with some of the particulars as part of their recommendation to City Council.
- Mr. Zapke asked if approval of the above mentioned reduction in millage rates, for example, was precedent setting.
- Mr. Hilston expressed his belief City Council had established their interest in annexing commercial versus residential properties by offering such types of incentives.
- Mr. Zapke opined this was typical for businesses as opposed to residential properties.
- Mr. Hilston countered there had been an insufficient number of large scale, residential annexations to determine same.
- Mr. Schindler pointed out the document provided in the agenda material had already been signed by the Mayor; thus, it appeared an agreement had already been reached with regard to specific conditions.
- Mr. Thomas Feneran pointed out the Voluntary Annexation Application, as delineated in the agenda material, had been signed only by Mr. Saxonberg; however, all other documentation listed Ms. Saxonberg as an equal property owner. He suggested staff look into the legality of same before proceeding further. He then commented on the Agreement itself, observing verbiage within same stated "all non-conforming uses,

structures and signs will be allowed to continue on the property ...” He clarified the language did not refer solely to the applicant/property owner; thus, he expressed concern with establishment of an undesirable type of business by a future property owner.

- Mr. Thomas noted any business would be required to adhere to City Code. He further stated any existing non-conformities would be required to be removed upon transfer of ownership.
 - Mr. Feneran cited an example where the applicants did not sell the property but rather established a different, undesirable type of business.
 - Ms. Teri Tubbs, Zoning Official, interjected a change of use or ownership would require compliance with all aspects of City Code.
 - Mr. Zapke called three times for anyone to speak on AX-01-11.
 - Mr. Zapke MOVED, Ms. Matthews SECONDED to close the public hearing. MOTION CARRIED UNANIMOUSLY.
 - Mr. Burrage MOVED, Ms. Matthews SECONDED to find AX-01-11 consistent with the Comprehensive Plan and to recommend approval of same based upon the evidence and testimony presented contingent upon verification of the above stated signature issue. MOTION CARRIED UNANIMOUSLY.
- C. CP-02-11 – An Ordinance of the City of Punta Gorda, Florida, amending the City of Punta Gorda Comprehensive Plan Future Land Use Map (FLUM) changing the current designation from Commercial/County (C/County) to Highway Commercial Corridor/City (HCC/City) on property generally described as 3225 Tamiami Trail, Punta Gorda, Florida, as more particularly described on Exhibit "A" attached to this ordinance; providing for conflict and severability; and providing an effective date.
- Ms. LeBeau announced this ordinance would amend the FLUM as required by the changes presented under Item B, AX-01-11. She presented staff’s findings as follows: (1) the subject site contains approximately 1.13 acres of platted property within the Aquí Esta Subdivision; (2) the Charlotte County FLUM designates the parcel as Commercial; (3) surrounding FLUM designations are HCC/City (North), C/County (South), Planned Development Special Purpose/City (PUD-SP/City) (West), Low Intensity Industrial/County (LH/County) (East); (4) annexation request precipitated the need for this amendment; (5) annexation shall be effective upon adoption. She then listed the following conclusions: (1) the requested City designation of the HCC FLUM classification was consistent with surrounding classifications; (2) trip generation was not expected to increase and was currently accommodated by existing transportation facilities; (3) adequate water and sewer capacity currently serves the site, no changes

proposed; (4) storm water requirements had been met, no changes proposed; (5) impact on solid waste pick-up and disposal would not degrade current Level of Service; (6) request met criteria for processing. She concluded with staff's recommendation for approval of CP-02-11.

- Mr. Thomas clarified any annexation required an amendment to the FLUM, commenting on the significant amount of paperwork involved for each item.
- Mr. Zapke called three times for anyone to speak on CP-02-11.
- Mr. Burrage MOVED, Ms. Matthews SECONDED to close the public hearing. MOTION CARRIED UNANIMOUSLY.
- Ms. Matthews MOVED, Mr. Zapke SECONDED to find CP-02-11 consistent with the Comprehensive Plan and to recommend approval of same based upon the evidence and testimony presented contingent upon verification of signatures. MOTION CARRIED UNANIMOUSLY.

QUASI-JUDICIAL PUBLIC HEARINGS

- A. Z-01-11 - An Ordinance of the City of Punta Gorda, Florida, rezoning property generally described as 3225 Tamiami Trail, Punta Gorda, Florida, as more particularly described on Exhibit "A" attached to this ordinance, from Commercial-Intensive/County (CI/ County) to Highway Commercial/City (HC/City); providing for conflict and severability; and providing an effective date.
 - Ms. LeBeau announced this zoning amendment was necessary due to the changes proposed in AX-01-11 and CP-02-11. She reiterated the site was developed, the use of the Goodyear store was existing, and no changes were anticipated. She recommended approval of Z-01-11, offering to answer any questions or concerns.
 - Mr. Zapke called three times for anyone to speak on Z-01-11.
 - Mr. Burrage MOVED, Mr. Zapke SECONDED to close the public hearing. MOTION CARRIED UNANIMOUSLY.
 - Mr. Burrage MOVED, Ms. Matthews SECONDED to find Z-01-11 consistent with the Comprehensive Plan and to recommend approval of same based upon the evidence and testimony presented contingent upon verification of signatures. MOTION CARRIED UNANIMOUSLY.

NEW BUSINESS

- A. Discussion regarding Uses Permitted in the City Center Zoning District

- Ms. Tubbs displayed an overhead depicting the City Center (CC) zoning district boundaries, as delineated in the agenda material, stating current City Code allowed any commercial use to be located within same; thus, an amendment was necessary in order to preserve the unique character and intent of that zoning designation. She explained CC zoning was provided to encourage redevelopment and expansion of a traditional town center. She continued a broad array of uses was expected in a pattern which integrated shops, restaurants, services, work places, civic, educational and religious facilities and higher density housing in a compact, pedestrian-oriented environment. She noted CC zoning was so coded to accommodate the higher, overall intensity of development required to support a City; thus, staff proposed an amendment to specify which uses would be permitted. She drew members' attention to a list of such uses as well as possible uses permitted with conditions, as delineated in the agenda material. She summarized City Council and the citizen's Land Development Review Committee (LDRC) recommended inclusion of a statement for all uses which allowed the Zoning Official to approve requested, non-detrimental uses which were similar to those listed without requiring a Special Exception.
- Consensus for approval, including the above stated recommendation.
- B. Discussion regarding Clarification for Demolition of Primary Structures
- Ms. Tubbs stated existing City Code language was not clear regarding situations where a primary structure, i.e., a single family home, was demolished, and all accessory structures must then also be demolished. She clarified only existing, non-conforming accessory structures clearly could not remain upon demolition of the primary structure. She drew members' attention to a proposed amendment to Section 26-16.5(b), as denoted within the agenda material, requesting the Commission's comments and direction regarding same. She mentioned the Commission's agenda packets contained photographs of sites to which such clarification would prove useful, acknowledging same applied primarily to parking lots. She concluded staff had proposed an amendment to Section 26-16.5(b).
- Ms. Matthews expressed agreement with staff's recommendation.
- Mr. Zajicek asked if exceptions could apply, citing as an example the site of the former U-Save grocery store. He questioned the wisdom of requiring removal of that parking lot.
- Mr. Thomas asserted the proposed amendment would require its removal and replacement with sod and landscaping in order to comply with the LDRs.
- Ms. Tubbs noted a provision was proposed to allow for a property owner who would be re-building within a limited time frame.

- Mr. Thomas clarified the City Marketplace property would have been required to be torn up and replaced with sod, resulting in the loss of a significant amount of parking area. He asked if parking would be allowed on property which had been covered in sod, acknowledging parking was technically not permitted on the City Marketplace property.
 - Mr. Burrage commented exceptions to the rule would always exist, thus the basis for allowing the Zoning Official's discretion to be applied.
 - Ms. Tubbs stated such situations could always be presented to City Council, explaining same would provide for the provision of certain conditions and safeguards, i.e., upkeep and maintenance.
 - Mr. Zapke asked if the proposed amendment to Section 26-16.5 would apply to a home site with a swimming pool.
 - Mr. Zajicek replied affirmatively.
 - Mr. Zapke confirmed laws existed requiring such properties to be kept safe such as through the use of fencing.
 - Mr. Zajicek clarified the fence in such a case would be required to meet City Code and State Building Code specifications.
 - Mr. Schindler recalled a request presented to the Commission related to a parcel abutting the railroad, expressing concern with regard to a requirement to remove such paved parking areas.
 - Mr. Thomas clarified removal of paved parking areas was required only upon demolition of the primary structure. He expressed concern with regard to imposition of the stated time limit of six months, stating same could be insufficient in many cases. He recalled the difficulty in securing contractors in a timely manner following Hurricane Charley in August 2004.
 - Ms. Tubbs responded Temporary Use (TU) permits provided for situations following catastrophic events. She clarified she would not be in favor of leaving the time limit open ended.
 - Discussion ensued with regard to providing for extenuating circumstances.
 - Consensus for approval of staff's recommendation contingent upon provision of detailed appeals process, extensions and penalties for failure to comply.
- C. Discussion regarding Easements in Use and Allowed Encroachments
- Ms. Tubbs stated after an April 20, 2005, amendment of the LDRs by City Council, several building contractors expressed concern with regard to the prohibition of placement of any structure within any setback or yard established by a recorded plat or recorded easement. She explained the contractors' concerns were a result of many

model homes having been designed and constructed at the minimum setback of 7.5 feet in the Special Residential Overlay (SRO) zoning district. She continued City Council, upon recognition of the need to allow immediate reconstruction after Hurricane Charley, amended the ordinance to allow such encroachments within the SRO district; however, consideration had not been given to easements in use and the need for the City to access said easements for maintenance or construction of utility or storm water systems. She announced staff recommended a small amendment to prohibit permanent structures within any easement in use, except roof overhangs at least eight feet above grade. She stated City Council directed staff to obtain input and then draft an ordinance which limited the use of all dedicated easements, whether or not currently in use.

- Mr. Loughman mentioned two such easements were in use on his street, the air conditioning equipment for one existing within approximately one foot from the property line while the property on the other side was enclosed with a fence, thus prohibiting access to the back yard.
- Mr. Thomas clarified staff wished to limit placement of structures at grade level.
- Ms. Tubbs agreed, stating the Public Works Department had no issues with anything located eight feet above grade, i.e., roof overhangs. She mentioned storm water pipes were typically re-lined as opposed to replaced. She announced the City of North Port simply did not grant occupations nor vacations of easements, adding Charlotte County allowed application for something which could be easily removed. She explained all outside utilities, i.e., Florida Power & Light (FPL), Sprint, etc., were queried as part of the application process to ensure no claim for future use. She mentioned the majority of other municipalities were extremely restrictive relative to easement use.
- Mr. Schindler questioned how an ordinance could be drafted which limited the use of all dedicated easements, whether currently in use or not.
- Ms. Tubbs explained “currently in use” meant in use by anyone other than the property owner, i.e., FPL, Sprint, etc.
- Mr. Schindler commented the LDRC recommended staff locate and map all water/sewer lines or storm water pipes and outfalls, thus ensuring the ready availability of all information on easements in use; however, he expressed concern with regard to the logistics of same.
- Ms. Tubbs explained a permit application for anything which involved the pouring of concrete required a survey.
- Discussion ensued with regard to the frequency of need to access such easement areas.

- Consensus of the Commission was to allow the use of easements contingent upon property owners being responsible for restoration of same in the event maintenance was required by the City and/or other public utility.
- D. Discussion regarding the Number of Sidewalks Permitted in Rear Yards in the Special Residential Overlay District
- Ms. Tubbs displayed several overheads of aerial views of properties located in Punta Gorda Isles (PGI) as well as a photograph of a property with existing walkways, all of which were delineated in the agenda material. She stated staff had found many instances where more than a single walkway had been constructed in rear yards of single family residences in the SRO district, adding staff had found no compelling reason to limit the number of walkways to just a single walkway but rather would recommend no more than two walkways to the seawall or dock on a standard eighty foot lot or no more than a single walkway per each fifty linear foot or a single walkway if total frontage was less than fifty linear feet on any seawall. She explained property owners were more commonly installing two docks along the seawall, adding such docks were typically installed spaced apart as opposed to side by side; thus, allowing an additional walkway would assist in providing safe access. She announced staff had obtained input from the community upon the direction of City Council, noting same was detailed in the agenda material.
 - Mr. Zajicek opined allowing only one walkway on a lot with fifty feet of frontage was insufficient, suggesting increasing the latter to eighty feet.
 - Mr. Thomas questioned the basis for the City's involvement or concern if a property owner wished to install two walkways on a fifty foot lot.
 - Ms. Tubbs replied the concern was based on total impervious area, adding staff must abide by the City Code as written. She mentioned an additional concern was related to walkways poured near the seawalls, stating a number of seawalls had failed in the past due to same.
 - Mr. Burrage confirmed property owners were responsible for the destruction of walkways resulting from seawall maintenance and/or replacement.
 - Consensus of the Commission was for approval of the following: up to 50 feet of frontage, 1 walkway; 51 feet to 190 feet of frontage, 2 walkways; 191 feet to 250 feet of frontage, 3 walkways; greater than 250 feet, 4 walkways.
- E. Discussion regarding Varying Setbacks and Allowed Encroachments

- Ms. Tubbs stated setbacks in the SRO district were fairly standard at seven and one-half feet with an allowed encroachment of four and one-half feet; however, setbacks in other zoning districts were five feet. She pointed out an allowed encroachment of our to five feet into the latter caused problems between abutting properties. She continued Section 26-8.14(d) of the City Code seemed to contemplate such situations as follows: "... provided that where the yard is less than five feet in width, such projection shall not exceed one-half the width of the yard ..." She clarified extending to the maximum setback required one to be cognizant of whatever encroachment may be allowed. She concluded staff recommended making that change so as to ensure coverage of those five feet or less setbacks for encroachments.
- Consensus of the Commission was for approval of staff's recommendation.
- Ms. Tubbs then stated Section 26-8.14(b) prohibited outdoor storage of goods and materials or refuse containers within any established setback or side yard abutting a street nor in any required buffer or screen, with the exception of temporary placement of refuse for scheduled curb side collection; however, this provision required staff to determine the actual building setbacks and was difficult to enforce. She requested the Commission's consideration of the following language: "No outdoor storage of personal items, goods and materials or refuse containers shall be located in any yard as defined herein, nor in any required buffer or screen, except for the temporary placement of refuse for scheduled curb side collection." She summarized the intent had always been to prohibit outside storage where same could be viewed from adjacent properties or the public right-of-way (ROW).
- Consensus of the Commission was for approval of staff's recommendation.

STAFF COMMENTS

- A. Community Redevelopment Agency (CRA) Project Status Report
- No discussion.

COMMITTEE/BOARD COMMENTS

- Mr. Zapke announced he would not be available for the Commission's December 20, 2011 meeting.
- Ms. Matthews recommended rescheduling the December 2012 meetings of both the Commission and the Board of Zoning Appeals (BZA) to Tuesday, December 28, 2012, at 2:00 p.m. and 4:00 p.m., respectively.
- Recording Secretary Kelly confirmed both of those changes had already been made.
- Ms. Matthews then confirmed no change was necessary to accommodate the Memorial Day holiday in May 2012.

ADJOURNMENT

- Meeting Adjourned: 3:18 p.m.

Edward Zapke, Chairman

Mary Kelly, Recording Secretary