

**PLANNING AND ZONING BOARD MINUTES  
THURSDAY, FEBRUARY 1, 2018 - 1:30 PM  
COUNCIL CHAMBERS, CITY HALL, VERO BEACH, FLORIDA**

**PRESENT:** Chairman, Lawrence Lauffer; Members: Honey Minuse, Steven Lauer, Alternate Member #1, Richard Cahoy and Alternate Member #2, Ken Daige **Also Present:** Planning and Development Director, Tim McGarry; Assistant City Attorney, Kira Honse and Deputy City Clerk, Sherri Philo

**Excused Absence:** Robin Pelensky

**Unexcused Absence:** John Carroll

**I. PRELIMINARY MATTERS**

**A) Agenda Additions and/or Deletions**

None

**II. APPROVAL OF MINUTES**

**A) Regular Meeting – December 7, 2017**

**Mrs. Minuse made a motion to approve the minutes of the December 7, 2017 Planning and Zoning Board meeting. Mr. Daige seconded the motion and it passed unanimously.**

**III. PUBLIC COMMENT**

None

**IV. PUBLIC HEARING**

**[Quasi-judicial]**

**A) A Minor Subdivision Application Submitted by Michael Zorc for the Subdivision of Land into 5 Lots Located at the Southwest Corner of 18<sup>th</sup> Street and 27<sup>th</sup> Avenue (#SD18-000001)**

The Chairman read Minor Subdivision Application #SD18-000001 by title only.

There were no ex parte communications reported.

The Deputy City Clerk swore in staff and all witnesses present for today's hearing en masse.

Mr. Tim McGarry, Planning and Development Director, went over staff's report with the Board members (attached to the original minutes). He noted that under staff's analysis, *Section 72.14* should be *Section 70.14*.

Mr. Lauer referred to staff's memorandum dated November 6, 2017 when this application was previously heard (memorandum attached to the original minutes). It states that the minimum lot size is 15,000 square feet and in staff's memorandum dated January 17, 2018, it states the minimum lot size is 7,500 square feet. He asked which is it.

Mr. McGarry said it is 7,500 square feet.

Mr. Lauer questioned staff's statement that this is not platted. It states in the survey attached to the backup information provided, "*being a replat of portion of Tract 16, Section 3, Township 33 South, Range 39 East per Plat Book 2, Page 25 of the Public Records...*" Therefore, it appears to him that this is a platted lot.

Mr. David Gay, City of Vero Beach Chief Surveyor, explained that while it is platted, it was platted as one (1) square mile track. It is a sectional breakdown and has not really been subdivided. Although, all the sections in most of the rural County were subdivided as sections, they basically adopted the sectional breakdown. The City has not treated these as subdivisions.

Mr. Lauffer said then other plats looking to be re-subdivided have been treated this way in the past.

Mr. Gay said that is correct. He said there hasn't been a new subdivision filed since that time and this would be considered the original plat in that section.

Mr. Lauer said this becomes relevant because in Section 70.14 (c), it discusses existing platted lots or lots in an approved subdivision and Mr. McGarry is saying that his department made a mistake on the original application because this is not a platted lot. Mr. Lauer said it appears to him that this is a platted lot.

Mr. Gay said it is a portion of a track in the subdivision, but it isn't part of a lot that was subdivided into lots. He said it is a subdivision in a new tract that has always been a Metes and Bounds Tract.

Mr. Lauffer asked for the Assistant City Attorney's opinion.

Ms. Kira Honse, Assistant City Attorney, said it makes sense to her that for whatever reason when this was part of St. Lucie County they went through and called them subdivisions, which it is not really a subdivision because there hasn't been any kind of typical improvement that they would associate with a subdivision.

Mr. Gay said that is correct.

Ms. Honse asked does the plat on file meet the requirements of a plat as it would exist today.

Mr. Gay answered no.

Mr. Lauer said in Section 70.14 (a), there are six (6) different criteria for meeting approval and only one (1) of those criteria is meeting the minimum lot size and dimension standards. He asked Mr. McGarry if staff has given any consideration to the remaining criteria.

Mr. McGarry said staff reviewed this and it is their opinion that this meets all the criteria.

Mr. Lauer said one (1) of the criteria is that they are to be compatible with established development patterns.

Mr. McGarry said it is a single-family area and there is nothing in the Code that prevents them from having larger lots. In fact, he thinks that a lot more lots could be done under the Code.

Mr. Lauer said that if they agree with staff then 70.14 (c) of the Code doesn't apply here.

Mr. McGarry said that is a true statement.

Mr. Ryan McLean, of MBV Engineering, said that they worked with the applicant and with Indian River Survey to put together the plat before them. He is present today to answer any questions of the Board.

Mr. Lauer asked Mr. McLean if he was the person who prepared the calculation of the square footage for the lots on the November 6, 2017 application.

Mr. McLean answered yes.

Mr. Lauer asked is this new submittal accurate.

Mr. McLean answered yes.

Mrs. Minuse said in actuality none of the plots changed size; it is just how they represented the number.

Mr. McLean said there are some minor modifications.

Mr. McGarry said the numbers before the Board today are accurate.

Mrs. Minuse said basically the lots remain the same. It was only how the numbers were represented.

Mr. Lauer reported that in the original application lot one (1) was 148 x 103 and in the new application it is 148 x 109; lot two (2) was 148 x 103 and remains the same; lot three (3) was 148 x 102 and in the new application it is 96 x 163; lot four (4) was 114 x 148 and remains the same; and lot five (5) was 114 x 160 and in the new application it is 99 x 160.

Mr. Lauffer said if the previous application is not before them today it is history. He said the Board should focus on the application before them and not do a comparable analysis.

Mr. Lauer explained that he was just answering Mrs. Minuse's question.

The Chairman opened the public hearing at 1:49 p.m.

Mr. George Schieber said that he owns two (2) properties at the end of 28<sup>th</sup> Avenue and is concerned about property values. His concern is where they will be building the new homes they have what he considers a "junk yard" and the properties near there would be reduced in value. He reported that there are 12 junk cars in the front, about a half a dozen in the back, and about 12 or 14 in the garage. Another concern is that this is a dead end street that does not have a "turnaround." Even though there are dead-end signs, they constantly have people drive down the street and turn around in their driveways and in their front yards. He asked if it was possible to have a turnaround at the end of the street.

Mr. McGarry suggested that Mr. Schieber notify Code Enforcement about the vehicles and the Public Works Director about the possibility of a turnaround.

The Chairman closed the public hearing at 1:53 p.m., with no one else wishing to be heard.

**Mrs. Minuse made a motion that the Board approves staff's recommendation. Mr. Cahoy seconded the motion and it passed 5-0 with Mr. Daige voting yes, Mr. Cahoy yes, Mr. Lauer yes, Mrs. Minuse yes, and Mr. Lauffer yes.**

## **V. PLANNING DEPARTMENT MATTERS**

Mr. McGarry reported that the City received comments back from the State on the Comprehensive Plan and their major objection had to do with sea level rise. He submitted amendments to the State, which were approved yesterday. He said that he was going to try to get this before the City Council at their first meeting in March.

## **VI. BOARD MEMBERS' MATTERS**

### **A) Consideration of Ordinance Authorized by Section 286.0115, F.S. – Requested by E. Steven Lauer**

Ms. Honse handed out copies of Florida Statute 286.0115 to the Board members (attached to the original minutes).

Mr. Lauer reported that this item deals with the proposed adoption procedure in Section 286.0115 of the Florida Statute to allow ex parte communication and site visits. When the Board discussed this at their last meeting they did not have the benefit of the legislative history. He then referred to the backup information provided, *“House of Representatives Committee on Ethics and Elections Final Bill Analysis and Economic Impact Statement”* (attached to the original minutes). He said at their last meeting he was speculating that the reason Statute was adopted was in response to the Jennings case, which was a case out of Dade County where there were site visits and ex parte communication and the Court basically said there was presumption that there was prejudice if there were those types of communications. He then read from the backup material, *“The model disclosure procedure established in the bill is intended to remove the presumption of prejudice that was established by the Jannings case. It permits discussions and substantive issues between local public officials and members of the public, including ex parte communication on pending quasi-judicial matters. The bill declares that such discussions may not be presumed prejudicial to the action taken by a board or commission if disclosure of the substance of such communication is made prior to final action on the matter.”* He said it goes on to analyze in detail how that is accomplished. As noted at the last meeting, the Board is in an unfair position in that anyone who comes before them is able to go to the site, speak to each other, etc., so they have more information than the Board does. He said that he also indicated at their last meeting that it would have been valuable for him to go to the site and look at the location of the building that the Board approved. He said looking at maps does not help him. He could not see why they wouldn't want to adopt this procedure. It shifts the burden away from the presumption of prejudice to no presumption of prejudice as long as there is disclosure. He said this was adopted in 1995 so it has been on the books for 30 plus years and if there was something wrong with this legislation it would have been challenged.

**Mr. Lauer made a motion that the Board bring this before the City Council and ask that they adopt a form of Section 286.0115 to shift the burden as described in the analysis.**

Mr. Lauffer said that he spent a lot of time reading the backup information and could not ascertain it all. He said by the time he marked everything up he didn't know where he was. He then went to the Florida Planning Officials Handbook, which basically states to stay out of the way and not get involved in what is going on other than what they hear at the hearing. That they should just listen to what they hear and make their decision based on that. He said they expect competent Counsel on

both sides to give them the information that helps them to make the appropriate decision. He said when he goes too far beyond that he thinks that he would become more like a jury member who has their own personal thoughts and information. He agrees that it may be helpful at times, but at other times it may not be. The handbook indicated to him that he should take the more conservative course.

Mrs. Minuse said that she has been selected to serve on jury trials and has not been selected to serve on jury trials based on things that she has said or things that she knows. She said here, they basically have a blank slate and are not expected to know things coming before them. She thanked Mr. Lauer for bringing this forward because she felt it is very healthy to get a fresh look at what they are doing. She said in a quasi-judicial case the burden is on the people presenting or objecting to it. It is not on the Board. She said the decision making body doesn't present evidence, but must comb through the records at the public hearing and that is what they use as facts to support or deny. The backup information provided reinforced to her that they shouldn't do site visits because one (1) Board member might not see the same things another Board member sees. If there are going to be site visits then she thinks they should all go at the same time. To her, the backup information provided reinforced that what they are currently doing is the right thing because they are coming at it without prejudice.

Mr. Daige asked Ms. Honse to explain Statute 286.0115, item (c) 3, *“Local public officials may conduct investigations and site visits and may receive expert opinions regarding quasi-judicial action pending before them. Such activities shall not be presumed prejudicial to the action if the existence of the investigation, site visits, or expert opinion is made a part of the record before final action on the matter.”*

Ms. Honse explained that site visits are a form of ex parte communication. If the City was to adopt an ordinance such as this, it would allow for site visits to be made and would not be presumed prejudicial. She said it is a matter of shifting the burden.

Mr. Lauffer said one (1) of the things that he based his opinion on is located on page 14 of 20 of the backup information provided. He read into the record the first two (2) sentences from item C)-2, *Combining Investigation or Prosecution and Decision-Making*, *“Generally, quasi-judicial board members should not testify at the hearing, should not engage in independent fact-finding, and should not expect staff or counsel to act as both advocate and advisor. However, this analysis must be performed on a case-by-case basis.”* He said that he was not sure if his opinion is right. He can see some advantages to what Mr. Lauer is saying in there have been times that he would have liked to have gone and looked at the area to have a better idea on what he was making a decision on.

Mr. Daige said that he would not have a problem with including number (c) 3 of the Statute with what they are currently doing where they could conduct investigation and site visits.

Ms. Honse noted that they would have to adopt it in its entirety. They cannot pick and choose which they want to do.

Mr. Daige suggested that they take a look at what they have now and go forward with changes that could be made. He felt it would be beneficial to see what is going on around a site. They would have to disclose that and they could give their thoughts on what they saw. He didn't see any harm with moving forward and having the Assistant City Attorney work on something and bring it back before the Board.

Ms. Honse said they would first need to bring it before the City Council to see if they want it to

move forward.

Mr. Lauffer felt that because Mr. Lauer feels it is important and because some of them have mixed emotions on it, they should ask the City Council to take a look at it to see what their opinion is.

Ms. Honse suggested that the Board makes a motion that one of the Board members be directed to take this before the City Council.

Ms. Sherri Philo, Deputy City Clerk, noted that there is a motion on the floor.

**Mr. Daige seconded the motion.**

Mrs. Minuse asked if they have ex parte communication and it goes to an appeal, is the Board going to cost the City a lot of money.

Mr. Lauer said if this ordinance is adopted then the burden is on the opponent to prove that it was prejudicial. As it stands now it is the burden of the City to prove it's prejudicial. Therefore, he would think it protects the City. The policy manual Mr. Lauffer is reading is the manual he should be reading because that is what the law is in the City of Vero Beach, but that policy manual would change if the Statute was adopted. He looks at this as a "mulligan" that the Legislature has given them. He said that he feels like he comes into these meetings at a disadvantage. To him, they lose the orientation that everyone else in the audience has. He is a visual learner and has to go out and look at things to understand them. He said they would have to make a disclosure prior to the hearing so if someone wants to question them about their visit they can.

Mr. Daige said that he sees this as a positive for the Board.

Mrs. Minuse said her hesitation is that they should all come to these meetings equally prepared.

Mr. Cahoy read into the record, page 8 of 20 item 3) – Local Government's Burden, "*The local government decision-making body typically does not present evidence, but rather, at the time of decision, must comb the record of the public hearing for facts to support approval or denial.*" He used today's quasi-judicial hearing as an example. He felt that going out and looking at the site sounded good, but in his way of thinking it is too subjective. He said there is no way that he could go out and look at this one (1) site without looking at the entire neighborhood. He truly thinks that he might be adversely influenced by what he sees subjectively in that neighborhood. He said that he could make a rational decision in forming his vote in dealing with the facts presented to him. He thought that they might not want to tamper with what has worked very well for them. He was not sure if he went out and studied an area that he would have any more information than what he would have presented to him at the hearing. The onus is on the Planning and Development Department to provide sufficient information. He was not sure that he supports Mr. Lauer's motion at this point. He felt more study should be done before bringing it before the City Council.

Mr. Lauffer did not know that it is this Board's decision. His suggestion would be to recommend to the City Council that they look into it as opposed to the Board looking into it. He said that he was not elected to make decisions like this. He felt that he is supposed to be like a Judge, which Judges don't make the law, they judge based on what is before them. He said that he should be able to make a decision based on what the public and the applicants have to say and not on what he thinks.

Mr. Lauer said unfortunately the public is not represented by lawyers. They don't know what they can and can't bring to a hearing. He felt that the developers had an unfair advantage and the Board

should be representing the citizens of Vero Beach, not the developers.

Mr. Daige did not have a problem with asking the City Council to look into this. He felt it would be beneficial to do site visits. He said it would have to be okay with the Board as a whole that they ask the City Council to look at this and have Mr. Lauer attend to answer any questions they may have.

Mr. Cahoy said his personal opinion by this Board requesting the City Council to look at this issue is tantamount to them that they are saying there is a problem and they want the City Council to fix it. He doesn't see it as that type of a recommendation coming from this Board.

The Chairman opened and closed public comments at 2:38 p.m., with no one wishing to be heard.

**The Deputy City Clerk read back the motion, which was that the Board bring this before the City Council and ask that they adopt a form of Section 286.0115 to shift the burden as described in the analysis.**

**Mr. Lauer added to the end of the motion, to shift the burden of prejudice from the opponent to the proponent.**

Mr. Daige said that sounds a little bit harsh. He doesn't want to demand anything. He suggested that they change the motion to request that the City Council look at it.

**Mr. Daige withdrew his second to the motion.**

**Mr. Lauffer seconded the motion.**

Mrs. Minuse said her deep concern is that they were not all coming to the point of decision making with the same amount of information, which bothered her.

**On a roll call vote, the motion passed 3-2 with Mr. Daige voting yes, Mr. Cahoy no, Mr. Lauer yes, Mrs. Minuse no, and Mr. Lauffer yes.**

Ms. Honse explained that they could prepare a memorandum through the Chairman to be placed on the City Council agenda or a Board member could request to be placed on the City Council agenda as a presenter.

Mrs. Minuse asked Mr. Lauer if he was going to go before the City Council.

Mr. Lauer said that he would.

At this time, Ms. Honse gave a brief report on the proposed Bills going before the Legislature.

## **VII. ADJOURNMENT**

Today's meeting adjourned at 2:49 p.m.

/sp