

NON APPROVED
TOWN OF LAUDERDALE-BY-THE SEA
PLANNING AND ZONING BOARD
MEETING MINUTES
Jarvis Hall - 4505 Ocean Drive
Wednesday, April 20, 2016
6:00 P.M.

1. CALL TO ORDER

Development Services Director Linda Connors called the meeting to order at 6:05 P.M.

2. PLEDGE OF ALLEGIANCE TO THE FLAG

The Pledge of Allegiance was recited.

3. ROLL CALL

Members present were Charles Clark, Roseann Minnet, John Lanata, John Graziano, 1st Alternate William Brady and 2nd Alternate Paul LaCoursiere. The absent member was David Chanon. Also present were Assistant Town Attorney Kathryn Mehaffey, Development Services Director Linda Connors, Planning Technician Juliana Cardona, and Clerk Jhanelle Campbell. Guests tonight were Helene Wetherington from the Board of Adjustment and Ron Persante from the Audit Committee.

As this was the first meeting of the Planning & Zoning Board, without objection, the agenda's order was changed to allow for the swearing in of the members enabling them to vote. The next order of business that was conducted by Ms. Connors was the election of the Planning and Zoning Chair and Vice Chair.

SWEARING OF BOARD MEMBERS

The Board Members from the Planning and Zoning Board and the Board of Adjustment stood and repeated the Oath recited by Development Services Director Linda Connors.

ELECTION OF PLANNING & ZONING'S CHAIR AND VICE CHAIR

Nominations for Chair were open. Ms. Minnet made a motion to elect John Lanata as Chair. The motion was seconded by Mr. Clark. There were no other nominations (nominations closed). All in favor of John Lanata as Chair carried 5-0.

Ms. Connors turned the meeting over to Chair Lanata. Nominations for Vice Chair were open. John Graziano made a motion to elect Roseann Minnet as Vice Chair. The motion was seconded by Mr. Clark. There were no other nominations (nominations closed). All in favor of Roseann Minnet as Vice Chair carried 5-0.

4. APPROVAL OF MINUTES

- a. Previous Meeting Minutes – February 17, 2016

Mr. Clark made a motion to approve the minutes of February 17, 2016 as presented. The motion was seconded by Mr. Graziano. The motion carried 5-0.

5. PUBLIC COMMENTS

No one from the public requested to speak.

6. TOWN PLANNER REPORT

- a. Staff Memo (Linda Connors, Development Services Director) – *contained in the packet.*

7. NEW BUSINESS

- a. Orientation for Town Boards and Committees

The meeting was turned over to Ms. Mehaffey. She gave a PowerPoint presentation regarding the following: Sunshine Law, Section 286.011, Fla. Stat.; Public Records Law, Chapter 119, Fla. Stat.; Voting Conflicts, Section 112.3143, Fla. Stat.; Nepotism, Section 112.3135, Fla. Stat.; Code of Ethics for Public Officers and Employees, Section 112.313, Fla. Stat.; Gift Seeking to Influence You, Section 112.313(4), Fla. Stat.; Misuse of Public Position, Section 112.313(6), Fla. Stat.; Disclosure/Use of Information, Section 112.313(8), Fla. Stat.; Solicit/Accept Honoraria, Section 112.3149, Fla. Stat.; Doing Business with Town, Section 112.313(3), Fla. Stat.; Conflicting Employment, Section 112.313(7), Fla. Stat.; and Penalties for Public Officers Under State Code of Ethics, Section 112.317(1)(a)-(b), Fla. Stat.

Ms. Mehaffey started the PowerPoint presentation with the Sunshine Law. She explained that a meeting is defined as two or more members of a collegial body. A quorum is not required. Anytime two board members have public discourse (e.g., via e-mail, texting, Facebook, talking, etc.) about an issue that would come before the Board is considered a meeting. However, a Board Member can talk to Staff about a Board issue and that is not considered a public meeting. She explained how a commissioner could talk with one board member without creating a meeting. She explained why polling was not allowed due to transfer of opinions back and forth. Please note that there was technical difficulty and Ms. Mehaffey continued her presentation via the PowerPoint hard copy. She explained that each Board is considered an agency, (e.g., Commission, Advisory Boards and Committees, Ad Hoc Committees, etc.), and the Sunshine Law applies to all of them. She explained what would not be considered an agency. If a meeting is covered by the Sunshine Law, it must be noticed, the venue must be open and reasonably accessible, and minutes must be taken. The meeting does not have to be recorded. If there is a finding that there was a Sunshine Law violation, it can invalidate the action taken. She explained the consequences for a knowing (criminal) violation and an unknowing (non-criminal) violation and removal if found guilty. It was pointed out that if there is an email from Staff, the Board Member should just reply to Staff and not "Reply To All". Discussion ensued and Ms. Minnet reminded everyone to avoid any Sunshine Law violation even those that happen by accident.

Ms. Mehaffey then went on to Public Records and was able to continue with her PowerPoint presentation. She said that public records are related to anything made or received pursuant to law or ordinance and anything related to the person's capacity as a governmental official. Where the public request is located and in what form are irrelevant. It is dependent upon the

subject matter being related to Town business. The public has a right to it even if it is on a personal computer. It is anything that is meant to communicate, formalize, or perpetuate knowledge. It does not include aids to trigger memory. Ms. Minnet spoke about keeping a dedicated folder with public correspondence. Ms. Mehaffey suggested speaking with Steve Olivera, if help was needed to set up this type of folder. She explained that there are some exceptions to disclosure (e.g., social security numbers, bank account numbers, etc.) and they are statutorily created. She spoke about the knowing and non-knowing violations for Public Records request.

Ms. Mehaffey said that regarding Voting Conflicts, a Board Member cannot vote if it would inure to the Board Member's special private gain or loss, or similarly affects the Board Member's client, relative, or business associate. She explained what to do if you think you might have a conflict. She suggested calling her or Linda Connors as voting conflicts are not always cut and dried or visible. A voting conflict can invalidate an action. She answered Ms. Minnet that as long as the nature of the voting conflict is disclosed, the Board Member can participate in discussion but cannot vote. The memorandum of voting conflict form must be filed with the Town Clerk within 15 days. On the other hand, Commissioners are allowed to vote after they made disclosure of the nature of any conflict.

Ms. Mehaffey said that the Board usually does not deal much with the next item for discussion, Nepotism. If anyone is related to a public official by blood or marriage, you cannot seek employment, promotion, advancement, etc. within the Town at all. This is not applicable to volunteer public safety position. The next item for discussion is Code of Ethics. Ms. Mehaffey said that the Broward County ethics codes are not applicable to Board Members. It does apply to the Commission. However, Board Members and the Town Commission do have Gift Restrictions for all reporting individuals who must file financial disclosures. Ms. Mehaffey said that Board Members should call her, if they have questions filling out their financial disclosure. She explained that a gift of \$100 or less does not have to be reported by a Board Members but over \$100 must be reported. If the gift came from a political committee, lobbyist or vendor, the over \$100 gift cannot be accepted. You cannot solicit a gift from a political committee, lobbyist or vendor for personal benefit. Ms. Minnet wanted to know what happens if you did not know it was from a vendor. Ms. Mehaffey said she would inquire through the Clerk's Office and the Finance Department about a vendor list.

Ms. Mehaffey then went on to explain Gift Seeking To Influence You. She said that the Board Members cannot accept anything of value when you know, or should know with the exercise of reasonable care, that it is being given to influence a vote or other official action or the perception of influencing a vote or official action. For the Misuse of Public Position, Ms. Mehaffey said a Board Member may not corruptly use or attempt to use your position to obtain a special privilege for you or for another. For the Disclosure/Use of Information, Ms. Mehaffey said a Board Member may not disclose or use information not available to the public and obtained by reason of your position for your personal benefit or the benefit of others. For Solicit/Accept Honoraria, Ms. Mehaffey said a Board Member cannot solicit an honorarium related to your official duties. You also cannot accept an honorarium from a lobbyist or vendor. You can accept reimbursement of expenses, if reported and disclosed.

For Doing Business With The Town, Ms. Mehaffey said a Board Member may not purchase, rent or lease any realty, goods or services for the Town from a business entity in which you, your spouse, or your child own more than a 5% interest, or in which you are an officer/director/partner, while acting in official capacity. While acting in private capacity, you

may not sell, rent or lease any realty, goods or services to the Town. Ms. Mehaffey said there are a few exemptions so consult with the Town Attorney if you have questions. For Conflicting Employment, Ms. Mehaffey said a Board Member may not have employment or contract with an entity doing business with or regulated by the Town. You may not have employment or contractual relationship that will pose a frequently recurring conflict between private interest and public duty, or which will impede the full and faithful discharge of public duties. Ms. Mehaffey said there are a few exemptions so consult with the Town Attorney if you have questions. Ms. Mehaffey then explained Penalties For Public Officers Under State Code of Ethics. Ms. Mehaffey invited any Audit Committee member to leave because they were going to cover Quasi-Judicial next. Mr. Ron Persante elected to remain.

Ms. Mehaffey then gave a PowerPoint presentation on Legislative and Quasi-Judicial Decisions. She explained that the Town Commission fully acts in a quasi-judicial capacity which is designated by Code. They are the final decision making authority. The Planning and Zoning Board does act in many ways as a Quasi-Judicial Board and follows procedures similarly. She said there are two different types of decisions: Legislative and Quasi-Judicial. The Planning & Zoning Board addresses both types of activities. Legislative issues are those that set policy (e.g., adopting/amending Comprehensive Plan and adopting/amending Land Development Regulations). She explained the Legislative Hearing. She said that the Legislative Decision is fairly debatable. There has to be a reasonable basis to support the action. The courts usually do not second guess the local government.

Ms. Mehaffey explained that Quasi-Judicial proceedings are applications of the general policies and rules (the Comprehensive Plan or Town Code) to specific properties. She explained what falls under Quasi-Judicial matters – Code Section 30-140 (c) (1).and the basic requirements for a Quasi-Judicial Hearing, Procedures, and Conduct. She explained that the Board Members are impartial judges and make a decision on the evidence before them. She then explained ex-parte communication. She said that since this occurred outside the public hearing, it must be disclosed before a Board decision is made. She gave a few examples of ex-parte communication. She said it is one-sided because the Board Member heard the evidence (in opposition or support) outside of the meeting and the other side was not there to hear or speak about it. The other side must have the opportunity to respond. Ex-parte communications are not considered prejudicial as long as they are disclosed before or during a public meeting. In actuality, she explained that even a site visit is taking in information/evidence outside of the meeting.

Ms. Mehaffey said that a Quasi-Judicial Decision must be based on substantial competent evidence and fact-based citizen testimony. Subjective preferences are not fact based and do not constitute Substantial Competent Evidence. Ms. Mehaffey reiterated that if a Board Member has a question on anything presented tonight, they should call her or Linda Connors. Ms. Minnet reminded everyone that an e-mail trail caused difficulty years ago. As the two PowerPoint presentations were over and all questions answered, the meeting was turned back to Ms. Connors.

Ms. Connors had the Town's website on display. She illustrated how to access the Town's Meetings, Agendas and Applications. She also showed the area on the website to pull the Town Code. Ms. Connors reiterated calling with any questions.

8. OLD BUSINESS
9. UPDATES/BOARD MEMBER COMMENTS
10. ADJOURNMENT

Ms. Minnet made a motion to adjourn at 7:15PM. The motion was seconded by Mr. Clark.
The motion carried 5-0.

Chair John Lanata

ATTEST:

Date Accepted: _____

Development Services Director Linda Connors
