

CITY OF PALM BAY, FLORIDA
PLANNING AND ZONING BOARD/
LOCAL PLANNING AGENCY
REGULAR MEETING 2024-08

Held on Wednesday, August 07, 2024, in the City Hall Council Chambers, 120 Malabar Road, SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Land Development Division, City Hall, Palm Bay, Florida. The minutes are not a verbatim transcript but a brief summary of the discussions and actions taken at this meeting.

Vice Chair Robert Good called the meeting to order at approximately 6:00 p.m.

Mr. Rainer Warner led the Pledge of Allegiance to the Flag.

ROLL CALL:

CHAIR:	Randall Olszewski	Absent (Excused)
VICE CHAIR:	Robert Good	Present
MEMBER:	Donald Boerema	Present
MEMBER:	Michael Jaffe	Present
MEMBER:	Leeta Jordan	Absent (Excused)
MEMBER:	Jeffrey McLeod	Present
MEMBER:	Rainer Warner	Present
NON-VOTING MEMBER:	VACANT (School Board Appointee)	Present

The absence of Mr. Olszewski and Ms. Jordan were excused.

CITY STAFF: Present were Ms. Lisa Frazier, AICP, Growth Management Director; Ms. Tania Ramos, Principal Planner; Ms. Kimberly Haigler, Senior Planner; Ms. Chandra Powell, Recording Secretary; Mr. Michael Rodriguez, Chief Deputy City Attorney

ANNOUNCEMENTS:

1. Mr. Good addressed the audience on the meeting procedures and explained that the Planning and Zoning Board/Local Planning Agency consists of volunteers who act as an advisory board to the City Council.

2. Mr. Rodriguez asked the board to disclose any ex parte communications regarding the quasi-judicial cases on the agenda. No ex parte communications were disclosed by the board.

NEW BUSINESS:

1. ****V24-00001 – Stefani Tennyson (Green Hammer Concrete, LLC, Rep.) - A Variance to allow an existing 11-foot by 16.9-foot concrete slab and a proposed shed to encroach 1.5 feet into the 6-foot side setback and 4.3 feet into the 10-foot rear setback, as established by Section 185.118 of the Palm Bay Code of Ordinances. Lot 26, Block 1709, Port Malabar Unit 36, Section 03, Township 29, Range 36, Brevard County, Florida; containing approximately 0.23 acres. Located north of Scottish Street SW, in the vicinity east of Hurley Boulevard SW, specifically at 1275 Scottish Street SW**

Ms. Ramos presented the staff report for Case V24-00001. Staff recommended Case V24-00001 for denial based on the facts presented, as required under Section 169.009 of the City of Palm Bay Code of Ordinances.

Mr. McLeod remarked on how it appeared as though the contractor had offered to move the encroaching slab. Ms. Ramos stated that there seemed to have been a conversation to that effect; but she was not privy to the discussion.

Mr. Jaffe asked for a copy of the drainage plan. Ms. Ramos stated that the drainage plan was reviewed with the building permit and not the variance application.

Mr. Good asked about the vacating of easement that was needed. Ms. Ramos confirmed that the vacating of easement had been approved by City Council.

Mr. Warner inquired about the size and type of the shed in question. Ms. Ramos explained that the variance was for an existing slab, and the applicant's desire to place a shed on the slab. Mr. Warner noted that a smaller shed could be placed on the slab without the need of a variance.

Ms. Stefani Tennyson (applicant) described how she went through the permitting process for her slab, which was approved and later failed by the same City inspector. She said that the contractor had offered to relocate the slab, but she preferred the current location as much of her yard was impacted by an aerobic septic system, and a playground structure was planned in the middle of the lot. She wanted to install a 10-foot by 16-foot shed on the 11-foot by 17-foot slab, and the structure would not affect any neighbor or utilities.

Mr. Warner asked about reducing the size of the shed. Ms. Tennyson explained that the shed was needed for storage to accommodate her multi-generational family home.

Mr. Good questioned whether the slab was intended for the shed or for the playground equipment that was photographed on the slab. Ms. Tennyson confirmed that a shed was planned for the slab. The playground structure would be moved to the grassy area between the slab and the concrete back porch.

The floor was opened for public comments and there was no correspondence in the file.

Mr. David Moallem (owner of property at Georgia Street NE) spoke in favor of the request. He stated how he owned lots within the vicinity of the subject site, and he encouraged the approval of the variance since the slab was already poured, and the utility companies did not have an issue.

Mr. Bill Battin (resident at Ocean Spray Street SW) spoke against the occurrences that had led to the variance request. The contractor and the inspector made mistakes, and now the landowner wanted to take advantage of the errors instead of allowing the contractor to redo the slab as originally agreed upon.

In response to the comments from the audience, Ms. Tennyson stated that she misunderstood the original measurements for the slab, and that she was by no means requesting something opposite to what was originally planned.

The floor was closed for public comments.

Mr. Boerema commented on how the variance would set a precedent for the remaining vacant lots on the block. His suggestion was to resolve the issue by cutting the slab.

Mr. Good asked about the vacating of easement that was granted by City Council. Mr. Rodriguez explained that only the necessary portion of the site received the vacating of easement. He also commented on how variance approvals could be persuasive when considering other sites, but variances did not create legal binding precedents for other properties.

Mr. Jaffe stated that he would support the proposed variance since Florida Power & Light appeared to have converted the neighborhood to underground power, and so the rear easement would no longer be needed.

Mr. Warner was still in favor of locating a smaller shed on the existing slab.

Motion by Mr. Boerema, **Seconded** by Mr. Jaffe to submit Case V24-00001 to the City Council for approval

Result: Carried 4 to 1

Aye: Good, Boerema, Jaffe, Warner

Nay: McLeod

Abstain: None

2. **T24-00003 – Repeal of Land Development Code (Ordinance 2024-32) - City of Palm Bay, Brevard County, Florida, amending the Code of Ordinances, Title XVII, ‘Land Development Code,’ by repealing the Land Development Code in its entirety; providing for the repeal of ordinances or parts of ordinances in conflict herewith; providing for the deletion from the City Of Palm Bay Code of Ordinances; providing for a severability clause; and providing for an effective date**

Ms. Frazier presented the staff report for Case T24-00003.

Mr. Jaffe stated how a problem could occur if the Land Development Code (LDC) was repealed (Case T24-00003) without the new code (Case T24-00004) being adopted. Mr. Rodriguez stated that for practicality, the two cases could be swapped on the City Council agenda. Ms. Frazier questioned the adoption of the new LDC prior to repealing the existing code. Mr. Jaffe suggested one motion to repeal and adopt at once. Mr. Rodriguez explained the need for two motions for ease of clarity for the current and proposed overhaul.

Mr. Warner asked if there was a timeframe to adopt the new Land Development Code. Mr. Rodriguez stated that the City wanted to adopt the new LDC by October 1, 2024 since the Florida legislation requirement for Economic Impact Statements would go into effect at that time. Ms. Frazier added that by Florida Statute, the City had one year within adoption of the July 2023 Comprehensive Plan update to bring the LDC into compliance.

Mr. Rodriguez noted that there were items in the LDC repeal that did not pertain to land development and were being placed in other parts of the Code of Ordinances. Those items would no longer need to be heard by the Planning and Zoning Board.

Mr. McLeod wanted to know why the repeal and replacement of the LDC was necessary and how the changes would benefit the City and citizens. Mr. Rodriguez stated that consistency was the primary basis for the amendments. By statute, the Land Development Code must be consistent and in compliance with the adopted Comprehensive Plan. Ms. Frazier stated that the presentation prepared for Case T24-00004 would reveal the hard work involved in the proposals as well as the benefits to the citizens and the development community.

Motion by Mr. Jaffe, **Seconded** by Mr. McLeod to hear New Business Item 2, Case T24-00004, prior to Case T24-00003.

Result: Carried 5 to 0

Aye: Good, Boerema, Jaffe, McLeod, Warner

Nay: None

Abstain: None

Case T24-00004, New Business Item 2, was heard at this time.

- T24-00004 – Create the Land Development Code (Ordinance 2024-33) - City of Palm Bay, Brevard County, Florida, amending the Code of Ordinances, by creating Title XVII, ‘Land Development Code’ to provide for the governance and regulation of the City of Palm Bay Land Development Regulations including Zoning, Accessory Uses, Subdivision Requirements, Signs, Natural Resources, Streets, Parking, Building Design, and Development Review Procedures; providing for the repeal of ordinances or parts of ordinances in conflict herewith; providing for inclusion in the City of Palm Bay Code Of Ordinances; providing for a severability clause; and providing for an effective date**

Ms. Patricia Tyjeski, AICP, Inspire Placemaking Collective, Inc. (planning consultant) stated how she had assisted staff in the update of the Land Development Code (LDC), and she gave a detailed PowerPoint presentation regarding the background, scope, major changes, and next steps to repeal and replace the Palm Bay LDC. In addition, Ms. Frazier explained how staff and the development community had struggled with interpreting many of the existing procedures, processes, and criteria that would now be streamlined into a

consistent manner, particularly for Planned Unit Developments (PUDs) and subdivisions. The board was provided a handout and map that comparatively illustrated the existing and proposed zoning districts under consideration, and the size, dimensions, and use changes that would benefit the property owners and not detract. Staff recommended Case T24-00004 for approval.

Questions and comments ensued regarding the LDC update.

Mr. Jaffe wanted clarification regarding the timing of vertical and horizontal construction plans for a PUD. Ms. Frazier stated that once the horizontal construction plans were approved, builders could pull permits for vertical home construction. During horizontal construction of subdivisions, permits for early start homes could be applied for up to 50 percent, but the homes could not be sold until the final plat were recorded.

Mr. Good asked about the 20-percent open space requirement for residential development and the 10-percent requirement for non-residential development. Ms. Frazier stated that the update was added for consistency with the Comprehensive Plan. PUDs had a 25-percent requirement for common residential open space, and open space was now better defined by the code.

Mr. Jaffe inquired whether the proposed LDC update had incorporated new state legislation to increase stormwater capacity to 40-percent, effective in approximately 15 months. The increase in green open space and in stormwater retention would make commercial development expensive. Ms. Frazier explained that treatment trains could be utilized with a combination of open space, stormwater retention or floodplain compensatory storage to meet the new state requirement.

Mr. Jaffe wanted to know which residential zoning districts would allow for the new cluster subdivision types. He questioned whether the former Majors Golf Course could be developed as a cluster subdivision. Ms. Tyjeski stated that the new use tables indicated which zoning districts would allow cluster subdivisions by conditional use and that a golf course community could not be developed as a cluster subdivision.

Mr. Jaffe and Mr. McLeod asked about the permitting process and tree survey requirement for single-family lots under a quarter acre and for adjacent lots in same ownership. Mr. Jaffe commented on the difficulty in preserving trees on smaller lots and the cost of replacement trees. Ms. Haigler and Ms. Frazier

explained that the permitting process had not changed; however, lots could no longer be cleared without building permit approval, and homeowners would need a tree removal permit to clear their adjacent lots. Although quarter-acre lots required a large amount of tree removal and replacements, a credit would now be offered as an incentive to retain trees over a certain height and diameter.

Mr. McLeod wanted to know if the removal of a tree that infiltrated a septic system would have to be replaced. Ms. Frazier stated that per Florida statute, the removal of a tree that created a hazard could not be denied, but the tree would have to be replaced.

Mr. Warner asked about the new parking table and if consideration had been given to the width of streets to accommodate emergency services in subdivisions. Ms. Tyjeski explained that the off-street parking table addressed all zoning uses from single-family residential garages to restaurants, but street widths had not been addressed. Ms. Frazier explained that emergency services could be affected by off-site parking; however, regulation of overnight or on-street parking on private streets fell to the homeowners' associations.

Mr. Jaffe remarked on how new home construction required two-car garages, but garages were also allowed to be built into livable space. Ms. Tyjeski stated that there was a caveat to the livable space, and that the two-car garage requirement had not been changed.

Ms. Tyjeski reminded the board that any suggested changes to the code could be done with phase two revisions. She shared with the board a list of sections being eliminated or relocated within the Code of Ordinances. The subject LDC proposal would go to City Council on August 8, 2024, for first reading and for final reading on September 19, 2024.

Mr. McLeod commented that it appeared as if the LDC update would simplify the code for residents and developers. Mr. Good agreed and stated that the LDC update appeared to be more organized. He noted a letter in the file regarding lot splits requiring a connection to City utilities. He asked staff to elaborate as public utilities was not available to a large portion of the City. Ms. Frazier explained that per State statute, a connection was only required when utilities were available within a certain distance.

Mr. Warner was pleased that the LDC had been streamlined and would give the City better control to make developers more accountable. However, he would

have preferred for the BMU, Bayfront Mixed Use District to remain and for the street widths within the subdivisions to be addressed.

Mr. Jaffe asked about the second phase in updating the LDC. Ms. Tyjeski explained that the second phase would address any items that did not make the current update. Ms. Frazier stated that minor tweaking would occur prior to the September adoption with larger items addressed during the second phase. She invited the board to submit their suggested changes to staff prior to the September 19, 2024, adoption.

Mr. Jaffe indicated the need for additional time that would allow the board and public further review and input of the updates.

The floor was opened for public comments, and the correspondence regarding lot splits was in the file.

Mr. Bill Battin (resident at Ocean Spray Street SW) wanted to be sure a mechanism was in place for City Council to receive the board's comments. He had questions regarding new Sections 174.002, 174.007, 174.01, and 176.011(A). The proposed minimum size of an animal enclosure was too small for a horse; chain link fences were required to sit further back than other types of fences, and the exemptions were limited; there were no repercussions for strip cleared lots, and commercial grubbing was the same as defoliating. He questioned why sidewalks were needed on both sides of a street, if the sidewalk requirement was for new development, and where the requirement would be applied in the City.

Mr. Rusty Melle (S. Wickham Road, Melbourne) stated that if the State was not going to fine the City, the LDC adoption date should be pushed out to January to allow for further review.

Mr. David Moallem (owner of property at Georgia Street NE) stated that more time was needed to digest the LDC proposal. He was concerned about the utility connection requirement as the City was mainly on well and septic, and he owned approximately 2,300 parcels in the City. The proposal created bureaucracy to enforce tree regulations and would lower assessed property values.

Ms. Lisa Jackson (resident at Trumpet Street SW) spoke against the request. She stated that the code changes with the perks and bonuses appeared more pro developer than community. She was opposed to homes being built and put up for

sale by developers who did not care about the environment, wildlife, or community, and Section 175.016 should not permit developers to clear cut lots less than an acre without a plan to build.

Ms. Patricia Dalpra (resident at Georges Avenue NE) spoke against the request. She wanted the LDC update simplified further and she wanted to know who would be responsible for enforcing regulations and making sure developers were accountable before errors occurred.

Ms. Katherine Booth, Let's Be a Good Neighbor to the Lagoon (conservation group), stated that Ms. Susan Connolly with the Sustainability Board had asked her to speak. She was pleased with the inclusion of single-family homes in new Chapter 175 and with the landscape ordinance. However, she had recommendations pertaining to Sections 175.021, 175.028, and 179. Low growing frog fruit and river sage should be included in the ground cover table. She supported the use of medium canopy trees and small native trees such as red bay, turkey oak, and cherry laurel, but egregious pruning methods such as thinning should be removed from the revised ordinance. She noted for the Indian River Lagoon that the Ocean Research Conservation Association (ORCA) recommended a 20-foot shoreline buffer of native plants.

In response to the comments from the audience, Ms. Frazier stated that the update to the LDC had been a long journey that began over a year and a half ago with many workshops, including virtual workshops with shareholders. Significant reformatting and restructuring had occurred, and staff was open to receiving any additional comments from the board and the public.

The floor was closed for public comments.

Mr. Jaffe wanted clarity regarding cluster subdivisions and the Majors Golf Course as the site was vacant, undeveloped land. Ms. Tyjeski stated that application for a cluster subdivision could be submitted for the property through a public hearing process. She explained that the lot sizes in cluster subdivisions would have to be consistent with the lot sizes in the adjacent subdivisions.

Mr. Warner questioned the need to change the BMU, Bayfront Mixed Use District and the BMUV, Bayfront Mixed Use Village District to the CMU, Community Mixed-Use and UMU, Urban Mixed-Use Districts. Ms. Tyjeski explained that the Bayfront Community Redevelopment District no longer existed, and the new zoning designations addressed that change. The new categories could also be

used throughout the City. Mr. Warner stated that the Bayfront District had been an identifying marker of Palm Bay and that characteristic was being lost.

Ms. Tyjeski stated how many of the comments from the audience, like for the animal cages and chain-link fences, had pertained to current language in the code that was not being changed. Staff should be contacted about including those items in the second phase.

Mr. Jaffe wanted clarification on new Section 173.030 regarding single ownership to subdivide property in cluster subdivisions. Mr. Rodriguez and Ms. Frazier stated that single ownership was standard language for subdividing property.

Motion by Mr. Boerema, **Seconded** by Mr. McLeod to submit Case T24-00004 to the City Council for approval

Result: Carried 4 to 1

Aye: Good, Boerema, McLeod, Warner

Nay: Jaffe

Abstain: None

City Council will hear Case T24-00004 on August 5, 2024.

The board resumed consideration of items in the order set by the agenda.

2. **T24-00003 – Repeal of Land Development Code (Ordinance 2024-32) - City of Palm Bay, Brevard County, Florida, amending the Code of Ordinances, Title XVII, ‘Land Development Code,’ by repealing the Land Development Code in its entirety; providing for the repeal of ordinances or parts of ordinances in conflict herewith; providing for the deletion from the City Of Palm Bay Code of Ordinances; providing for a severability clause; and providing for an effective date**

Ms. Frazier once again presented the staff report for Case T24-00003. Staff recommended Case T24-00003 for approval.

The floor was opened and closed for public comments; there was no comments from the audience, and a single item of correspondence was in the file regarding lot splits. Mr. McLeod left the meeting temporarily at this time.

Motion by Mr. Boerema, **Seconded** by Mr. Good to submit Case T24-00003 to the City Council for approval. A vote was not taken on this motion.

Mr. McLeod rejoined the meeting at this time.

Discussion ensued regarding the next steps in the repeal and replacement process, and how public concerns and comments could be emailed to staff in preparation for the City Council hearing.

Ms. Frazier stated that the LDC was a living document which would involve future amendments.

Motion by Mr. Boerema, **Seconded** by Mr. McLeod to submit Case T24-00003 to the City Council for approval.

Result: Carried 4 to 1

Aye: Good, Boerema, McLeod, Warner

Nay: Jaffe

Abstain: None

City Council will hear Case T24-00003 on August 5, 2024.

3. **T24-00004 – Create the Land Development Code (Ordinance 2024-33) - City of Palm Bay, Brevard County, Florida, amending the Code of Ordinances, by creating Title XVII, ‘Land Development Code’ to provide for the governance and regulation of the City of Palm Bay Land Development Regulations including Zoning, Accessory Uses, Subdivision Requirements, Signs, Natural Resources, Streets, Parking, Building Design, and Development Review Procedures; providing for the repeal of ordinances or parts of ordinances in conflict herewith; providing for inclusion in the City of Palm Bay Code Of Ordinances; providing for a severability clause; and providing for an effective date**

Case T24-00004 was discussed under New Business prior to board action on Case T24-00003.

OTHER BUSINESS:

There was no other business discussed.

ADJOURNMENT:

The meeting adjourned at approximately 9:10 p.m.

Robert Good, VICE CHAIRPERSON

Attest:

Chandra Powell, SECRETARY

**Quasi-Judicial Proceeding