

**Minutes of Board of Adjustment and Planning Commission Workshop
Held Tuesday, May 30 and Wednesday May 31, 2006, at 6:00 PM
City Council Chambers, 11 North 3rd Street, Jacksonville Beach**

The joint workshop was called to order on Tuesday, May 30, 2006, at 6:05 p.m., with the following persons in attendance:

Steve Hartkemeyer	Greg Sutton	Dick Matthews
Keith Hall	Paul Schmidt	Carolyn Woods
Terry McGill	Lee Dorson	Lance Folsom
Bobby Jolley	Fred Jones	Brenda Shields
Charles Sellers	Mayor Fland Sharp	Darrell Shields
John Moreland	Rick Knight	Jim Overby
Joseph Loretta	Lee Buck	Liza Mitchell

Also present were City Manager George Forbes, Planning and Development Director Steve Lindorff, Bill Mann, John Hays, and Recording Secretary Amber Lehman.

Mr. Lindorff began, by explaining that the purpose of the workshop was to discuss legal foundations for Land Use Planning and Regulations in the state of Florida. He added that the workshop was a training session that had been anticipated for a long time by many members of the City Council.

At this time, Mr. Lindorff introduced Ms. Brenna Durden and Melissa Gross-Arnold, Land Use Attorneys from the law firm of Lewis, Longman & Walker, P.A., who would be presenting the workshop.

Ms. Durden began by reviewing the many issues of Planning and Planning Law that would be addressed, stating that there have been many changes in the rules and regulations and that it was important for elected officials to be familiar with these rules and regulations.

Ms. Gross-Arnold addressed the roles of the Planning Commission and the Board of Adjustment, pointing out that the Planning Commission was responsible for making recommendations to the City Council on plan amendments and zoning amendments; and the Board of Adjustment is responsible for ruling on variances and appeals of interpretations of the Land Development Code or Zoning Atlas.

Ms. Gross-Arnold then reviewed Florida's Government in the Sunshine Law and addressed the scope of the Sunshine Law, the basic requirements, the agencies covered and pointed out that any advisory board was covered by the Sunshine Law, but some fact-finding boards and staff were not. Mr. Moreland asked whether discussing an action was a violation. Mr. Buck stated that he thought if action was already taken, it would not be a violation.

Ms. Gross-Arnold went over meetings that were subject to the Sunshine Law, and what

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constitutes a “Shade Meeting”. Community forums and political forums are not subject to the Sunshine Law, and reasonable notice of all meetings is required. Written minutes are required of all meetings. Consequences of violations of the Sunshine Law may be non-binding actions, declaratory relief, a criminal penalty, or removal from office.

Practical aspects of land use decisions were then addressed, with Ms. Gross-Arnold explaining the three types of land use decisions: quasi-judicial, legislative, and executive. The difference between quasi-judicial and legislative decisions was then addressed. Ms. Gross-Arnold then presented examples of legislative land use decisions. The Mayor asked whether changing the text of the Land Development Code was legislative, with the speaker responding in the affirmative. Examples of quasi-judicial decisions were presented. Mr. Buck stated that quasi-judicial notice was given before every Board of Adjustment meeting and that revamping the Land Development Code was a legislative action.

The quasi-judicial burden of proof was reviewed. The local government's decision must be supported by competent substantial evidence. Ms. Gross-Arnold explained that consistency with the Comprehensive Plan is subject to strict scrutiny – the review is based on evidence from the record and is not a de novo review. Mr. Moreland asked to what extent the appeals court looks at the evidence. The response was that they would look at the Comp. Plan, the criteria in the Land Development Code, and statutory provisions.

Ms. Durden addressed procedural due process. Mr. Knight asked who would provide the interpreter for non-English speaking parties; and the speaker responded that it might be the local government. Ms. Durden explained that a lawyer was not to testify – they were an advocate of the court. Mr. Buck stated that many times a lawyer is hired to present the case. Mr. Knight addressed sworn testimony, and it was stated that there is a greater weight given to sworn testimony. Ex-parte communications were then discussed, with the Mayor and Mr. Moreland discussing ex-parte and the need to declare site visits as ex parte. Mr. Hartkemeyer asked if they were allowed to walk the property, with the response that it was up to the property owner. A citizen asked if it was okay for a Council member to discuss an application with the applicant, with the answer being yes, as long as it is disclosed. The Mayor asked if you could refuse to meet; and it was noted that the refusal was a not a violation.

Ms. Durden then reviewed substantial competent evidence, which has to be non-speculative and fact-based. The Mayor asked a question about statements that can be made by the public and the need for documentation. Mr. DeLoach asked if there was any leeway of the Sunshine Law in the event of a natural disaster. Ms. Durden responded as long as at least 24 hours notice is given, it would meet the requirements.

Mr. Buck addressed the issues of noise and the noise ordinance. Ms. Durden addressed the need for competent evidence and the possibility for needing a noise expert.

Ms. Durden went on to explain that a “Shade Meeting” should only address one subject.

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Following discussion, the workshop meeting was adjourned at 8:35 p.m. and was reconvened at 6:00 p.m. on Wednesday, May 31, 2006, to continue presentation of legal foundations for Land Use Planning and Regulations in Florida.

The meeting started with an overview of variances, including their definition and instances of applicability. Administrative variances were then reviewed. Ms. Durden explained the variance application procedures and variance standards. The conditions for a variance and the basis for appeals were then presented. Mr. Hartkemeyer asked whether the terms of a variance apply forever. Ms. Durden responded that there would be time frame for which action on the variance must commence. Mr. Knight asked whether a true hardship would have a time limit. Ms. Durden stated that conditions change in a community. Mr. Knight stated that variances do not give privileges.

Mr. Buck brought up an issue with a subdivision. The speaker responded issuance of a variance would generally be consistent with the Comprehensive Plan. She further stated that each variance must be judged against the Comprehensive Plan, and that there could be conditions placed on any variance.

Ms. Durden went on to provide an overview of case law as it concerns variances. Mr. Moreland stated that many times there appears not to be a hardship with variance requests. Mr. Lindorff stated that the Kellogg case addresses the issue. Ms. Durden explained that a homestead was exempt from bankruptcy. She added that there should be some language in the Comprehensive Plan addressing instances when a variance would not be given. Mr. DeLoach stated that if a lot were substandard, there would be the need for a variance to allow for development. Mr. Buck stated that the Board of Adjustment was doing a good job.

Mr. Moreland asked, since decisions could be appealed, should the Board of Adjustments state why they were voting yes or no. Ms. Durden responded that you do not have to put the findings in writing, and sometimes they can be used against the local government. It was good to have findings, provided that they are relevant and supportive of the decision.

An overview of conditional use permits was presented, including enumerated uses, standards and criteria for issuance, and appeals. Ms. Durden explained what the burden of proof was for a conditional use.

Ms. Durden then explained Comprehensive Plan Requirements, including time frames, basic requirements, the review process; and the process for challenges, which do not apply to small-scale amendments. The Evaluation and Appraisal Report requirements were then addressed. EAR-based amendments and Land Development Code requirements were also addressed.

Ms. Durden reviewed concurrency requirements, including the purpose, those public facilities subject to concurrency, what is meant by concurrent with impacts of development, and the City's

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concurrency review requirements. Concurrency exceptions were then presented, including local and state exceptions. Ms. Durden described the requirements for the Transportation Concurrency Exception Areas. Definitions of de minimus impacts, Transportation Concurrency Management Areas, and new fair share requirements adopted pursuant to Senate Bill 360, were presented.

Ms. Durden concluded her presentation by presenting the new state Eminent Domain Law provisions from House Bill No. 1567 and how the Florida League of Cities reacted to the Kellogg decision rendered by the Supreme Court. She explained that the use of Eminent Domain could no longer be used to eliminate slum or blighted properties, or preservation or enhancement of the tax base.

The joint workshop was adjourned at 8:05 p.m.

Submitted by: Amber Lehman, Recording Secretary

Approval:

/s/Steven Hartkemeyer
Steven Hartkemeyer, Chairman
Board of Adjustment

Date: July 5, 2006

/s/Terry DeLoach
Terry DeLoach, Chairman
Planning Commission

Date: July 10, 2006