



Meeting Minutes Planning & Land Development Regulation Board

*Board Member Michael Beebe
Board Member Robert Cuff
Board Member Glenn Davis
Board Member Ray Henderson
Board Member James Jones
Board Member Armando Mustiga
Board Member Linda Steggerda
School Board Representative Mike Judd*

Wednesday, May 18, 2011

6:30 PM

Community Center (3rd Wednesday)

DRAFT

A. Call to Order and Pledge of Allegiance

Board Chair Steggerda called the May 18, 2011 Planning and Land Development Regulation Board (PLDRB or Board) meeting to order at 6:30 p.m. and the Pledge of Allegiance was recited.

B. Roll Call and Determination of a Quorum

Recording Secretary Kathryn Davis called the roll. (Board Member Henderson arrived at 6:33 p.m.)

Present: 7 - Board Member Beebe, Board Member Davis, Board Member Mustiga, Board Member Steggerda, Board Member Jones, Board Member Cuff, and Board Member Henderson

Excused: 1 - School Board Representative Judd

C. Approval of Meeting Minutes

1 11-171 MEETING MINUTES OF THE APRIL 20, 2011 PLANNING AND LAND DEVELOPMENT REGULATION BOARD MEETING

Attachments: [April 20, 2011 PLDRB Meeting Minutes \(DRAFT\)](#)

The Minutes was Approved as presented.

Approved: 6 - Board Member Beebe, Board Member Davis, Board Member Mustiga, Board Member Steggerda, Board Member Jones, and Board Member Cuff

Excused: 1 - Board Member Henderson

D. Public Hearings

2 11-168 DETERMINATION OF THE CONSISTENCY OF A PROPOSED ORDINANCE TO IMPOSE A TEMPORARY MORATORIUM ON INTERNET CAFES AND OTHER

SIMILAR USES FOR 180 DAYS WITH THE COMPREHENSIVE PLAN.

Attachments: [Internet Cafe - Ordinance Moratorium](#)

Planning Manager Ray Tyner introduced the item to the PLDRB and provided background information. He discussed the process for the proposed Ordinance and noted that the PLDRB is to determine consistency with the City's Comprehensive Plan and cited some of the applicable Comprehensive Plan policies. He clarified that the 'use' aspect, i.e. where the use should be, will be evaluated during the moratorium period.

Board Attorney Catherine Reischmann noted that the ordinance will be tweaked slightly prior to going before City Council that will include the effective date, which would be noted as May 10th. She clarified that while the proposed ordinance notes 180 days, it can be shorter. It was further clarified that there is relief offered to anyone in the process in which they can request a hearing. She noted that there is currently a lawsuit working its way to federal court on internet cafes so there's a lot changing in this area that would merit some study on this use.

Mr. Tyner clarified to the Board that there is a 90 day extension possible, but the ordinance is for 180 days.

Board Chair Steggerda opened the floor to the Board for questions and/or declarations to be made.

Board Member Cuff stated that he has filed a notice of conflict (attached to minutes); therefore, he'll be abstaining from voting, but will participate in the discussion and has questions. For the record, he revealed that one of his clients owns property that is occupied by an internet cafe. He expressed that he wasn't certain how the moratorium could be consistent or inconsistent with the Comprehensive Plan, but assumes it is a procedural requirement.

Board Attorney Reischmann explained that there hasn't been enough court cases to explain what a moratorium is into the land development regulations and the case out there is older and somewhat confusing, but legal counsel is taking the conservative position that it should be viewed as a land development regulation as it could portend future Land Development Code changes. She agreed that it may be difficult to determine consistency, but it's best to go through the exercise the best we can.

Board Member Jones questioned if the Board's role is to determine consistency with the existing Land Development Code or existing Comprehensive Plan. Board Attorney Reischmann responded that it is their role and further clarified that the Board could comment on the moratorium itself, but as far as the actual use of the internet cafe, that will come back to this Board once staff has had the opportunity to review. Therefore, that aspect is premature in light of the fact there is a lot of information to be evaluated.

Board Member Jones inquired if these types of facilities are currently required to be permitted or regulated in any way. Mr. Tyner responded that they are permitted and are considered retail.

Board Member Beebe inquired if the study will be performed by staff or an outside consultant. Mr. Tyner responded that the answer to that is not clear at this time; however, it most likely will be by staff with the assistance of legal counsel.

Board Member Beebe wanted specifics regarding the cited Comprehensive Plan

goals being demonstrated to justify the moratorium. He then specified clarification on Objective 4.4.1 relating to economic growth and recreation and Objective 7.1.6 to address impacts of development proposed in the Comprehensive Plan upon the County and adjacent local governments. Addressing Objective 4.4.1 pertaining to economic growth and recreation, Mr. Tyner clarified that what staff tried to illustrate, to address Council's 'Whereas' clauses in the ordinance, was that there could be a potential impact and cited some examples that may cause a negative impact on economic development and tourism. Regarding Objective 7.1.6, Mr. Tyner explained that a proposed use may possibly require intergovernmental coordination such as working with the police department or possibly the school board due to the proximity of a proposed use to a school and noted that the intergovernmental and interagency aspect is broad.

Board Member Beebe inquired as to the number of existing uses (internet cafes) in the City and how many in the pipeline. Staff responded that there are seven (7) existing and four (4) pending. Regarding the pending applications, Board Member Beebe asked if they would be considered active or placed on hold in which Board Attorney Reischmann explained that the moratorium applies to those seeking a permit after May 10th. Board Member Beebe then wanted clarification that if they are in the pipeline prior to May 10th, meaning they've submitted an application, then they won't be affected. Board Attorney Reischmann affirmed this and noted that it seems to be the majority view of the Council. Board Member Beebe sought further clarification as to the number of days for the moratorium. Mr. Tyner clarified that the moratorium is for 180 days in which the Council may extend the moratorium an additional 90 days. Board Member Beebe asked who or where the numbers came from. Board Attorney Reischmann explained that legal counsel recommended the numbers and noted that a moratorium over a year merits a Bert-Harris action.

Board Member Henderson commented on Goal 7.3 relating to sustaining the high quality of life and offered his opinion noting that this type use will violate this goal. He expressed concern on how to control or limit this type of activity.

Board Member Davis was questioning as to why the moratorium is proposed now when there are these uses in existence. He expressed concern about the use being similar to restaurants and that restaurants cause health and safety problems and believes the lottery is a similar use. He further commented that the moratorium is vague and hard to enforce. He noted that special events sometimes serve alcohol as well. He noted that he read in the newspaper that City Council had already approved a resolution and questioned the difference between the resolution and the moratorium. Regarding why the ordinance is being proposed at this time, Mr. Tyner explained that it was at the direction of City Council. He noted that there had been discussions on internet cafes off and on for approximately a year at City Council workshops in which some believed that legislation would be addressing the issue this year statewide; however, that did not happen. As a result, some municipalities have been trying to work out some of the issues and that is why the moratorium is being proposed now - to have time to look at issues. He further noted that all of the points raised by Mr. Davis relating to the various uses are something that staff will have time to explore during the moratorium. Board Attorney Reischmann expounded by explaining that there is a safety hatch built in the moratorium as a mechanism where a business can come in and seek an exception to the moratorium. She further explained the difference between the resolution and the ordinance. It was noted that the resolution memorializes City Council's intent to direct staff to prepare a moratorium and that the ordinance itself adopts the moratorium. She explained that it was legal counsel's advice to adopt the moratorium through the typical land development code process starting with a Comprehensive Plan amendment, thus the reason for the delay.

Board Chair Steggerda sought clarification that the PLDRB is being asked to determine that a temporary moratorium on internet cafe or similar uses is consistent with the Comprehensive Plan. Board Attorney Reischmann clarified that the primary issue is consistency with the Comprehensive Plan, but that's not to say that the Board can't pass on their opinions on the proposed ordinance.

Board Chair Steggerda noted that in looking thru the Comprehensive Plan, there is nothing in there regarding a moratorium. Board Attorney Reischmann explained that the US Supreme Court has determined that a moratorium is not a taking, but is a valid way to address problems.

Board Member Davis inquired if Flagler County has anything of this nature for a moratorium or is this City going to be the first to face a lawsuit. He cited some of the uses called out in the proposed ordinance and voiced concern about the moratorium including those uses. Board Attorney Reischmann explained that the reason for the very broad group of uses is because it is very difficult to define what we are talking about specifically. She commented that the language in the ordinance may be something that could be tightened up before going to Council; however, the businesses we need to study call themselves sweepstakes redemption centers. It was further noted that the ordinance is not intended to be a broad category to include McDonald's with their sweepstakes games and that we may need to precisely define the uses. She noted that it is something staff will take a look at and try to tweak.

Board Member Henderson suggested placing an asterisk where it reads sweepstakes redemption center and define it so that it doesn't include retail activities. Board Attorney Reischmann noted that they can be considered retail activity because they sell phone cards. Mr. Tyner expounded by stating that right now it's considered retail, thus the reason the use is presently being allowed.

Board Member Mustiga inquired about the possibility of the ordinance coming back before the PLDRB once it has been tweaked, but before going to Council. Board Attorney Reischmann explained that the tweaking will be very minor. She also expressed that everything is happening very fast in this area and that we might be able to get it a little better defined due to a decision that has just come out of federal court. She elaborated that this was written in its present form for a reason because you can't absolutely narrow it down as they have too many ways of presenting themselves. Board Member Mustiga asked if certain businesses are circumventing the regulations and acting in other areas in which they are not entitled. Board Attorney Reischmann explained that is a concern, that the businesses are not being tracked properly or paying taxes on all the winnings, which are some concerns that have been brought out through investigations. Board Member Mustiga stated there should be rules and regulations in place to prohibit such actions in which Board Attorney Reischmann responded that there are; however, they've found ways to get around them. Board Member Mustiga noted that we should be screening the pending four (4) and anyone acting outside of the boundaries to the court system. Board Member Reischmann noted that it is a problem as prosecutors haven't been successful in prosecuting cases, thus the reason for this moratorium to study it. This came forward a week and a half ago when we found out about the federal case. The moratorium will give us time for the outcome of the federal case decision.

Board Chair Steggerda asked for clarification that although the Board will have no idea of what changes will be recommended, we need breathing time to take a look at anything that will be put in place. Board Attorney Reischmann explained that there is a possibility that you could do something that would create a lawsuit and because this case is pending in federal court, it makes sense to try to wait for some resolution.

There was further discussion regarding the various uses spelled out in the ordinance and how some of the existing uses encompass them in various ways. Various Board members expressed concern with the broad list of uses in the ordinance. Board Attorney Reischmann reminded the Board that the ordinance provides an avenue for the applicant to seek a hardship for the use. She clarified the reason to provide such a broad definition is because they will claim every time that they don't fit the definition. She noted that the moratorium can always be amended.

Board Member Mustiga stated that in reality, there's no need to tweak it and that it should be kept as written.

Board Chair Steggerda closed the floor to the Board and opened it to the public. Seeing no one approach the podium as there was no public present, she closed the floor to the public. She asked the Board if they have any further discussion.

Board Member Davis commented that we are infringing on his personal freedoms if he wants to go and use that and that he sees that as a lawsuit as a result of the First Amendment, which he will not give up.

Board Member Henderson commented that in his opinion, you're not giving up any freedom, only where you're exercising your freedom.

Board Member Beebe commented that he respects everyone's opinion, but has an issue with the definition and that if a study is needed, and then do a study, but a moratorium isn't necessary to do a study.

Board Member Cuff commented that he has conflicting feelings. He voiced that on the whole, believes the concern from a community level is a proliferation of this type of businesses. From what he understands there were none of these uses about 12 months ago in Palm Coast, but what he's observed is they've raised some land use type issues and business regulation issues even if it's finally determined that what they're selling to the public is legal and is not unregulated gambling. He understands there may be parking, crowding, and security issues and that while he believes there may be a lot that could be said for or against, his belief on a whole is that giving the city staff time to evaluate and see what the court's say is a good thing. He noted that he's heard some of the arguments by businesses, so given by their confusion of their status and their potential negative impact, a reasonable moratorium is probably wise. He recommends that Council and staff act expeditiously as they can to come up with a decision on what they want to do about this so staff can come back with some concrete proposals that the Board can review and debate if it's believed that changes are necessary to the Land Development Code.

Board Chair Steggerda commented that she has concern about potential businesses with WiFi as so many businesses such as Starbucks, restaurants, and hotels have it. She noted that she actually looks for restaurants that have WiFi when on the road and has concern today about what we might be doing to businesses that we really want to have open.

Board Chair Steggerda called for a motion.

Board Member Davis made a motion that the Board recommends denial to Council for the moratorium of these broad programs. Board Member Beebe seconded the motion. Clarification on the vote was requested. Board Attorney Reischmann recommended rephrasing the motion to the positive and cited the following example, "Motion to approve the moratorium to Council in which then you can vote 'no'."

Discussion held how to pose the motion. Board Member Beebe asked Board Member Davis if he'd consider withdrawing the motion in order to get another motion. Board Member Davis withdrew his motion.

Motion made that the Board finds the proposed Ordinance consistent with the Goal, Objectives, and Policies of the Comprehensive Plan and recommends approval to City Council. Motion FAILED as a result of the following votes:

Approved: 3 - Board Member Steggerda, Board Member Jones, and Board Member Henderson

Denied: 3 - Board Member Beebe, Board Member Davis, and Board Member Mustiga

Excused: 1 - Board Member Cuff

Board Discussion and Staff Issues

F. Adjournment

Board Member Mustiga made a motion to adjourn the meeting. Board Member Jones seconded the motion. Motion passed unanimously and the meeting adjourned at 7:31 p.m.

Respectfully submitted,

Kathryn Davis, Recording Secretary

H. ATTACHMENTS

3 11-179 ATTACHMENT TO MINUTES

Attachments: [Memorandum of Voting Conflict form - Robert G. Cuff](#)