



Town of Ponce Inlet Planning Board Regular Meeting Minutes April 26, 2022

1 **1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE:** Pursuant to proper notice,
2 Chairman Cannon called the meeting to order at 10:00 a.m. in the Council Chambers, located at
3 4300 S. Atlantic Avenue, Ponce Inlet, FL, and led attendees in the Pledge of Allegiance.

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5 **2. ROLL CALL AND DETERMINATION OF QUORUM:**

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7 Board members present:

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9 Mr. Kaszuba, Seat 2

10 Mr. White, Seat 3; Vice-Chairman

11 Mr. Cannon, Seat 4; Chairman

12 Mr. Thompson, Seat 5

13 A quorum was established with four members present; Mr. Mauldin, Seat 1 was absent.

14
15 Staff present:

16 Mr. Disher, Director, Planning & Development Department

17 Ms. Hunt, Assistant Deputy Clerk

18 Mr. Mendenhall, Principal Planner

19 Attorney Shepard, Town Attorney

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21 John Carney, Board applicant was present.

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23 **3. ADOPTION OF AGENDA:** Chairman Cannon asked if there were any changes; there
24 were none.

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26 Chairman Cannon moved to adopt the agenda as presented; seconded by Mr. Thompson. The
27 motion PASSED 4-0, consensus.

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29 **4. APPROVAL OF MINUTES:**

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31 **A. January 11, 2022 Special meeting** - Chairman Cannon asked if there were any
32 changes; there were none.

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34 Chairman Cannon moved to approve the January 11, 2022 Special meeting minutes as presented;
35 seconded by Mr. Thompson. The motion PASSED 4-0, consensus.

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37 **5. REPORT OF STAFF:**

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39 **A. Administrative Variance Applications** - Mr. Mendenhall stated there were no
40 Administrative Variance applications.

42 **B. Other updates / reports** - Mr. Mendenhall reported that the 7-year Evaluation &
43 Appraisal Report (EAR) is due to the State by November; it is staff's goal is to have this Board
44 review it at its August meeting to allow for Council's review and timely submittal to the State. The
45 Town then has one year to adopt any plan amendments identified in the report. He stated there will
46 be two Special Exception applications presented at the Board's next regular meeting: one is for a
47 Farmer's Market and the other is for a Tiki Tour Boat operation.

48
49 Mr. Disher reported that staff is working on regulations for food truck vendors; the Town is
50 required to update its water supply work plan by August 2023 and will submit a budget request for
51 that update and enlist the assistance of the Towns Engineer; he noted the following changes to
52 state law: the 2019 preemption for tree removal or trimming is proposed to be amended to require
53 that the letter from the arborist state that the tree exhibits "an unacceptable risk,"; legal notices
54 may now be published on a county-owned website specific to that purpose; the statewide office of
55 resiliency and flooding requires the Department of Transportation to have a statewide resilience
56 plan as well; regarding affordable housing, any industrial or commercial property may include
57 residential units so long as 10% is dedicated to affordable housing, which supersedes the Town's
58 Comprehensive Plan; the Florida Clean Air Act now allows local governments to prohibit smoking
59 in public places, parks, and the beach, (with the exception of unfiltered tobacco); Senate Bill 620,
60 which allows businesses to sue the local jurisdiction if a local law decreases their business profits
61 by at least 15%. Attorney Shepard reiterated his concerns for preemptions and restrictions on local
62 governments; emphasizing the importance of Home Rule. The Town, along with several other
63 jurisdictions, have sent letters to the Governor opposing this law.

64
65 Mr. Thompson asked if food trucks must be linked to special events? Mr. Disher stated staff is
66 researching this issue, as they have to be allowed according to State law. The Town may dictate
67 where they are allowed and their hours of operations. Attorney Shepard referenced the Town's
68 existing short-term rental ordinance and noted that the Town cannot change a comma, for example,
69 or the ordinance becomes void; that is not "local control". Mr. Thompson asked if [fishing] charters
70 must be linked to local businesses. Mr. Disher stated that issue has been explored and they are
71 allowed as a permitted use in the B-2 zoning district. Vice-Chairman White referenced the
72 affordable housing rule and asked if this would affect the 35' height limit. Mr. Disher stated not to
73 his knowledge, as this is more about the "use", the applicant would still have to go through the
74 Town's review and permitting processes.

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76 **6. CORRESPONDENCE/DISCLOSURE OF EX-PARTE COMMUNICATION:** None.

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78 **7. HEARING OF CASES:** None.

79
80 **8. BUSINESS ITEMS/PUBLIC HEARINGS:**

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82 **A. Boardmember Annual Sunshine Law, Quasi-Judicial, & Public Records**
83 **Training** - Attorney Shepard referenced the EAR report as mentioned by Mr. Mendenhall in item
84 5-B and noted that a prior Planning Board committed potential sunshine law violations by
85 discussing a previous EAR after the Board submitted it to the Town Council for review and
86 approval. He stated that the Council sent the EAR back to the Planning Board for further
87 comments, but Council learned that the Board had discussed the matter, so Council had to take
88 over the function of the Local Planning Agency itself, to avoid a Sunshine Law violation. He urged

89 members to not ever discuss any item that is brought before the Board because that item could
90 come back before this Board and that is where the issue arises. Attorney Shepard reviewed the
91 training materials, which included the Sunshine Law, Public Meetings, Public Records, and Ethics.
92 He noted that this is a Constitutional issue and embedded in Florida law. He noted that
93 “perception” of a violation is just as bad as actually committing a violation - and urged members
94 to use caution when interacting with each other. Attorney Shepard noted that Development Review
95 Team (DRT) meetings are public meetings and must be open to the public and minutes must be
96 kept. He reviewed exceptions for “shade meetings” and negotiation sessions; stated that the
97 occasion or location itself is not the issue - the violation occurs when the *subject matter* is regarding
98 Town business. He reviewed the process for curing a violation, noting that it could result in
99 criminal charges as well as voiding all decisions made during the violation action (referencing the
100 Halifax Hospital & Bert Fish merger), and can cost millions of dollars to defend. He reviewed
101 “conflicts” and noted that it applies if it inures to your personal special or private gain or loss
102 (financial), and if so you should indicate the conflict and not vote. If you think you have a conflict,
103 you should call the Ethics hotline *before you vote*. He reviewed gifts and public records and
104 reminded members that if they receive any communication regarding Town business, it must be
105 forwarded to the Town Clerk so that it is maintained properly.

106
107 Mr. Thompson referenced memos and position papers and asked how they should be sent to the
108 Board members. Attorney Shepard noted issues with mass email lists that could create potential
109 Sunshine law violation and unwillingly create “conduits”; he stated that all communication
110 (including position papers and memos) must be sent to the Town Clerk, who will disseminate the
111 information to the Board with the agenda packet. He reminded members that once the
112 communication is transmitted to Town staff, it becomes public record. Mr. Thompson asked if
113 there is an appropriate way to speak individually with Council members? Attorney Shepard stated
114 that they could be considered “conduits”, so if you wish to address Council or any member of
115 another Board, it should be done during a public meeting. Vice-Chairman White stated a resident
116 approached him about the minor replat application that came before the board and his response
117 was to attend the meeting; the resident then asked him “what side he was on” and his response was
118 “the side of the codes and building regulations; Attorney Shepard stated that was the correct
119 response. Attorney Shepard reviewed Quasi-Judicial hearings and noted that members cannot
120 make a decision prior to the hearing of testimony and evidence during the hearing; you are required
121 to think and act like a judge in QJ cases. Your expertise can be used to formulate questions, but
122 you must rely solely on the testimony and evidence presented during the hearing to reach a
123 decision. Vice-Chairman White noted that the Board was presented with an application that the
124 Board deemed not complete and thus postponed the decision; he asked if the Board was correct in
125 postponing a decision because of the incomplete application? Attorney Shepard stated he would
126 not second-guess the Board’s decision, but he is not in favor of approving any development
127 application if the application is not complete; it is not personal - and it does happen because of
128 timing and logistics but sometimes applications can be “approved with conditions” to
129 accommodate a decision. Chairman Cannon noted that when the application came back before the
130 Board, the application was complete. Attorney Shepard noted that the Town has professional staff,
131 Town Council, and Board members that you can rely on to ensure that the information before you
132 is accurate. Mr. Kaszuba asked if there are new exemptions for public records laws; Attorney
133 Shepard stated some recent changes have cracked down on “mills”, where persons request records
134 just to trap someone into saying “no” so they could file a lawsuit. Mr. Disher stated SB 520 is new,
135 which protects personal identifying information of applicants for presidents of universities or a

136 Florida College System institution. There was a discussion regarding the State Legislature not
137 having to abide by the Sunshine Law. Mr. Kaszuba asked if the Town has a retention schedule for
138 public records? Attorney Shepard stated that the State does through the Department of State,
139 Division of Library and Information Services, and the Town follows that schedule. Mr. Kaszuba
140 stated his reasons for asking were because of the pandemic, many jurisdictions met on-line, and
141 he was curious how those records were retained. Attorney Shepard stated it was not easy, but the
142 video and recordings were retained just like regular meeting minutes. Chairman Cannon briefly
143 discussed variances. Attorney Shepard noted that as the “judge”, you can ask questions or make
144 suggestions based on your skill set; you cannot direct or coerce the applicant to do something that
145 they are not required to do. Chairman Cannon stated that it is imperative that all criteria be met
146 before the Board can grant a variance request. Attorney Shepard stated that if the staff is presenting
147 testimony, that is considered competent substantial evidence; if the applicant or a member of the
148 audience comments on the matter, those comments are considered lay-opinions.
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150 **B. Discussion, Large-Scale Comprehensive Plan Amendment to the Coastal**
151 **Management and Future Land Use Elements** - Mr. Mendenhall stated that in 2015, then
152 Governor Scott signed into law what is now known as the 2015 Florida Peril of Flood Act (PoFA)
153 which requires six provisions. He stated that the PoFA requires jurisdictions that have a Coastal
154 Management Element in their Comprehensive Plan to plan for future storm and flood hazards,
155 compounded by rising seas. He noted that the Town is partially fulfilling some of the six provisions
156 already, such as participating in the Community Rating System (CRS) and enforcing development
157 principals that reduce the flood risk for flooding and stormwater runoff. In 2020, the East Central
158 Florida Regional Planning Council (ECFRPC) was hired to conduct a [Vulnerability Assessment](#)
159 to analyze the Town’s potential exposure to flooding which was presented to the Town Council at
160 its February 17, 2022 meeting. He reviewed the proposed and amended policies: **Coastal**
161 **Management** - 1.2.2; 1.4.3; 1.4.4; 1.4.9; 1.4.14;1.5.5; 2.2.3; 3.1.5; **Future Land Use** - 1.1.4. He
162 noted that the proposed amendments have been drafted based on the findings of the Vulnerability
163 Assessment and public input (survey and meetings) and are intended to meet the legislative
164 requirements of the PoFA. These provisions are set to be implemented in increments over the next
165 80 years. He requested that the Board provide comments that staff will incorporate into a future
166 ordinance for the Board’s review and recommendation.
167

168 There was a comprehensive discussion regarding deadlines, goals, legal challenges; the level of
169 risk and costs to property owners; availability of grants or funding; possible changes to the
170 Comprehensive Plan, and impacts to the environment; suggested partnerships with research
171 organizations and universities to assist with the project; questions about the impact of a four-foot
172 sea level rise; requests for legitimate reference points and solid reasons for implementing these
173 policies; and more detail on what we are relying upon for information - is it legitimate?
174

175 Mr. Disher noted that one of the many goals is to explore funding sources to assist with these
176 policies. Mr. Mendenhall stated Volusia County, along with many statewide jurisdictions, are
177 facing the same challenges and the ECFRPC is familiar with these issues and concerns. Mr Disher
178 noted that several of the policies are already in place, for example, policy 1.4.3 regarding a
179 minimum finished floor elevation. Staff is cognizant of costs and residents concerns - our job is to
180 research these avenues and make recommendations based on available data. Mr. Mendenhall
181 reviewed the sea level rise projection maps from NOAA and the Army Corps of Engineers, noting
182 slight differences, but still mostly in agreement that much of this area is projected to have at least

183 one foot of standing water by the year 2070. He noted that the maps could change as conditions
184 do; but staff is proposing changes now to reduce potential impacts to properties. Chairman Cannon
185 noted that beach erosion is of major concern; he agreed that we should plan ahead but not so far
186 out that we lose grasp of what's important now; most residents moving here are not planning 50
187 years ahead. Vice-Chairman White added that this is good information to share with builders;
188 suggested the Town's infrastructure also be considered (roads, utilities, etc.), because even if
189 houses are elevated, you cannot get to them if there is no road. Mr. Disher reiterated that some of
190 these items are currently being done, and have been for some time, including elevating properties
191 and flood proofing. There are immediate needs and long-term needs, which will be done in
192 increments. Mr. Thompson suggested an "information clearing house," and that the Town should
193 be prime case study for modeling due to its unique geographical location. Mr. Disher stated that
194 the Vulnerability Study is a pre-requisite to future grants and funding - and these are highly
195 competitive. Chairman Cannon and Mr. Disher discussed timelines (internal/external) and other
196 deadlines that staff may be held to; Mr. Mendenhall stated it is typically one year, but staff will
197 research and verify. Mr. Disher suggested bringing this item back next month after incorporating
198 the information obtained from the board. Chairman Cannon suggested that comments be emailed
199 to Mr. Disher and Mr. Mendenhall. Mr. Kaszuba suggested that because of the comprehensiveness
200 of this material, the Board should schedule a special meeting just for this topic; the board
201 concurred. Mr. Thompson noted that it is imperative to address "rapid recovery" during review of
202 this topic. Mr. Disher stated the Town Engineer has been hired to perform a full update of the
203 stormwater master plan.

204
205 Chairman Cannon opened public participation. Joe Villanella, 46 Jana Drive commended the
206 Board and staff for the breadth and depth of the comprehensive review of the materials; he
207 suggested the use of pictograms for future presentations to allow the board and public to view risk
208 scenarios in greater detail. Chairman Cannon closed public participation.

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210 The Board requested a Special meeting be held Monday, May 9, 2022 at 10:00 a.m. to review the
211 material in greater detail and that comments be emailed to Mr. Mendenhall and Mr. Disher; 5-0,
212 consensus.

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214 **9. PUBLIC PARTICIPATION:** Chairman Cannon opened public participation - hearing
215 none, he closed public participation.

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217 **10. BOARD DISCUSSION:** None.

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219 **11. ADJOURNMENT:** The meeting was adjourned at 1:17 p.m.

220
221 Prepared and submitted by,

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223 _____
224 Peg Hunt, Assistant Deputy Clerk

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226 Attachment(s):
227 1. None