

**MINUTES OF THE TOWN OF LADY LAKE
SPECIAL PLANNING AND ZONING BOARD MEETING
LADY LAKE, FLORIDA**

**April 10, 2017
4:30pm**

The Planning and Zoning Board Meeting was held in the Town Hall Commission Chambers at 409 Fennell Blvd., Lady Lake, Florida. The meeting convened at 4:30 p.m.

CALL TO ORDER: Chairperson/Member Gauder

ROLL CALL: Carole Rohan, Member
William Sigurdson, Vice Chair/Member
Robert Conlin, Member
Regis LeClerc, Member
John Gauder, Chairperson

STAFF MEMBERS PRESENT: Thad Carroll, Growth Management Director; Wendy Then, Town Planner; Kris Kollgaard, Town Manager and Carol Osborne, Staff Assistant to the Town Clerk.

Also Present: Attorney Sasha Garcia, BRS Legal, Commissioner Paul Hannan.

NEW BUSINESS:

1. Discussion and Review of the Planning and Zoning Board's Duties and Role in the Town's Land Development Processes; Meeting Protocol and Sunshine Law (Attorney Sasha Garcia)

Attorney Sasha Garcia presented the background for this agenda item (on file in the Clerk's office). She stated the Planning and Zoning Board was created by the Town of Lady Lake Land Development Code and is codified in Section 1-82. She explained the purpose of the Board is to review comprehensive planning policies, specific development applications and to provide recommendations to the Town Commission on planning and land development related matters, which is done through a public hearing and is on record. Because the Planning and Zoning Board is an advisory board, the final decisions rest with the Town Commission.

Ms. Garcia stated this Board does not have a specific procedure in place for meetings, such as Robert's Rules of Order. She stated there must be some order to the meetings and she outlined suggested meeting protocol:

- The Board members should review the meeting's agenda in advance of the meeting to be prepared for potential questions and to bring up their concerns for discussion. This also aids in avoiding voting conflicts.
- The Chairperson is in charge of running the meetings and keeping order.
- The Open Forum portion of the meeting is an opportunity for the public to speak to the Board on matters that are not being considered as an agenda item for that particular day.
- Approval of the minutes may be done through "Aye" or "Nay" voting. Specific agenda items such as ordinances must be voted on by a roll call vote.

- When an item is under consideration, it is sufficient for the chairperson to call the item on the agenda by the agenda number item number and ordinance number.
- Staff will conduct the presentation on an agenda item and board members should allow staff to complete the entire presentation prior to asking questions. After the presentation, the Board may ask questions of staff or anyone present associated with the agenda item. It is very important to speak clearly into the microphone. At no time during the meeting can Board members discuss the agenda items amongst each other. Because discussions are on the record, this could give the appearance of impropriety.
- It is required to allow public input on the agenda items; if there are no comments from the public, it must be stated for the record by the chairperson. Ms. Garcia stated in the past when there has been annexation, small scale future land use amendment and rezoning items before the board, a member of the public will address issues such as traffic, service limitations or service impact at an inappropriate time.

Growth Management Director Thad Carroll stated if a public comment is made at an inappropriate time, such as if a commercial design issue is brought up during the annexation ordinance, the chairperson can state that issue will be discussed during a subsequent ordinance and their comments will be heard at that time.

Ms. Garcia suggested announcing when these issues will be discussed; i.e., if you are addressing traffic concerns or service concerns, please wait until “Item Number 3”.

- When a member of the public wishes to speak to the Board, he/she must come to the podium and state their name and address for the record. Public comments should not be permitted from the audience as this disrupts the record as they cannot be identified or what their concern is.
- After public input has been closed, the Board may have additional discussion on the item or ask any further questions of staff or the applicant. This allows the Board to consider the item in its entirety prior to voting.
- The items under review in the meeting packets contain language the board needs to read when making a motion. For example, if the board member supports the requested action, motion #1 is typically read in its entirety, including “with recommendation for approval”; if the board member does not support the action requested, motion #2 is typically read in its entirety.

Member Conlin asked if it is possible to make a motion with modification.

Ms. Garcia stated it is permitted to modify a motion after an issue has been discussed by the board.

Member Sigurdson asked how a tie vote is presented to the Commission.

Ms. Garcia stated it is forwarded to the Town Commission noting two votes in favor and two votes opposing the agenda item.

Chairperson/Member Gauder asked when adding a modification to a motion, if the modification is voted on prior to voting on the issue.

Ms. Garcia recommended reading the motion as presented with the modification inserted at the end. This way the full consideration of the motion is clearly translated for the record.

Chairperson/Member Gauder asked if it would be more effective to vote on the modification, then vote on the agenda item.

Mr. Carroll stated there cannot be multiple motions on one agenda item; there should be one motion to forward to the Commission. He explained that during the Commission meetings, a Commissioner will propose an idea, the Commissioners will discuss it and arrive at a consensus. Each time there is a discussion and the board comes to an agreement, the board is not required to vote on it.

Chairperson/Member Gauder stated if an issue is not in the packet and it is something that came up during discussion, he does not see a problem with taking a vote on it to be sure to have the board's decision on it; then add it to the original motion as an amendment.

Member Sigurdson suggested having the Chairperson ask the board for their input to get their feelings on the issue, come to a decision, and have that added as the amendment to the original motion.

Chairperson Gauder stated that is acceptable.

Town Planner Wendy Then stated that during the commission meetings, after the Commissioners have discussed an issue and have come to a consensus, they will grant approval specifying the agreed upon conditions. Therefore, based on the consensus of this board, the recommendation to the Commission will be "approval with conditions".

Mr. Carroll clarified the board could reach a consensus on an issue prior to voting.

Ms. Garcia stated the purpose of discussing an issue prior to voting is to bring forth input of this board regarding certain consideration, modifications or conditions. She emphasized that the motion must include the modification for the board to vote on it. This does not mean the motion will pass; she stressed it is improper to approve an agenda item in parts because it is not the complete item.

Member Sigurdson asked will the board vote on a motion again if it fails.

Ms. Garcia stated this is correct; if the motion with the modification does not pass then the board must discuss the issue to remove the modification completely or amend it.

Member Conlin asked if each board member must agree to the modification and what would carry the modification.

Ms. Garcia stated not everyone has to agree to the modification; a majority vote is required for any motion to pass or fail. She stated she will interject to ensure there is a valid recommendation to the Town Commission.

Chairperson Gauder stated the chairman cannot make a motion; when he asks the board for a motion, he requested that a member make it quickly to help move the procedure along.

Ms. Garcia stated the chairperson is permitted to make a motion if no other member is introducing a motion. She stated in this instance, the chairperson would pass the gavel to the vice chairperson.

Florida's Sunshine Law:

- The purpose of the Sunshine Law is to provide the public a right of access to governmental proceedings at the state and local levels, and to protect the public from “closed door” decision-making.
- Florida's Sunshine Law is governed by Florida Statutes Section 286 and Florida Constitution Article I, Section 24.
- “All meetings of any board or commission...at which official acts are to be taken are declared to public meetings open to the public at all times, and no...formal action shall be considered binding except as taken or made at such meeting.”
- Those persons and entities that are covered by the Sunshine Law include any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation or political subdivision, any elected or appointed boards or commissions, advisory boards, individual and elected board members, and voting and non-voting members of a board or committee.
- Meetings of boards or commissions must be open to the public, reasonable notice of meetings must be given, and minutes of the meetings must be taken and promptly transcribed.
- The Sunshine Law applies to all discussions or deliberations, as well as the formal action taken by board or commission.
- Two or more members of the same board or committee may not privately discuss issues with one another that is relative to or that may come before their board or committee. This includes discussions via telephone, email, social media or in person. They must hold such conversations at a public meeting and on the record.

Ms. Garcia emphasized that any board member with questions should contact her directly and not discuss any issue with another board member. She stated as an example that if one or more board members individually conduct a site visit to a property and see another board member on site, they should not stop.

Member Gauder stated a board member is permitted to discuss an issue with the Growth Management Director or the Town Planner.

Ms. Garcia stated this is correct.

- Reasonable notice of any meeting is required to give the public time to decide whether to attend a meeting. Reasonable notice is dependent on the circumstance, and does not require paid advertisement. Preparation of an agenda is not required, but highly recommended by the Attorney General.
- The public must be permitted to attend meetings and be given a reasonable opportunity to be heard. Meetings cannot be held at exclusive or inaccessible facilities.
- Minutes of all meetings must be written and made available promptly. Sound recordings cannot substitute written minutes. The minutes may be a brief summary of the meeting events, not verbatim, and they must record the votes.
- **Do Not** ‘reply all’ to emails from staff to entire Board/Committee as that created the potential for Sunshine Law violations.

- **Do Not** use an ‘evasive device’ such as staff, lobbyists, or other means to seek other members’ positions about issues, or circulating written reports/statements to elicit responses or positions of the Board/Committee members on issues.
- Attorney General opinion 2008-07 – There is no “statutory prohibition” against a council member posting comments on a privately maintained electronic bulletin board or blog. Board/Commission members **must not** engage in an exchange or discussion on social networking sites such as Facebook or Twitter on matters that foreseeably will come before the board or commission for official action.
- **It is incumbent upon the members to avoid any action that could be construed as an attempt to evade the requirements of the law.**
- Violations punishable by fine of up to \$500; however, **knowing** violations are second degree misdemeanors and punishable with a fine of up to \$500 and/or up to 60 days’ imprisonment. Other penalties include nullification of the board/committee decisions, removal from position, payment of attorney’s fees incurred by the challenging party (does not apply where the state attorney’s office is enforcing the Sunshine Law), as well as declaratory and injunctive relief.

Public Records:

- Public records description is found in Article 1, section 24(a) of the Florida Constitution. It provides the public the right to inspect or to receive copies of governmental documents through a public records request.
- A public record is all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. Such as board meeting minutes and recordings, correspondence with the city including from personal email, correspondence with other Board members, posts made on public or private forums.
- Avoid public records issues by ensuring staff retains a copy of any public record that is sent to you. You are free to dispose of your copy when you are finished with it. If you receive any public record from a source other than staff, send a copy or the original to staff to be kept in accordance with the public records law.
- Chapter 119 of the Florida Statutes contains the violations or failure to comply with public records requirements.

Ethics and Disclosure:

- “It is essential to the proper conduct and operation of government that public officials be independent and impartial and that public office not be used for private gain other than the remuneration provided by law.” - Florida Statute §112.311(1)
- **Do not** accept gifts to influence your vote. This is defined as anything of value including loans, rewards, promises of future employment, favors, forgiveness of debt and services. An item is not considered a gift if equal or greater than fair market value is given within 90 days of receipt of the gift.
- Prohibits buying, renting, leasing goods from official, spouse or child or entity in which they are an officer, director, partner or have material interest. Prohibits an officer from renting, leasing, selling real property, goods or services to their agency. This may be waived for an advisory board member where the body which appointed the person to the advisory board, upon full disclosure of the transaction or relationship to the appointing body prior to the waiver

and affirmative vote in favor of waiver by two-thirds vote of that body. If you own a business that could profit from an action taken by a board please contact the Town Attorney to go through the proper procedure to inform the board. This may be waived pursuant to Fla. Stat. §112.313(12).

- Public officers, employees of an agency and their spouses and minor children are also prohibited from accepting any compensation, payment or thing of value when the official know or, with the exercise of reasonable care, should know that it is given to influence a vote or other action.
- Public officers, public employees and local government attorneys shall not corruptly use or attempt to use their official position or any property or resource within their trust or perform their official duties, to secure a special privilege, benefit or exemption for themselves or others.
- Prohibits having a contractual relationship or employment with a business entity subject to regulation of or doing business with your agency, or one which would create a continuing or frequently recurring conflict of interest. This may be waived pursuant to Fla. Stat. §112.313(12).
- The law prohibits use or disclosure of information not available to members of general public and gained by reason of an official position for personal gain or benefit or that of another person or business entity.
- No public officer shall vote upon any measure which would inure to the officer a special private gain or loss, or which the officer knows would inure to the special private gain or loss of any principal by whom the officer is retained, or to the parent organization or subsidiary of a corporate principal by which the officer is retained; or which the officer knows would inure to the special private gain or loss of a relative or business associate. Generally, but not always, this refers to a financial interest of the public official that is directly enhanced by the vote in questions. It can also involve a loss, such as zoning of property adjacent to yours which might harm.

Ms. Garcia stressed that members should read the agenda carefully prior to the meeting; and if a member believes there will be a conflict, they should contact her to discuss it prior to the meeting. A conflict is not defined as an uneasy feeling in reference to an agenda item. Those issues are brought forth during the discussion process. She stated after discussing the issue with the board member, and if there is a conflict of interest, she will have that member abstain from the discussion and from voting. It will be noted for the record.

Further discussion was held regarding voting procedures.

Ms. Garcia stated once a motion is made, it has to be voted on unless it is withdrawn; any condition or modification is available for discussion prior to an actual vote. She stated that there is plenty of opportunity for discussion after the presentation and prior to public input, and after public input. She advised that if a board member wants to include a modification to a motion, that board member needs to make the motion with the modification.

Mr. Carroll stated there could be an instance when a motion has been made and seconded by another board member who then states he/she wants to add more language to address a particular issue that is not included in this motion. In that case, the board member who made the initial motion could withdraw his motion due to the modification presented; the board member who made the subsequent motion would withdraw his/her motion. At this point the motion is introduced again with the modification.

Ms. Garcia stated once a motion is before the board and it has been seconded, the process must be completed regardless if are modifications. If there is no second to a motion, it fails for lack of a second.

Discussion was held regarding closing public input. Ms. Garcia stated if a board member has requested that the chairperson close public comment due to repetitive comments, the chairperson may poll the audience to see who has a comment other than the one that is being repeated.

ADJOURN: *With nothing further to discuss, the meeting was adjourned at 5:29 p.m.*

Carol Osborne, Staff Assistant to the Town Clerk John Gauder, Chairperson

Minutes transcribed by Carol Osborne, Staff Assistant to the Town Clerk