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**Town of Ponce Inlet
Planning Board
Regular Meeting Minutes
October 27, 2020**

6 **1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE:** pursuant to proper notice,
7 Chairman Cannon called the meeting to order at 5:35 PM in the Council Chambers, located at
8 4300 S. Atlantic Avenue, Ponce Inlet, FL, and led attendees in the Pledge of Allegiance.
9

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

11
12 Board members present:

13 Mr. Mauldin, Seat 1
14 Mr. Kaszuba, Seat 2
15 Mr. White, Seat 3
16 Mr. Cannon, Chairman; Seat 4
17 Mr. Thompson, Vice-Chairman; Seat 5 (via Zoom technology)
18

19 Board member(s) absent:

20 None
21

22 A quorum was established with five board members present; there were no absences.
23

24 Staff present:

25 Ms. Dean, Acting Board Secretary
26 Mr. Disher, Assistant Director, Planning & Development Department
27 Ms. Frazier, Senior Planner
28 Ms. Hugler, Office Manager
29 Mr. Joulani, Director, Planning & Development Department
30 Mr. Shepard, Town Attorney
31

32 **3. ADOPTION OF AGENDA:** Chairman Cannon asked if there were any changes to the
33 agenda; there were none.
34

35 Chairman Cannon moved to adopt the agenda as presented; seconded by Mr. Mauldin. The motion
36 PASSED 5-0, consensus.
37

38 **4. APPROVAL OF MINUTES:**

39 A. September 22, 2020 Regular meeting - Chairman Cannon asked if there were any
40 changes requested to the minutes; there were none.
41

42 Chairman Cannon moved to adopt the September 22, 2020 minutes as presented; seconded by Mr.
43 Kaszuba. The motion PASSED 5-0, consensus.
44

45 **5. REPORT OF STAFF:**

46 A. Administrative Variance Applications Report - None.

47 B. Other updates - Mr. Disher reported that as of November 1st, all board members
48 must resume meeting in person as the Governor's emergency order will expire; Council approved
49 funding for a Vulnerability Study on the impacts of sea level rise beginning in December; the
50 Town has applied for a grant to study the Town's stormwater system (Watershed Management
51 Plan) under sea level rise conditions; he encouraged citizens to participate in the surveys and
52 workshops that will be coming; staff will present the first draft of the proposed amendment to
53 section 4.10 of the Land Use & Development Code regarding Landscaping and Tree Preservation
54 to this Board at the November or December meeting. Mr. Thompson asked how the town plans to
55 obtain citizen participation for these sea level rise studies. Mr. Disher noted that the work on the
56 Vulnerability Study will not begin until December, but information will be disseminated using the
57 town's normal notification process and reaching out to various stakeholders.
58

59 **6. CORRESPONDENCE & DISCLOSURE OF EX-PARTE COMMUNICATION:**
60 None.

61
62 **7. HEARING OF CASES:**

63
64 A. FDP25-2020; Property address: 100 Lighthouse Drive
65 Owner(s): Volusia County
66 Project: Marine Science Center Seabird Hospital
67 Request: Approval of final site development plan application
68

69 Chairman Cannon noted that he visited the bird hospital site but did not speak with anyone; Mr.
70 White stated he bicycled and walked through the area but has had no conversations with anyone.
71 Mr. Disher noted that there will be no quasi-judicial worksheets for this item, as they have not yet
72 been reviewed and approved by this board.
73

74 Mr. Disher referenced his staff report dated October 19, 2020. He stated the request is for
75 installation of a 480 square-foot, one-story modular building to be located on the Marine Science
76 Center property and will be known as the Seabird Hospital Building; the building will not be open
77 to the public. He noted the zoning is P/I (Public/Institutional) and has a corresponding future land
78 use map designation as P-I (Public-Institutional); and is located within the Lighthouse Overlay
79 District (LOD). He stated the project is consistent with the LOD and the Comprehensive Plan. He
80 stated that seven trees will need to be removed and due to preservation of trees outside the
81 designated protection zone, the mitigation ratio is 1:1. He confirmed that due public notice was
82 provided to adjoining property owners and no objections or comments have been received. The
83 Cultural Services Board has reviewed the landscape plan and recommended approval. He reviewed
84 the architectural design criteria as outlined in the LOD and the construction materials of the
85 building with a gable metal roof and hardiboard siding. He noted that the building will complement
86 the existing structures on the property and surrounding area. He stated that staff's recommendation
87 is for approval. Mr. White asked if the LOD was created to protect the area based on the lighthouse
88 and grounds and the historical character of the area. Mr. Disher stated yes, it was designed to
89 protect the lighthouse and the views of the lighthouse. Mr. Thompson asked if any consideration
90 was given to use landscaping to soften the view *from* the lighthouse? Mr. Disher stated he was
91 unsure if that was part of the applicant's intent, but there are a number of palms and oaks proposed.
92 Mr. Disher noted that there are plans for vegetation, accent plantings, trees, etc. Mr. Cannon asked
93 how far off the boat trailer parking lot surface will this building be placed. Mr. Disher stated there

94 is a ten-foot setback. Mr. Cannon noted that the ramp would be about three feet from the parking
95 lot and asked if the existing fence would be removed. Mr. Disher stated yes, the fence between the
96 existing bird enclosure and the dumpster enclosure will be removed. He clarified that the building
97 will not be open to the public; it is for existing staff. The handicap ramp is indicated on the plans
98 and has been designed to meet existing codes. Mr. Cannon asked how much of the building will
99 be visible from the parking lot and street. Mr. Disher stated twelve feet, but it will be screened
100 with vegetation. Mr. White stated it appears there is a non-conforming shed building on the
101 property and asked if that is going to be addressed. Mr. Disher stated it is the applicant's intent to
102 remove that shed. Mr. Kaszuba asked if the handicap ramp will go to the boat trailer parking lot
103 and asked why there is a sidewalk proposed? Mr. Disher stated it is proposed for handicapped
104 staff. There was discussion regarding the handicap ramp and parking spot location. Mr. Thompson
105 noted that the handicap parking spaces in the boat trailer parking lot are allocated for Davies
106 Lighthouse Park visitors and asked if the access can be on the east side. Mr. Disher noted that
107 access for the seabird hospital staff is proposed to run through the existing bird cages and is not
108 handicap accessible. Chairman Cannon invited the applicant to address the Board.

109
110 Clay Ervin, Director of Growth and Resource Management, Volusia County introduced himself to
111 the Board and noted Chad Macfie, Laura Laser, and John Dillard are also present to address
112 questions. He noted that they currently use an 80 square foot building for an office, and due to
113 COVID, have been forced to take this route to allow their staff to safely work. He noted that the
114 modular unit will meet the building code, fire code, and wind load. It will be set on a foundation,
115 but there will be no wheels. He noted the importance of the continuity of the views on the grounds
116 and from the lighthouse. Laura Laser, Senior Architect, Volusia County, noted the structure has
117 been custom designed to complement the surrounding area and the lighthouse grounds; and
118 reviewed the landscaping design. John Dillard, Zev Cohen Associates, stated that existing
119 vegetation will be trimmed to allow the structure to be maneuvered to its resting place. He stated
120 there is existing handicap access to the bird hospital and there are no plans to expand it. He
121 reviewed the building size, structure, and ground soils; adding that the tongue and wheels will be
122 removed, a skirt will be installed, and then heavily vegetated. He stated that vegetation and trees
123 can be moved around if the town determines the building needs to be better screened. Mr. White
124 asked if the non-conforming buildings will be removed during this process. Mr. Dillard stated that
125 everything within the site area will be removed except the dumpsters, which will remain behind
126 the gate as they are now. Mr. White asked about the metal roof overhang and asked if they will
127 mirror what it existing. Mr. Dillard stated yes, that was our intent. Mr. Thompson asked if the roof
128 color is white. Mr. Dillard stated no, it's a finished aluminum, replicating the existing bird building.
129 Mr. Thompson asked if reflection will be visible from the top of the lighthouse. Mr. Dillard stated
130 he would look at it but believes the building's orientation remedies that issue. Mr. Thompson asked
131 why the ramp on the west could not have been taken to the east. Mr. Dillard stated it is due to the
132 dramatic elevation differences. Mr. Cannon referenced the soffits and gutters and suggested they
133 mirror the existing bird hospital. Ms. Laser stated the modular building has approximately 16-inch
134 overhang with gutters. Mr. Ervin stated the County would commit to submitting a change order to
135 ensure the overhang (soffit) matches the existing buildings. Mr. Kaszuba asked if this would need
136 to be built if there was not a pandemic. Mr. Ervin stated that staff is running out of space, the
137 pandemic expedited the need. Chairman Cannon reiterated his concerns that the County ensure the
138 ADA and handicap requirements are met. Mr. Dillard stated there is an existing handicap parking
139 space on the east side of the existing bird hospital. Chairman Cannon opened public comment -
140 hearing none, he closed public comment.

141
142 Chairman Cannon moved to forward the final development site plan for the Marine Science Center
143 Seabird hospital to the Town Council with a recommendation of approval, with the stipulation that
144 the eaves/soffits/roof lines match the existing bird hospital to the south; seconded by Mr. White.
145 The motion PASSED 5-0, with the following vote: Mr. Mauldin - yes; Mr. Kaszuba - yes; Mr. White
146 - yes; Mr. Cannon - yes; Mr. Thompson - yes.

147
148 **8. BUSINESS ITEMS/PUBLIC HEARINGS:**

149
150 **A. Case 26-2020, Ordinance 2020-XX, LUDC Text Amendment for section 4.4 -**
151 **Fences and Walls**
152 **Applicant: Battelle Memorial Institute**
153 **Project address: 4925 S. Atlantic Avenue**
154

155 Ms. Frasier explained the request is for a text amendment to revise the fence height and material
156 components to allow the use of barbed wire and to increase the maximum fence height from six
157 feet to eight feet. The LUDC text amendment application is from the Battelle Memorial Institute
158 properties to allow its properties to be properly secured, as required by federal contract. She noted
159 that the code does not allow barbed wire as a fence material and does not allow chain link fencing
160 above six feet in height. She reported that an email was received from the Security and Emergency
161 Management Director of Battelle Corporate Operations who described the security needs of the
162 facilities as justification for the requests. She noted that staff acknowledges that increased fence
163 height and anti-climbing barriers may be appropriate in certain situations and that there are several
164 properties in town that have existing non-confirming security-type fencing. She stated that the
165 LUDC cannot be written for a specific property - but staff is proposing to address specific needs
166 regarding security and materials on a case-by-case basis. She noted that the proposed amendments
167 are consistent with the Comprehensive Plan. Mr. Mauldin asked about proposed paragraphs D &
168 E in section 4.4.4. and asked if the P/I-zoned properties would need a variance. Ms. Frazier stated
169 no, if approved, this would be allowed by right. Mr. Disher added that this could also apply to
170 anything allowed in paragraph D for public-institutional uses. Ms. Frazier stated that if a property
171 owner requested a fence height higher than eight feet, they would need to request a waiver from
172 this board. Mr. Mauldin noted that a waiver under the proposed amendments would have to come
173 before the Planning Board for approval. Ms. Frazier noted that an Administrative Variance is
174 limited to two additional feet. Mr. Cannon further clarified that if approved, an eight-foot tall fence
175 could be permitted with an additional two feet through an Administrative Variance for a total of
176 ten feet and then allowed to have barbed wire on top. Ms. Frazier stated that the Director could
177 choose to send the Administrative Variance request to this Board and that barbed wire is currently
178 prohibited due to changes to the Code in 2017. She added that there are several properties in town
179 with existing non-conforming fences, including barbed wire, which predate the current code. Mr.
180 Cannon stated that someone could actually put up an 11 ½-foot high fence with barbed wire on
181 top; Ms. Frazier stated yes, so long as it meets the criteria. Mr. Cannon noted that the Battelle
182 property on Sailfish Drive abuts a residential property. Ms. Frazier stated they could request, upon
183 meeting the criteria, an Administrative Variance; and could replace the entire fence with an eight-
184 foot high chain link fence and barbed wire on the top. He suggested that anyone wanting to do this
185 should get a waiver. Mr. Mauldin concurred. Mr. Thompson asked what is driving the request to
186 allow chain link and barbed wire fencing, is it based on Federal contracts or security needs? He
187 supports the idea of a waiver process. Ms. Frazier noted that the lighthouse also has a chain link

188 fence, and she has reached out to the Preservation Association to ask about the future needs of that
189 property. Mr. Thompson stated he believes there are other ways to address security, the town must
190 be sensitive to neighboring property owners and the natural environment (dunes, etc.). He stated
191 that Sailfish Drive is a scenic roadway and that neither chain link nor barbed wire fencing should
192 be allowed anywhere near the lighthouse. Mr. White stated he understands what they are asking
193 for but does not want to encourage other businesses to be permitted to install chain link and barbed
194 wire fencing for security; and expressed concerns of potential negative impacts from single-family
195 and multi-family property owners. Mr. Disher noted that the Administrative Variance and Waiver
196 processes include notification of property owners and if there are any objections, the application
197 is brought before the Planning Board. Mr. Thompson asked if potentially affected property owners
198 were notified of this request. Mr. Disher stated the town followed the notification requirements.
199 Chairman Cannon invited the applicant to address the Board. Blake Hollis, Research Scientist,
200 Battelle Memorial Institute, agreed that no one should be “blindsided” by changes in the Code. He
201 stated the fence pre-dates the town itself by at least five years. The fence is over 70 years old and
202 the changes implemented by the 2017 Code came as a surprise to them. He noted that the fence is
203 not easily visible to the public from the roadway. He stated that Battelle’s Sailfish Drive property
204 also needs to be included as future projects may require additional security. He noted work on both
205 properties involve government projects; a requirement of the government contracts is that each
206 facility meets a minimum industrial standard of security, which includes security cameras and
207 eight-foot high chain link fencing topped with three strands of barbed wire. He stated that one of
208 their problems is palm berry poachers trespassing and damaging the existing fence. He added that
209 many sections of the fence are in disrepair and they have repaired it section-by-section for many
210 years. He stated it is not their intent to enclose the entire Sailfish property, just the portion
211 necessary for specific projects that require additional security. He noted that this is a research
212 facility and there are concerns of safety and trespassing. He stated the existing fence is galvanized
213 steel and they are proposing to replace it with aluminum, due to its durability. Mr. Kaszuba asked
214 how many breaches Battelle has experienced on the beachfront property. Mr. Hollis stated there
215 have been several thefts over the years. He confirmed that the corrosion rate of the fence materials
216 has accelerated. Mr. Cannon asked if “minimum industrial standard of security” is defined. Mr.
217 Hollis stated yes. He stated his support of being prepared and regulating the waiver process. Mr.
218 White expressed concerns that the town may be opening up an avenue where all property owners
219 could apply for a waiver. Mr. Mauldin stated that “temptations” should be removed from the
220 process and the board may want to consider reviewing all waiver applications. Mr. Hollis stated
221 he spoke with his legal team and they suggested adding “federally-contracted” facilities to the
222 wording. Mr. Disher asked if properties under the scope of federal standards (lighthouse, cell
223 tower, etc.) could be written into the Code. Attorney Shepard expressed concerns of equal
224 protections, noting it cannot be arbitrary and must be justified, to distinguish between one group
225 or another (such as for safety). Mr. Hollis stated there is a federal document called the Unified
226 Code for Facility Management, which outlines and requires certain minimums of physical and
227 cyber securities and is based on facility and research. Attorney Shepard stated he would review it.
228 Mr. Kaszuba noted that this could apply at the Pacetti Boarding house - and does the Town really
229 want to do that? Chairman Cannon opened public comment - hearing none, he closed public
230 comment. Mr. Mauldin suggested that minimum requirements must be stated in an application
231 along with justification; noted that it should not apply to commercial or any residentially-zoned
232 property. Mr. Thompson concurred, urging that the restrictions should not be too broad or too
233 narrow; and that applications should be reviewed on a case-by-case basis. Chairman Cannon asked
234 how the town can prevent this type of request “rolling down” to the general public - can the town

235 protect against that? Attorney Shepard stated yes, as equal protection must be ensured and you
236 must articulate a reason as to why or why not, and it must make sense.

237
238 The Board suggested staff continue working on this amendment based on the comments and bring
239 it back to the Board for further consideration.

240
241 **B. Ordinance 2020-XX, Code of Ordinances Amendment - Exterior Lighting**
242 **regulations** - Mr. Joulani provided the history of this amendment and reviewed the changes
243 proposed. He confirmed that changes were made incorporating the Board’s comments and created
244 additional definitions. Mr. Cannon expressed his concerns that the town would be attempting to
245 regulate fixtures and suggested all references to “fixtures” be removed from the ordinance. Mr.
246 White agreed noting that our only concern should be about where the light is shining. Mr. Joulani
247 stated he is not a lighting expert, but in reviewing over 35 different ordinances, they all referenced
248 “fixtures”. Mr. White asked how many complaints has the town received? Mr. Joulani stated in
249 twelve years, there have been very few. Mr. White asked how the town proposed to regulate
250 fixtures. Mr. Cannon noted that approximately 70% of lights in town are “unshielded” and this
251 ordinance would basically eliminate the existing lights. He added that there have been one or two
252 complaints, yet we seem to be attempting to severely limit lighting abilities. Mr. Mauldin
253 suggested “less is more” and read from the proposed ordinance: “no person shall install or maintain
254 ... which creates a nuisance” and stated the town should address each complaint on a case-by-case
255 basis. Mr. Kaszuba noted much effort has been put into this ordinance, but it appears that lighting
256 is not a major issue, he stated his reservations of implementing something such as this and
257 suggested that the town address light trespass not light fixtures. Mr. Cannon suggested removing
258 language that restricts the placement/location or fixture types. Mr. Thompson concurred adding
259 simpler is better and less is more. He stated that the trespass may be subjective, but the town will
260 be responding to complaints - not scanning the town for lighting violations. Mr. Joulani stated he
261 would remove all references to light fixtures and address the “nuisance” issue and bring a revised
262 version before the board for further consideration. Mr. Thompson expressed concerns that the town
263 is exempt from nuisance lighting. Mr. Joulani stated it is exempt for sports and recreational
264 facilities. He noted that some of the problems with enforcement or standards is that there are none
265 in the building code, which is why some of the language was added regarding fixtures. Mr.
266 Thompson suggested a checklist be created to ensure the town avoids nuisance lighting issues.

267
268 The Board suggested staff continue working on this amendment based on the comments and bring
269 it back for further consideration.

270
271 **C. Ordinance 2020-XX, Code of Ordinances Amendment - Small Wireless**
272 **Facilities** - Mr. Disher reviewed the history of this item. He noted that the town must enact the
273 regulations in order to have any ability, however limited, to control these facilities - since they are
274 protected by state and federal law. He reviewed the changes to the proposed ordinance as requested
275 at the September 22, 2020 Planning Board meeting. Mr. Thompson asked if the town can require
276 5G only be allowed in right-of-way areas and prohibit or regulate them on private properties. Mr.
277 Disher stated this applies only to the rights-of-way areas and would research if the town could
278 restrict placement on private property. Attorney Shepard stated municipalities are extremely
279 limited in what they can regulate since the technology is governed by the FCC and state law. His
280 office is following developments of this topic. Mr. Cannon asked how many units can we expect
281 to be installed and if the \$1,000,000 bond is sufficient? Mr. Disher stated installation includes a

282 pole, wired into existing electrical source, equipment mounted on the top of the pole (antenna),
283 and equipment on the ground - which would equate to one location every thousand feet or so.
284 Regarding the bond, the County requires a \$3,000,000 bond and he will check with them to how
285 they came up with that figure. Mr. Kaszuba asked if it is possible that these poles could only be
286 limited to Atlantic Avenue? Mr. Disher stated it is possible, as the companies will target the higher-
287 density areas first. Mr. Kaszuba asked how limited the town is with requiring these companies to
288 negotiate in “good faith”. Attorney Shepard stated there is no “pro or con” to include wording to
289 that effect, but it may or may not matter - as “good faith” is not defined. Chairman Cannon opened
290 public comment - hearing none, he closed public comment.

291
292 Chairman Cannon moved to approve proposed ordinance 2020-XX, Small Wireless Facilities and
293 to forward to the Town Council with a recommendation of approval as presented; seconded by
294 Mr. Mauldin. The motion PASSED 5-0, with the following vote: Mr. Mauldin - yes; Mr. Kaszuba
295 - yes; Mr. Cannon - yes; Mr. Thompson - yes; Mr. White - yes.

296
297 **9. PUBLIC PARTICIPATION:** Chairman Cannon noted there was no one present for
298 public participation.

299
300 **10. BOARD DISCUSSION:** Chairman Cannon announced that Mr. Barrow has resigned and
301 thanked him for his service. He stated that all motions will be based on staff’s recommendations,
302 rather than trying to keep motions “in the positive”; he encouraged other members to make
303 motions. Mr. Mauldin stated he may not be at the next meeting due to surgery.

304
305 **11. ADJOURNMENT:** the meeting was adjourned at 8:39 p.m.

306
307 Prepared and submitted by,
308 _____
309
310 Peg Hunt, Board Secretary