



# PLANNING BOARD AGENDA REGULAR MEETING

TUESDAY  
July 23, 2024 – 10:00 AM

COUNCIL CHAMBERS  
4300 S. ATLANTIC AVE., PONCE INLET, FL

**SUNSHINE LAW NOTICE FOR BOARD MEMBERS – Notice is hereby provided that one or more members of the Town Council or other Town Boards may attend and speak at this meeting.**

A complete copy of the materials for this agenda is available at Town Hall.

1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE.
2. ROLL CALL AND DETERMINATION OF QUORUM.
3. ADOPTION OF AGENDA.
4. APPROVAL OF MEETING MINUTES:
  - A. April 23, 2024
  - B. June 4, 2024 Town Council Special Joint Meeting with Planning Board (*approved minutes*)
5. REPORT OF STAFF:
  - A. Planning Division Reports
  - B. Other Updates and/or Reports
6. CORRESPONDENCE & DISCLOSURE OF EX-PARTE COMMUNICATION – None.
7. HEARING OF CASES (Public hearings & Quasi-Judicial matters): A Quasi-Judicial decision entails the application of already-established criteria and general public rule or policy to a limited number of specific individuals, interests, properties, or activities. Certain standards of basic fairness must be adhered to in order to afford due process. The parties must receive notice of all hearings and be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which a Quasi-Judicial board acts. It shall be the responsibility of the APPLICANT to ensure that the proposal meets all the criteria and standards established in the Land Use and Development Code for the development sought. Procedure for Public Hearings:
  1. Reading of the Item for the Record;
  2. Staff Testimony, including noticing information;
  3. Board Discussion;
  4. Public Discussion, including statement of Applicant(s);
  5. Boardmembers individually complete Quasi-Judicial worksheets (if applicable);
  6. Motion and Second by the Board; followed by Board discussion, and
  7. Roll-call Vote.
8. BUSINESS ITEMS.
  - A. Ordinance 2024-##, Amendment to LUDC Section 3.17, Docks, Boathouses, Boat Slips, and Piers
  - B. Amendment to Planning Board By-Laws, Article III, Section 1, changing regular meeting time from 10:00 am to 2:00 pm

- C. Training on Quasi-Judicial Proceedings
- D. Discussion - Reschedule November and December Planning Board Meetings

9. PUBLIC PARTICIPATION.

10. BOARD DISCUSSION.

11. ADJOURNMENT.

*If a person decides to appeal any decision made by the Planning Board with respect to any matter considered at a meeting or hearing, he/she will need a record of the proceedings and that for such purpose, may need to ensure that a verbatim record of the proceedings is made (at their own expense), which includes testimony and evidence upon which the appeal is to be based. Persons who require an accommodation to attend this meeting should contact the Ponce Inlet Town Hall at 236-2150 at least **48 hours prior to the meeting**, in order to request such assistance.*



**Meeting Date:** July 23, 2024

**Agenda Item:** 4

## **Report to Planning Board**

**Topic:** Approval of Meeting Minutes

### **Summary:**

Staff has prepared the attached set of Planning Board meeting minutes and submits for the Board's review and approval.

- A. April 23, 2024
- B. June 4, 2024 Town Council Special Joint Meeting with Planning Board (*approved – for information only*)

### **Requested by:**

Ms. Stewart, Assistant Deputy Clerk

### **Reviewed by:**

Mr. Lear, Planning & Development Director

### **Approved by:**

Mr. Disher, Town Manager



# Town of Ponce Inlet Planning Board Regular Meeting Minutes April 23, 2024

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1 **1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE:** Pursuant to proper notice,  
2 Chair Kaszuba called the meeting to order at 10:00 a.m. in the Council Chambers, 4300 S. Atlantic  
3 Avenue, Ponce Inlet, FL, and led attendees in the Pledge of Allegiance.  
4

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

6  
7 Board members present:

8 Mr. Oebbecke, Seat #1  
9 Mr. Kaszuba, Seat #2; Chair  
10 Mr. Burge, Seat #3  
11 Mr. Cannon, Seat #4  
12 Mr. Carney, Seat #5; Vice Chair  
13 Mr. Revak, Alternate #1  
14 Mr. Young, Alternate #2 - Absent  
15

16 Staff present:

17 Mr. Lear, Planning & Development Director  
18 Ms. Rippey, Principal Planner  
19 Ms. Stewart, Assistant Deputy Clerk  
20

21 **3. ADOPTION OF AGENDA:** - Mr. Cannon moved to adopt the agenda as presented;  
22 seconded by Vice Chair Carney. The motion PASSED by consensus, 5-0.  
23

24 **4. APPROVAL OF MINUTES:**

25  
26 **A. March 26, 2024** - Mr. Oebbecke moved to approve the March 26, 2024, meeting  
27 minutes as presented; seconded by Mr. Cannon. The motion PASSED by consensus, 5-0.  
28

29 **5. REPORT OF STAFF:**

30 **A. Planning Division Reports** – Mr. Lear announced that Sailfish Marina was  
31 approved by the Town Council last Thursday.  
32

33 Chair Kaszuba commented there has been much activity around the proposed boatel site  
34 and asked where that project currently stands with the town. Mr. Lear explained the property  
35 owners started dredging, which they had no permits to do from the town or the Department of  
36 Environment Protection (DEP). A stop work order has been issued and a code enforcement case  
37 has been started; he will have to confer with the Code Compliance Manager, Mr. David Hooker,  
38 for a status report.  
39

40 **B. Other Reports & Updates** – There were no other updates.  
41

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

43

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

45

46 8. **BUSINESS ITEMS/PUBLIC HEARINGS:**

47

48 A. Ordinance 2024-XX (proposed), Docks, Boathouses, Boat Slips, and Piers.

49

50 Mr. Lear provided a [PowerPoint](#) presentation and noted that this proposed ordinance is  
51 directed in response to concerns about how the requirements for calculations of maximum dock  
52 square footage are too challenging for two property owners. He explained the process of the  
53 proposed ordinance to be adopted by the Town Council. He reviewed the background of this case,  
54 noting that this Board heard Variance Case 14-2023 on March 28, 2023, where the applicant  
55 requested to construct a dock totaling 525 square feet (SF), for a total of 2, 525 SF; however, the  
56 maximum SF for the subject dock was 700 SF, based on the 70-foot lot width at the mean high-  
57 water line (MHWL). He showed a map of the property and proposed dock and walkway location.  
58 The 2012 LUDC amendment regarding dock SF calculation has proven to be problematic for  
59 property owners with landward MHWLs that are a substantial distance from the navigable  
60 waterway. Additionally, any non-conforming dock replacement must meet this current code. The  
61 proposed amendments to this section seek to alleviate this burden and are contained in the proposed  
62 ordinance, by excluding the walkway from the dock size calculation. He reviewed the proposed  
63 amendments which include the definition of “access walkway” and “terminal platform”. Under  
64 Section G, it was clarified that the maximum area shall not include the access walkway to the dock;  
65 and under #4, the variance language was stricken. The proposed ordinance will be consistent with  
66 the comprehensive plan of the LUDC, and staff recommends it be forwarded to the Town Council  
67 with a recommendation of approval. Chair Kaszuba opened it to the Board for discussion. Mr.  
68 Cannon asked why the variance language was stricken. Mr. Lear explained that the way it was  
69 stated, it can be perceived that a variance is easily obtained when a variance should be the last  
70 resort. Discussion ensued regarding the language for a variance and when a variance would be  
71 required. There was also discussion on Item H-4 as it related to sub-standard lots. Chair Kaszuba  
72 commented there is nothing under the standards that will govern the new definition of an access  
73 walkway; however, the definition states it should not exceed a 6-foot width. He suggested moving  
74 that section to the standards.

75

76 Chair Kaszuba noted that since the limitation of the overall size of these terminal docks  
77 inclusive of the walkways, whatever square footage used in the walkway can now be added to the  
78 waterfront dock; if the dock size language is not updated, the docks can grow larger. He asked if  
79 the Board wants the overall dock size to be the same as it used to be or if it should be adjusted  
80 based on the walkways. Mr. Cannon asked what the dock size is now. Mr. Lear explained it is the  
81 width of the lot; he noted that staff did not see an issue when reviewing this. Mr. Cannon asked if  
82 there is a maximum square footage allowed for a dock area. Mr. Lear explained it is the lot width;  
83 if it is over 1000-SF, another 10-SF is allowed per 10-linear feet (LF); however, there are not many  
84 lots that large, and DEP also has a size limitation of 2,000 SF. Discussion continued regarding the  
85 size limits of docks.

86

87 Mr. Revak referred to the language in Item G referencing that for lot widths of 100 feet or  
88 more a maximum of 1,000 SF of dock area may be allowed without state and/or federal approval.  
89 He asked if lots less than 100 feet still needed a permit from DEP. Mr. Lear replied yes, they are

90 still required to get a permit from DEP so that language can be removed. Chair Kaszuba asked  
91 how many times this has been an issue since the requirements changed in 2012. Mr. Lear replied  
92 he is aware of one variance request last year; however, the concern is if another storm event  
93 damages the existing docks, the owners would all have to request a variance and come before this  
94 Board to rebuild. Discussion ensued regarding the maximum length and width of docks, the  
95 MHWL, and if the MHWL is moving upland thus creating longer access walkways. Chair Kaszuba  
96 asked how many potential cases the language is being changed for. Mr. Lear explained it is mostly  
97 the properties in this area. Chair Kaszuba opened public comments. Ms. Karen Rij, citizen, asked  
98 what the street address is of the property shown with the star. Mr. Lear responded it is 4520 South  
99 Peninsula Drive. Chair Kaszuba closed public comments.

100  
101 Chair Kaszuba asked if the Board is obligated to approve this today; there is an option if  
102 the Board would prefer to see the proposed changes before recommending to the Town Council.  
103 Mr. Cannon clarified that historically, the Board would receive an item, review it, and make  
104 comments, staff would then incorporate those comments and bring it back to the Board for  
105 approval; however, it is up to the Board to approve now. Chair Kaszuba stated he does not want  
106 this Board to become something where items are rushed through. Discussion continued regarding  
107 the language in Item G.

108  
109 Mr. Cannon moved Ordinance 2024-XX, Docks, Boathouses, Boat Slips and Piers be returned to  
110 staff for re-inclusion of variance language; move width from Section 3.17.1, "Definitions", to  
111 "Standards" and to reword Paragraph G under Section 3.17.2, "Standards" to eliminate mention  
112 of state and/or federal approval for clarity to the next regularly scheduled Planning Board  
113 meeting; seconded by Mr. Oebbecke. The motion PASSED 5-0, consensus.

114  
115 **9. PUBLIC PARTICIPATION:** Chair Kaszuba opened public participation – hearing none,  
116 he closed public participation.

117  
118 **10. BOARD DISCUSSION:** Mr. Oebbecke stated he would like to discuss the scheduling of  
119 these meetings; as it currently stands, it is unknown whether the meeting will occur in the morning  
120 or evening until approximately two weeks beforehand; he asked if it was possible to have the  
121 meetings that are typically scheduled for the mornings to be held in the afternoons instead. Mr.  
122 Lear noted the Bylaws would need to be reviewed and asked Ms. Stewart to read the section of the  
123 bylaws which state that "Board meetings shall generally begin at 10:00 AM, however, meetings  
124 shall begin at 5:30 PM if the meeting agenda includes one or more quasi-judicial hearings; the  
125 Planning and Development Director directs as such, or if a simple majority of all members  
126 determines that a 5:30 PM meeting time better suits the public interest due to anticipated agenda  
127 item(s)...the time and place of the regular monthly meeting may be changed by affirmative vote  
128 of a simple majority of all members. At least 24 hours notice of the time and place of the regular  
129 meetings shall be given by the Secretary to each member of the Planning Board". Mr. Lear  
130 explained the agenda item must be known prior to scheduling the meeting and it is not always  
131 known if a quasi-judicial item will be on the agenda for that month. He further explained  
132 information is not always received until the deadline for agendas to be assembled and distributed.  
133 Chair Carney noted that quasi-judicial hearings must be posted, and he has seen those postings  
134 around town before he has received agenda packets. Mr. Cannon commented that the Board has  
135 requested receiving the packet further in advance than it has been in the past and asked if there is  
136 a possibility of that occurring. Ms. Stewart and Mr. Lear explained the agenda assembly process

137 and the deadlines involved. It was explained that to change the scheduled meeting time of 5:30  
138 PM for quasi-judicial items, the bylaws would have to be changed, which requires Council  
139 approval. Discussion continued regarding how agenda information is gathered, the process of  
140 internal review, the timeframe required by applicants and when it is provided to Board members  
141 for review; there are specific internal deadlines that staff must meet. If the Board feels they have  
142 not had enough time to review the information provided in an agenda, they have the option to  
143 continue that item. Chair Kaszuba commented that the Planning Board seems to have the least  
144 amount of time to review information yet are the ones to make recommendations; he remembers  
145 this being discussed in the past and asked where the issue stands. Mr. Lear explained staff will  
146 need to analyze the code, bylaws, etc., to see what can be changed that will provide the Board what  
147 they are asking for. Chair Kaszuba added it puts the Board in a bad position when there is only a  
148 short time to review something that is as complicated as last month's Sailfish Marina project; he  
149 asked members what direction to give staff on the issue of meeting times. Mr. Oebbecke stated the  
150 first step should be to place it on next month's agenda to initiate any potential changes to the  
151 bylaws.

152  
153 Mr. Oebbecke requested staff include on next month's agenda a review of the meeting time for the  
154 Planning Board related to non-quasi-judicial matters -5-0; consensus.

155  
156 **11. ADJOURNMENT:** The meeting was adjourned at 11:09 a.m.

157 Prepared and submitted by,

158  
159 *Draft*

160 Debbie Stewart

161 Assistant Deputy Clerk

162  
163



Town of Ponce Inlet  
**TOWN COUNCIL**  
**SPECIAL JOINT MEETING MINUTES**  
**WITH PLANNING BOARD**

5 TUESDAY

TOWN COUNCIL CHAMBERS

6 JUNE 4, 2024 at 10:00 AM

4300 S. ATLANTIC AVENUE, PONCE INLET, FL

7  
8 **1. CALL TO ORDER.** Pursuant to proper notice, Mayor Paritsky called the meeting to order at  
9 10:00 a.m. in the Council Chambers at 4300 South Atlantic Avenue, Ponce Inlet, Florida.

10  
11 **2. PLEDGE OF ALLEGIANCE.** Mayor Paritsky led the Pledge of Allegiance.

12  
13 **3. ROLL CALL OF TOWN COUNCIL.**

14 Mayor Paritsky, Seat #1

15 Councilmember Milano, Seat #2

16 Councilmember White, Seat #3

17 Councilmember Villanella, Seat #4

18 Vice-Mayor Smith, Seat #5

19  
20 **ROLL CALL OF PLANNING BOARD.**

21 Mr. Oebbecke, Seat #1

22 Mr. Kaszuba, Seat #2; Chair

23 Mr. Burge, Seat #3

24 Mr. Cannon, Seat #4 - Absent

25 Mr. Carney, Seat #5; Vice Chair - Absent

26 Mr. Revak, Alternate #1

27 Mr. Young, Alternate #2

28  
29 **Staff Members Present:**

30 Mr. Baker, Chief Building Official

31 Ms. Cherbano, Town Clerk

32 Mr. Disher, Town Manager

33 Ms. Gjessing, Assistant Deputy Clerk

34 Chief Glazier, Police Chief

35 Mr. Griffith, Public Works Director

36 Mr. Okum, IT Director

37 Ms. Pierce, Planning & Development Office Manager

38 Ms. Rippey, Principal Planner

39 Chief Scales, Public Safety Director

40 Ms. Stewart, Assistant Deputy Clerk

41  
42 **4. ADDITIONS, CORRECTIONS OR DELETIONS TO THE AGENDA.**

43  
44 Mayor Paritsky moved to approve the agenda as presented; seconded by Councilmember Villanella;  
45 The motion PASSED 5-0, consensus.



47 **5. REVIEW AND APPROVAL OF WATERSHED MASTER PLAN TO MEET THE**  
48 **STATUTORY REQUIREMENTS FOR CRS ACTIVITY 450 – STORMWATER**  
49 **MANAGEMENT.** – Mr. Disher reviewed the history of this project, noting that it began with a Florida  
50 Department of Environmental Protection (FDEP) grant application in 2020; it then was shifted into the  
51 Resilient Florida Program in 2022 when that program was created. The Town hired a consultant at the  
52 beginning of 2023 and has been working with them since then to prepare the Watershed Master Plan for  
53 the Board and Council’s review and approval today; it is due to the state by the end of the month per the  
54 term of the grant. Ms. Rippey explained the Watershed Master Plan analyzes the combined impacts on  
55 the Town’s drainage system from existing and expected development; various long rainfall events, such  
56 as the 100-year storm; tidal flooding and projected sea level rise. Based on these projections, the  
57 Watershed Master Plan also provides policy recommendations for future decision making; it will also  
58 allow the Town to improve its community rating system (CRS) rating which will eventually lower  
59 insurance costs for our residents. Ms. Rippey introduced Ms. Elizabeth Perez and Mr. Joel Jordan,  
60 Collective Water Resources, LLC (CWR), to give the presentation on the Watershed Master Plan.

61  
62 Ms. Perez provided a [Watershed Presentation.pptx](#) and explained the Watershed Master Plan is a  
63 thorough assessment of the potential types of flooding that could impact the Town and includes  
64 recommendations for future decision-making and mitigation. The Watershed Master Plan is a term  
65 coined by FEMA under the CRS program; it is reviewed by national reviewers and assigned credit. A  
66 vulnerability assessment was conducted as part of this study that was funded by FDEP under the Resilient  
67 Florida Program. She explained that a watershed master plan is a comprehensive decision-making tool  
68 to assist communities with stormwater management; it provides an opportunity to enhance relevant  
69 datasets, address climate vulnerability, and update stormwater modeling to current standards. The plan  
70 looks at both existing and future conditions; FEMA asks that we look out to the year 2100. The  
71 consultants reviewed the impact of sea level rise and climate change; wetlands; applicable codes and  
72 regulations; and mitigation of potential impacts. Ms. Perez noted that the plan is not a comprehensive  
73 capital improvement plan, adaptation plan, or a detailed funding plan. She noted that currently, the Town  
74 is a Class 5 within the CRS program; this plan is essential to move to a higher rating which could result  
75 in residents receiving a lower insurance premium. She explained the CRS program and how the rating  
76 system provides incentives for communities that adopt and enforce flood management practices. Ms.  
77 Perez explained the vulnerability assessment and the three steps required under the Resilient Florida  
78 program for assessments of this type: conduct an exposure analysis; conduct a sensitivity analysis; and  
79 assign focus areas. She provided general definitions of terms used within the Watershed Master Plan  
80 including community assets, vulnerability and risk, and other related terms.

81  
82 Mr. Jordan continued the presentation with the hydrology and hydraulics overview; he explained that  
83 hydrology looks at how much runoff will be generated from a rainfall event, while hydraulics is how  
84 that runoff gets moved from wherever it collects. The topography, land use and land cover, soils, and  
85 climate and rainfall were reviewed for current and future conditions. He explained the hydraulics  
86 overview and provided a digital map. Ms. Perez resumed the presentation and stated that for the  
87 vulnerability assessment, the State of Florida requires you to look at critical and regionally significant  
88 assets. The first step is the exposure analysis which included flooding threats: tidal, storm surge, rainfall-  
89 induced, and compound; the time horizons up to the year 2100; and sea level rise projections. She  
90 reviewed the exposure analysis results from year 2023 to year 2100; and she provided digital maps for  
91 the results for rainfall-induced flooding, Category 2 storm surge flooding, and compound flooding. She  
92 reviewed the analysis results for the percentage of buildings exposed to flooding and the percentage of  
93 property assets exposed to flooding by flood type and scenario; she noted that this analysis will make

94 the Town compliant with Resilient Florida requirements. She also reviewed the roadway assets and the  
95 table showing the percentage of assets exposed to potential future flooding. Councilmember White  
96 referred to the buildings and properties assets and asked if a property had a building on it, would it not  
97 be an asset? Ms. Perez explained that for planning purposes, they look at properties; she noted that Mr.  
98 Jordan will explain more on the focus areas. Mr. Revak asked for clarification on the meaning of the  
99 total number of assets; the Town has more than the 65 buildings shown on the table. Ms. Perez explained  
100 that is as prescribed by the state of Florida; they specifically state what counts as a building. She  
101 continued the presentation and reviewed the sensitivity analysis results.  
102

103 Mr. Jordan reviewed the eight focus areas; they were analyzed using future land use changes and known  
104 flooding complaints. The analyzed areas were: Old Carriage Road and Anchor Drive area; Calumet  
105 Avenue; Michael Lane (Oceanside Village Subdivision); Las Olas Subdivision; Bay Harbour Drive to  
106 Beach Street; South Atlantic Avenue; and the Riverfront area. He reviewed each focus area individually  
107 and the proposed improvements for each. Councilmember Milano stated that years ago, the two  
108 developments at Old Carriage and Anchor Drive had trouble with the silt in the canal not draining; he  
109 asked if the suggestions provided in this report would include the cleaning of those canals. Mr. Jordan  
110 explained they did not look at any dredging in the intercoastal waterway; that is a costly process and it  
111 is not easy to obtain the needed permits. He continued to review the analysis results and recommended  
112 improvements for the focus areas; he noted that the Town contracted with Zev Cohen & Associates to  
113 evaluate the current system at Michael Lane (Oceanside Village Subdivision). Councilmember White  
114 commented that everything was connected through a series of pipes and ponds in the Bay Harbour area  
115 and asked where the water ends up. Mr. Jordan replied there is a 24" outfall pipe at Beach Street that  
116 runs to the intercoastal waterway; this is why it takes time for water to drain from yards and roadways  
117 after a rain event. This is a complex area; there were seven flood reports from Hurricane Ian from just  
118 this focus area. He continued with the presentation; the Bay Harbour area has a combination of  
119 alternative improvements recommended to alleviate flooding. He continued with South Atlantic Avenue,  
120 and reviewed the evaluated improvements which include swale improvements on both sides of the road,  
121 where practical. He noted that any improvements on this roadway would have to be coordinated with  
122 Volusia County as the County owns the roadway. Councilmember White asked if Volusia County  
123 Council Member Matt Reinhart could be provided with this presentation. Mayor Paritsky agreed that  
124 was an excellent idea. Mr. Jordan reviewed the analysis of the Riverfront area and recommended  
125 improvements. He noted that this area is subject to both rainfall-induced flooding and tidal flooding. He  
126 reviewed the recommended solutions including flap-gates and additional retention capacity.  
127 Councilmember Villanella commented that it does not seem that there are enough swales in the Town.  
128 Mr. Jordan explained there are some; and swales are encouraged as part of retention areas in the LUDC.  
129 Some swales in the town are perfectly adequate for a storm event but in other areas, due to soil conditions,  
130 etc., they cannot store the runoff. Retention would need to be combined with other potential  
131 improvements.  
132

133 Ms. Perez reviewed the recommended adaptation strategies, explaining that FEMA asks that as part of  
134 the Watershed Master Plan we document other strategies and mitigation measures. The adaption  
135 strategies include 1) regulation strategies (stormwater manual, LUDC); 2) public information (required  
136 by FEMA); 3) structural controls (flap-gates, seawalls, etc.); 4) non-structural controls (swales,  
137 improved site design, etc.); 5) protection of natural areas; and 6) acquisition of flood-prone properties.  
138 She explained these things are included in the plan to optimize the Town's ability to apply for funding;  
139 she reviewed funding examples including the Resilient Florida program. She noted that the Town will  
140 qualify for the second Resilient Florida funding grant with this plan. She briefly discussed other funding

141 examples. Mayor Paritsky reminded the Council and Planning Board that this document is a foundation,  
142 and that the Town has methodically worked toward a resilient Ponce Inlet. The Town adopted a  
143 Resolution that memorializes the importance of resilience and identifying all our issues; whether it is  
144 flooding, or sea level rise, and how we are going to mitigate and adapt to the issues. She was recently in  
145 Washington D.C. representing Ponce Inlet for the American Flood Coalition when the Watershed Master  
146 Plan was completed, and it is a big deal – we are ahead of the curve; we were already ahead of the curve  
147 with the vulnerability assessment. This plan is also a diagnostic tool for the Town. Not only will we  
148 prioritize the funding opportunities presented in the plan, but we can forward it to Volusia County as  
149 Councilmember White suggested; she can also take it to the state legislature for appropriations requests.  
150 She pointed out that the Town Manager was the former Planning & Development Director for the Town  
151 so there has always been a focus on resiliency in our plans and codes. Mayor Paritsky opened discussion  
152 for the Council.

153  
154 Councilmember White commented he is trying to understand the ranking; noting that the challenge is  
155 going to be how we rank it. He asked if there are any current regulations for the Town to pump  
156 stormwater into the river; it will be a challenge if it must be treated before it goes into the river. Ms.  
157 Perez explained that Ponce Inlet is in the St. Johns River Water Management District who protects water  
158 quality vigilantly; therefore, along with the new stormwater rule, the Town will likely be required to  
159 provide pre-treatment. For a large storm event, it may not be possible to treat all the water; there are  
160 pump stations in the state that are permitted with nominal treatment but not the St. John's. She added  
161 that pump stations must be carefully engineered, and they consume a lot of power. There is no uniform  
162 requirement for pretreatment throughout the state currently. However, that will change with the new  
163 stormwater rule. Mayor Paritsky asked if the Town has been funded for the adaptation plan. Mr. Disher  
164 replied yes; the next step is to put it out for bid. Councilmember Milano referred to the objectives that  
165 the Town could start doing right away; one is the storm retention which is at 1"; the recommendation is  
166 2.5". The next objective was land acquisition. He suggested the Town Manager and Planning Board  
167 review the retention now instead of when it comes up in the ranking; to do some of these smaller things  
168 now while we wait for funding to do the big projects. He understands the retention ponds are being  
169 dredged and cleaned. The Town has tried to be proactive with resiliency and do some of these things;  
170 perhaps we have not communicated that well to the residents. Councilmember White added that the  
171 Planning Board has been working on this for two years; the comprehensive plan has been adjusted based  
172 off the resiliency program. Mayor Paritsky opened discussion for the Planning Board.

173  
174 Mr. Burge asked if the river level is higher than the flap-gate if the outflow will still occur. Mr. Jordan  
175 replied yes, and explained how the flap-gate would work. Mr. Burge asked if the flap-gate prevents street  
176 litter or dirt from flowing into the river. Mr. Jordan explained devices can be installed that will catch it  
177 before it goes into the receiving body of water; however, they must be maintained. There is an option of  
178 installing concrete baffle boxes; however, they also must be maintained. Mr. Burge referred to the streets  
179 between Peninsula Drive and South Atlantic Avenue that frequently flood, and asked if there is a way to  
180 lower the water table so the rainfall would percolate into the ground. Mr. Jordan replied yes, from a  
181 technical standpoint, but it would be much more problematic from a permitting standpoint because that  
182 is where the natural vegetation has grown expecting the water table to be there. If it is lowered, the root  
183 systems may not be able to reach the water table and there would be adverse effects to plants and wildlife.  
184 Discussion continued regarding the water table. Planning Board Chair Kaszuba stated it is important for  
185 the Town to have a good working relationship with the other jurisdictions, particularly Volusia County  
186 and the federal government. He watched the County work on the swales last summer and it seemed  
187 inadequate. He hopes this report will get a more serious look at the suggested solutions. He understands

188 some projects have hefty price tags but some smaller projects we could start doing. Mayor Paritsky  
189 agreed. Mr. Oebbecke commented that we need to get this information to our citizens; we need the  
190 committees such as the Land Acquisition Committee, etc., to get the citizens involved so they feel they  
191 are part of the solution.

192  
193 Mayor Paritsky opened public comment. Barbara Davis, 4871 Sailfish Drive, thanked the Council for  
194 recognizing that we need to be proactive. It flooded in 2004; we had a rain event in 2009; we did a  
195 resiliency report; in 2022 everything flooded during a tropical storm. She has been beating her drum for  
196 16 years about the 1” retention; she explained why that needs to be changed. She mentioned several  
197 properties where the structures are being lifted instead of the lot being filled and why more properties  
198 should be allowed to do that. She referred to swales and stated there is a 75-foot right-of-way on Sailfish  
199 Drive that is supposed to be protected by resolution; however, people are putting sod on it and clearing  
200 it out. We need to legislate on the 1” retention and swales; and land acquisition. The Town bought a  
201 parcel on Sailfish Dr. and sold it for the same price instead of installing retention. The Land Acquisition  
202 Committee was disbanded so we cannot look for more retention areas. She referred to the Las Olas  
203 information provided and asked what will happen there; sewer water is in the water there when it floods.  
204 Until Mr. Griffith came to work here, we did not have a flap-gate on the river; water was backing up  
205 through the storm gates onto Sailfish Drive. We need more retention. The focus area recommended low-  
206 impact development; we need legislation to stop people from filling and not putting in adequate plants  
207 to absorb the water. Improve site design. We have the right-of-way where we could install swales,  
208 particularly in the flood zones on Sailfish Drive. The north end of the right-of-way is 30 or 40 feet wide  
209 and 75 feet on the south end – swales could be installed all the way down in the flood area and increase  
210 retention. Let’s get proactive; let’s take this list and get started; let’s legislate and get the 2.5” retention  
211 at least. Councilmember Milano agreed and referred to the slide depicting swales, noting their location.  
212 He provided the history of the 1” retention and how he tried to get it increased. He explained he had to  
213 go through the county’s road and bridge department to have a swale installed near his property. They  
214 provided the dirt and built a mound to help direct water to the south to the stormwater drain. Mayor  
215 Paritsky closed public comment. Mayor Paritsky provided instructions to the Planning Board on what  
216 the motion should be: to recommend approval of the Watershed Master Plan; suggest modifications as  
217 part of the approval; or recommend rejection of the plan. Mayor Paritsky opened discussion to the  
218 Planning Board; there was no discussion.

219  
220 Mr. Young moved to recommend approval of the Watershed Master Plan as presented; seconded by Mr.  
221 Burge; The motion PASSED 5-0, with the following vote: Mr. Young – yes; Mr. Burge – yes – Mr.  
222 Oebbecke – yes; Mr. Kaszuba – yes; Mr. Revak - yes.

223  
224 Councilmember White moved to adopt the Watershed Master Plan to meet the requirements for CRS  
225 Activity 450 Stormwater Management as presented; seconded by Councilmember Villanella; The motion  
226 PASSED 5-0, following vote: Councilmember White – yes; Councilmember Villanella – yes; Mayor  
227 Paritsky – yes; Councilmember Milano – yes; Vice-Mayor Smith - yes.

228  
229 Councilmember Milano referred to the “near term recommendations” listed on page 57 and asked if we  
230 could start on those items now; hopefully the Town can submit for a grant for other items. Mr. Disher  
231 explained this will be entered into a list and sorted by area, priority, and timeframe. Councilmember  
232 Milano suggested sending a letter to residents that this plan is available for them to review. Mr. Disher  
233 explained notice was provided regarding today’s meeting. Mayor Paritsky reiterated that the public is  
234 noticed; she explained staff will create an outline that will prioritize everything. Mr. Disher explained

235 that Hurricane Ian was a wake-up call; that is when we began cleaning the stormwater pipes which was  
236 recently concluded; that had never been done before. Staff is currently designing two pond excavations,  
237 and stormwater flaps on a couple of roads are being installed. We are in the process of securing \$10.4  
238 million to complete the septic-to-sewer project. We are being proactive and moving forward as best we  
239 can. He referred to the 2.5” recommended retention and explained that number was not arbitrarily picked;  
240 this was an incredible study with specific recommendations for us. It is a computerized model of the  
241 entire Town’s watershed and drainage pattern and considers the groundwater table. These recommended  
242 projects are eligible for future grant funding through the Resilient Florida Program with up to 50%  
243 construction funding for some. Mr. Disher announced the Town has received grant funding for the  
244 adaptation plan which is the next step in these efforts; we are doing a combination of planning and  
245 construction to address these issues. He also added that lots that may have had stormwater drainage  
246 retention when they were first developed may have since filled in; each property must retain the first  
247 inch of rainfall that comes off the roof during a storm. Over time, and as properties change hands, these  
248 drainage areas have been filled in. That is another aspect that could be addressed if homeowners are  
249 unaware of what those holes in their yards are for. Mayor Paritsky thanked Ms. Perez and Mr. Jordan  
250 for being here today and requested a copy of the PowerPoint be provided to Council. Mr. Disher asked  
251 that it be provided to the Planning Board and posted on the Town’s website.

252  
253 *\*Mayor Paritsky adjourned the meeting at 12:19 pm for lunch\**  
254 *\*Mayor Paritsky reconvened the meeting at 12:50 p.m.\**  
255

256 **6. REQUEST FOR DIRECTION ON AMENDING THE LAND USE & DEVELOPMENT**  
257 **CODE TO ALLOW FARMER’S MARKETS AS A PERMITTED SPECIAL EXCEPTION USE**  
258 **IN THE PUBLIC INSTITUTION (P-I) ZONING DISTRICT.** – Ms. Rippey explained staff is  
259 requesting direction from the Council on amending the LUDC to allow farmer’s markets as a permitted  
260 special use in the public institutional (P-I) zoning district, as Town staff received a written request from  
261 the Ponce Inlet Community Center Board requesting it. Code amendments are initiated in one of three  
262 ways: 1) sponsored or directed by a Councilmember; 2) proposed by staff to implement policies in the  
263 comprehensive plan or changes to state law; or 3) through an application with a fee payment. Barring  
264 these, staff can only devote time to such requests after other Council-directed goals and tasks have been  
265 completed. Farmers markets are a temporary or occasional outdoor retail sale of farm produce or seafood;  
266 typically located within a parking lot or approved location in a public right-of-way closed to vehicular  
267 traffic. Farmers markets are only permitted by right in the PUD and PWD zoning districts and are also  
268 allowed as a minor special exception in the B-1 and B-2 commercial zoning districts. The request to add  
269 farmers markets as a special exception use to the P-I zoning district would provide additional locations  
270 for farmers markets to serve the local population. In the P-I zoning classification, farmers markets are  
271 only allowed through a special event permit, limited to 12 times per calendar year. Mayor Paritsky asked  
272 for clarification that if this P-I zoning was amended, it would be applicable to any area zoned P-I. Ms.  
273 Rippey answered yes. Mayor Paritsky asked if the special event permit applications are submitted  
274 through the Cultural Services Department. Mr. Disher replied yes. Mayor Paritsky stated that if Council  
275 agrees to this amendment for the community center, the impact would be that every P-I zoned area would  
276 have the right to do this. Ms. Rippey answered yes. Mayor Paritsky stated the consequence of approving  
277 this is bigger than just for the community center. She asked if there was a way the community center  
278 could have a farmers market every Sunday without this sweeping change; she asked if there was anything  
279 in the code would allow that to happen.  
280

281 Ms. Rippey explained she did not find anything in her research that would allow it without amending  
282 the zoning district and land use. Mr. Disher agreed and added that he has not had an opportunity to  
283 research if it could be allowed to occur inside the building. Mayor Paritsky commented that would be  
284 like renting the community center; they could also use the kitchen as she knows some of the vendors  
285 cook. Vice-Mayor Smith asked what the difference is between the food trucks there on that site  
286 periodically and a farmer's market. Mr. Disher explained the food trucks are through a special event  
287 permit, so it is limited to 12 times per year. Vice-Mayor Smith asked if there could be multiple special  
288 event permits. Discussion ensued regarding special event permits; the limitations of special events; the  
289 food trucks; and farmers market. Councilmember White noted that the responses he has received from  
290 residents is that they want to see a farmers market at the community center; and they feel very strongly  
291 about the location. He asked if there is a way to have the farmers market at the community center on a  
292 permanent day. Mayor Paritsky asked if his opinion would change if the consequence would then permit  
293 farmers markets in similarly zoned districts. Councilmember White explained no, if the vendors follow  
294 the permits and supply the documentation, whether it is at PICCI or another location, it is an added  
295 advantage for the residents of Ponce Inlet regardless of what a P-I property holds; it needs to benefit the  
296 residents. Vice-Mayor Smith asked if the farmers market would interfere with the church that is held at  
297 PICCI on Sunday morning. Councilmember Milano stated he supports the farmers market, but the church  
298 is a concern. He noted that PICCI has insurance, but if it opens it up to other locations, such as the  
299 museum, it puts the liability on the Town. Mr. Oebbecke explained he spoke to the pastor of the church  
300 about the possibility of having the farmers market at the community center; he is fine with it with one  
301 condition; that people attending the farmers market do not enter the community center. The external  
302 doors to the restrooms will be available to farmers market attendees but everything else will be restricted.  
303 Signs will be posted that church is in service. The pastor is there from 9:30 am to noon; church service  
304 starts at 10:30 am. The community center is requesting this be allowed as a special exception use; if  
305 another request is submitted for a Public-Institutional property, the Town could always deny it if it  
306 deemed not appropriate. He explained this would be a farmer's market; it will not be extended to include  
307 crafts or things not directly related to food stuffs. Mayor Paritsky asked if that would include food that  
308 is cooked on-site. Mr. Oebbecke replied yes, it would. Mayor Paritsky asked if this request was made at  
309 the Board of Directors of PICCI. Mr. Oebbecke answered yes, and it was a unanimous vote.

310  
311 Councilmember White asked what the process is to request a special exception. Mr. Disher explained  
312 that currently, someone would submit an application that is reviewed by staff; then it is reviewed by the  
313 Planning Board for approval. If the Council wants to review applications for Town-owned property, then  
314 it would be considered a major special exception, which is reviewed by the Planning Board for a  
315 recommendation, then by the Council for final approval. Mayor Paritsky asked what Town-owned  
316 property is not zoned Public-Institutional? Mr. Disher explained only the Green Mound and Lighthouse  
317 Point Park. Discussion continued; other locations were suggested and discussed. Councilmember  
318 Villanella stated he would like the farmers market at PICCI; however, he understands the legal concerns  
319 that we cannot say the special permit is only for PICCI. Councilmember White reiterated the number of  
320 residents that have voiced their opinion to hold the farmers market at PICCI, he feels we must move  
321 forward with this. Councilmember Milano and Vice-Mayor Smith agreed.

322  
323 Mayor Paritsky provided staff direction to move forward with the farmers market at the Ponce Inlet  
324 Community Center.

325

326 **7. DISCUSSION – AMENDING THE PLANNING BOARD BY-LAWS TO CHANGE THE**  
327 **MEETING TIME TO 2:00 P.M. AND SPECIFYING THE TIMING OF AGENDA PACKET**  
328 **DELIVERY.**  
329


330 Mayor Paritsky asked the Planning Board members to explain what they are asking for. Planning Board  
331 Chair Kaszuba explained that some of the Planning Board meetings are held at 10:00 am and others are  
332 at 5:30 pm, depending on whether it was a quasi-judicial hearing. Some Planning Board members wanted  
333 a better idea of how much of their day would be consumed with a meeting for better planning purposes  
334 for their schedules. Mayor Paritsky asked for clarification that the new proposed meeting start time is  
335 2:00 pm. Chair Kaszuba answered yes. Mr. Burge explained it was presented by a member for personal  
336 reasons; personally, he is happy with 10:00 am.  
337

338 Mr. Oebbecke moved to change the Planning Board meeting time to 2:00 pm for non-quasi-judicial  
339 items; seconded by Mr. Revak; The motion PASSED 4-1, with the following vote: Mr. Oebbecke – yes;  
340 Mr. Revak – yes; Mr. Kaszuba – yes; Mr. Burge – no; Mr. Young - yes.  
341

342 Mayor Paritsky stated the Planning Board bylaws will be brought to the Town Council for approval. She  
343 stated the next part of this item is specifying the timing of the agenda packet delivery; she explained the  
344 Planning Board packet is provided in the same timeframe and manner as for the Council and other  
345 Boards; one week in advance. She asked the reason for this request. Chair Kaszuba referred to the Sailfish  
346 Marina project and explained that Planning Board members had less than a week to review it. They are  
347 looking for more time to review the material; ensuring it is a week would be a step in the right direction.  
348 Mr. Young commented Board members heard that Sailfish marina had been in the process for two years,  
349 yet only received the packet a week in advance. He understands the quasi-judicial nature of that particular  
350 application and that the Board's role is to hear the case and decide it; however, when it is something so  
351 controversial, it would be helpful to have the information more in advance. Mayor Paritsky asked if they  
352 separated out that project (Sailfish Marina), if they were comfortable with the process as it stands today.  
353 Mr. Young answered yes. Mayor Paritsky explained there is one week in advance for Council and Boards  
354 because there is an internal process of dates; when staff works on something, it is reviewed by the Town  
355 Manager, etc. Planning Board materials are labor intensive and there is a lot to read; there are facts that  
356 must be applied to ordinances, etc. She suggested that if Board members feel ill-prepared on an item,  
357 they make a motion to table it for a month. She referred to Sailfish and reminded members that even if  
358 they hear of something for two years, they cannot discuss before the hearing it if it is quasi-judicial.  
359 Discussion continued regarding the timing of agenda packet delivery and consensus was reached to leave  
360 it as-is. Mr. Disher added that staff is always available to answer questions or explain anything if needed;  
361 and staff can provide updates on projects that are not quasi-judicial. Mayor Paritsky asked if anything  
362 like Sailfish Marina is coming, to inform the Planning Board and Council it is coming.  
363

364 **8. ADJOURNMENT.** — Mayor Paritsky adjourned the meeting at 1:43 P.M.  
365

366 Respectfully submitted by:

367   
368 \_\_\_\_\_  
369 Kim Cherbano, CMC, Town Clerk  
370 Prepared by: Debbie Stewart, Assistant Deputy Clerk  
371

372 Attachment(s): None





**Meeting Date:** July 23, 2024

**Agenda Item:** 8-A

## **Report to Planning Board**

**Topic:** Ordinance 2024-##, Amendment to LUDC Section 3.17, Docks, Boathouses, Boat Slips, and Piers

**Summary:** The proposed Ordinance has been revised to address comments by the Planning Board at its April 23, 2024 meeting. See staff report for additional information.

### **For Discussion & Board Comment**

#### **Or – Proposed Motion:**

To find proposed Ordinance 2024-XX, Amending the Code of Ordinances, *Section 3.17 – Docks, Boathouses, Boat Slips, and Piers*, is consistent with the Comprehensive Plan and to forward to the Town Council with a recommendation of approval.

**Requested by:** Mr. Lear, Planning & Development Director

**Approved by:** Mr. Disher, Town Manager





# MEMORANDUM

## TOWN OF PONCE INLET, PLANNING AND DEVELOPMENT DEPARTMENT

*The Town of Ponce Inlet staff shall be professional, caring, and fair in delivering community excellence while ensuring Ponce Inlet residents obtain the greatest value for their tax dollar.*

To: Planning Board  
From: Patty Rippey, AICP, Principal Planner  
Through: Darren Lear, AICP, Planning and Development Director  
Date: July 15, 2024  
Subject: Ord. No. 2024 -XX – Docks, Boathouses, Boat Slips, and Piers

---

**MEETING DATE:** July 23, 2024

---

1 **INTRODUCTION**

2 This proposed ordinance has been drafted in response to concerns that the present requirements  
3 for the calculation of maximum dock square footage are too challenging for certain property  
4 owners to meet. The Planning Board previously reviewed the proposed amendments at its April  
5 23, 2024 meeting. The Board requested Staff to revise the ordinance to include certain changes,  
6 and to bring it back for further review and recommendation.

7  
8 **AUTHORITY AND PROCESS**

9 Pursuant to the Land Use Development Code (LUDC) Section 6.2.2.A, the Planning Board,  
10 "...serves as the local planning agency in accordance with the Community Planning Act (2011)  
11 F.S. § 163.3161 et. Seq." Pursuant to LUDC Section 6.2.2.D. "As the local planning agency, [the  
12 Board shall] ... review proposed land development regulations, determine their consistency with  
13 the comprehensive plan, and make recommendations to the town council as to whether the  
14 regulations should be adopted."

15  
16 Following the Board’s recommendation, the Town Council will review the ordinance. If approved  
17 on 1<sup>st</sup> reading at a public hearing, the amendment will then be scheduled for a 2<sup>nd</sup> reading at a  
18 public hearing for adoption.

19  
20 **BACKGROUND**

21 The impetus for the proposed ordinance stems from a 2023 variance case (No. 14-2023) in which  
22 the applicant sought relief from the maximum dock size requirements in the LUDC. In that case,  
23 the length of access walkway to the terminal platform caused the proposed dock to exceed the

24 maximum dock size. Before 2012, access walkways were not included in dock size calculations.  
25 Walkways extending over large areas of mangrove and other vegetation for access to the terminal  
26 platform were in compliance with the LUDC.

27

## 28 **DISCUSSION**

29 The 2012 LUDC amendment regarding the dock square footage calculation has proven to be  
30 problematic for certain property owners with landward MHWLs that are a substantial distance  
31 from the navigable waterway. Based on an aerial assessment of the riverfront, there are seven  
32 properties on the Daggett Creek branch of the Halifax River and an approximately six additional  
33 homes near the south end of S. Peninsula Drive that will benefit from the amendment.

34

35 The Planning Board reviewed the proposed amendments at the April 23, 2024 meeting. The  
36 proposed amendments included adding definitions for ‘access walkway’ and ‘terminal platform to  
37 Section A., adding clarification that access walkways shall not be included in the maximum dock  
38 size calculation in Section G., removing variance language and adding requirement to meet  
39 dimensional standards to Section H.4., and adding ‘access walkway’ to restriction for enclosed  
40 sides in Section M.

41

42 After their review, the Board requested staff to revise the proposed ordinance to Section A. to  
43 move the 6 feet access walkway width restriction from Section 3.17.1, “Definitions”, to  
44 “Standards”, Section G. eliminate references to state and/or federal approval, and Section H. -  
45 restore variance language . Exhibit A of the proposed ordinance incorporates those changes in  
46 addition to excluding the walkway from the dock size calculation

47

## 48 **Comprehensive Plan**

49 Staff reviewed the policies of the Comprehensive Plan and found the Ordinance will maintain  
50 consistency with the Town’s desired vision and direction. In particular, the proposed ordinance  
51 will ensure that Coastal Management Element Policy 1.6.3 is implemented fairly for all single-  
52 family riverfront lots.

53

54 *Policy 1.6.3: Single-Family Boat Slip Allowance.* Single-family residential riverfront lots will not  
55 be denied their riparian rights to construct one dock per lot. If single-family residential riverfront  
56 lots are subdivided subsequent to the approval of the MPP, each additional single-family residential  
57 riverfront lot shall represent one powerboat slip that is part of the total number of powerboat slips  
58 allocated to the Town of Ponce Inlet.

59

## 60 **Recommendation**

61 Staff recommends the Planning Board find Ordinance No. 2024-XX, amending Section 3.17 –  
62 *Docks, Boathouses, Boat Slips, and Piers* of the LUDC to be consistent with the comprehensive  
63 plan and forward it to the Town Council with a recommendation for **approval**.

64

65 Attachment:

66 1. Ordinance 2024-XX

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**ORDINANCE NO. 2024-XX**

**AN ORDINANCE OF THE TOWN OF PONCE INLET,  
FLORIDA, AMENDING THE LAND USE AND  
DEVELOPMENT CODE, ARTICLE 3 USE REGULATIONS,  
SECTION 3.17 DOCKS, BOATHOUSES, BOAT SLIPS, AND  
PIERS; PROVIDING DEFINITIONS AND STANDARDS;  
PROVIDING FOR CODIFICATION; PROVIDING FOR  
SEVERABILITY; PROVIDING FOR CONFLICTS; AND  
PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Article 3 of the **Town's** Ponce Inlet Land Use and Development Code (LUDC) establishes regulations for particular uses that are permitted in the LUDC; and

**WHEREAS**, Section 3.17 of the LUDC regulates docks, boathouses, boat slips and piers;  
and

**WHEREAS**, concerns have been raised that the present requirements for the calculation of maximum dock square footage are too challenging for certain property owners to meet, and that amendments to the LUDC are necessary to address these concerns; and

**WHEREAS**, the Planning Board, in its capacity as the Local Planning Agency, has determined that this Ordinance is consistent with the Comprehensive Plan and has recommended approval of this Ordinance to the Town Council; and

**WHEREAS**, the Town Council affirms that this Ordinance is consistent with the Comprehensive Plan and is in the best interest of the public welfare of the Town; and

**WHEREAS**, the Town has complied with all requirements and procedures of the LUDC and Florida law in processing, noticing, and advertising this Ordinance; and

**WHEREAS**, this ordinance is enacted under the general home rule and police powers of the Town of Ponce Inlet.

**NOTE:** Underlined words constitute additions to the Town of Ponce Inlet Land Use Development Code (LUDC) as amended by Ordinance 2024-XX, ~~striketrough~~ constitutes deletions, and asterisks (\*\*\*) indicate an omission from the existing text of said LUDC as amended which is intended to remain unchanged.

**NOW, THEREFORE, BE IT ENACTED BY THE TOWN COUNCIL OF THE TOWN OF PONCE INLET, FLORIDA:**

**SECTION 1. Recitals.** The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this Ordinance.

46           **SECTION 2. Incorporation of Amendments.** The proposed amendments to **Article 3,**  
47 **Section 3.17** of the Land Use and Development Code are attached to this Ordinance as Exhibit  
48 "A" and are hereby incorporated into the text of this Ordinance as though fully set forth herein  
49 verbatim as amendments to the Land Use and Development Code.  
50

51           **SECTION 3. Codification.** It is the intent of the Town Council of the Town of Ponce Inlet  
52 that the provisions of this Ordinance shall be codified. The codifier is granted broad and liberal  
53 authority in codifying the provisions of this Ordinance.  
54

55           **SECTION 4. Severability.** If any section, subsection, sentence, clause, phrase, word, or  
56 provision of this Ordinance is for any reason held invalid or unconstitutional by any court of  
57 competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall  
58 be deemed a separate, distinct, and independent provision, and such holding shall not affect the  
59 validity of the remaining portions of this Ordinance.  
60

61           **SECTION 5. Conflicts.** In any case where a provision of this Ordinance is found to be in  
62 conflict with a provision of any other ordinance of this Town, this Ordinance shall prevail.  
63

64           **SECTION 6. Effective date.** This Ordinance shall become effective immediately upon  
65 adoption by the Town Council of the Town of Ponce Inlet, Florida.  
66

67           It was moved by \_\_\_\_\_ and seconded by \_\_\_\_\_ that said Ordinance  
68 be passed on first reading. A roll call vote of the Town Council on said motion resulted as follows:  
69

70                           Mayor Paritsky, Seat #1                                 \_\_\_\_\_  
71                           Councilmember Milano, Seat #2                                 \_\_\_\_\_  
72                           Councilmember White, Seat #3                                 \_\_\_\_\_  
73                           Councilmember Villanella, Seat #4                                 \_\_\_\_\_  
74                           Vice-Mayor Smith, Seat #5                                 \_\_\_\_\_

75  
76 Approved on first reading this \_\_\_ day of \_\_\_\_\_ 2024.  
77

78           It was moved by \_\_\_\_\_ and seconded by \_\_\_\_\_  
79 that said Ordinance be passed on second reading. A roll call vote of the Town Council on said  
80 motion resulted as follows:  
81

82                           Mayor Paritsky, Seat #1                                 \_\_\_\_\_  
83                           Councilmember Milano, Seat #2                                 \_\_\_\_\_  
84                           Councilmember White, Seat #3                                 \_\_\_\_\_  
85                           Councilmember Villanella, Seat #4                                 \_\_\_\_\_  
86                           Vice-Mayor Smith, Seat #5                                 \_\_\_\_\_

87  
88 Approved and adopted on second reading this \_\_\_\_ day of \_\_\_\_\_ 2024.

89  
90 Town of Ponce Inlet, Florida:

91  
92  
93  
94 \_\_\_\_\_  
95 Lois A. Paritsky, Mayor

96 ATTEST:  
97  
98 \_\_\_\_\_  
99 Kim Cherbano, CMC  
100 Town Clerk

1 EXHIBIT “A”

2  
3 **ARTICLE 3 – USE REGULATIONS**

4  
5 \*\*\*

6  
7 **SECTION 3.17. DOCKS, BOATHOUSES, BOAT SLIPS, AND PIERS**

8 **3.17.1 Applicability.**

9 This section applies to boathouses, boat slips, piers, docks, and marginal docks in any zoning  
10 district along the Halifax River or any of its arms, canals or tributaries.

11 *A. Definitions.*

12 Access Walkway. The part of a dock that connects a riparian owner’s property to a terminal  
13 platform. The main access pier or catwalk shall be considered a walkway and shall not exceed  
14 six feet (6') in width.

15 *Boathouse.* An accessory use to a residence adjacent to a waterway, providing covered space  
16 for the housing of a boat and its customary accessories. A boathouse may not be used for human  
17 habitation.

18 *Boat slip.* See definitions, section 3.9.

19 *Dock.* A fixed or floating structure, including access walkways, terminal platforms, catwalks,  
20 mooring pilings, lifts, davits and other associated water-dependent structures, used for mooring  
21 and accessing vessels, pursuant to Chapter 18-21 F.A.C.

22 *Marginal dock.* A dock placed immediately adjacent and parallel to the shoreline or seawall,  
23 bulkhead or revetment, pursuant to Chapter 18-21 F.A.C.

24 *Mooring piling.* A post, pillar, piling, or stake used for the purpose of berthing buoyant vessels  
25 either temporarily or indefinitely, whether or not it is used in conjunction with a dock.

26 *Pier.* A fixed or floating structure used primarily for fishing or swimming and not designed  
27 or used for mooring or accessing vessels.

28 Terminal Platform. The part of a dock or pier, that is connected to the access walkway, located  
29 at the terminus of the structure and is designed to secure and load/unload a vessel or conduct other  
30 water-dependent activities. The terminal platform is considered the activity area of the dock. Such  
31 a platform is typically wider than the pier leading to it and shall be located at the end of the access  
32 walkway.

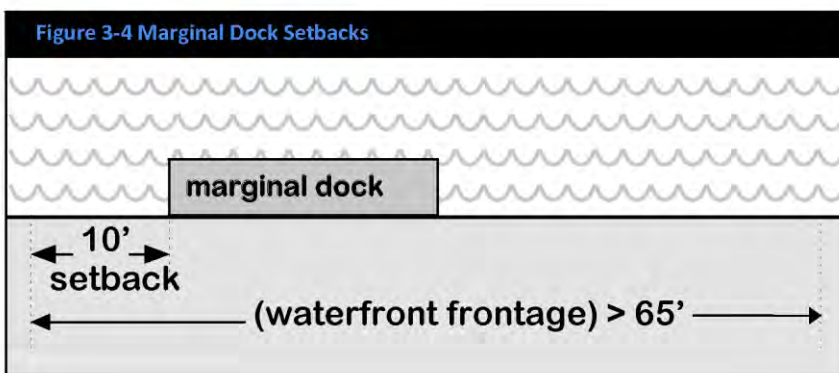
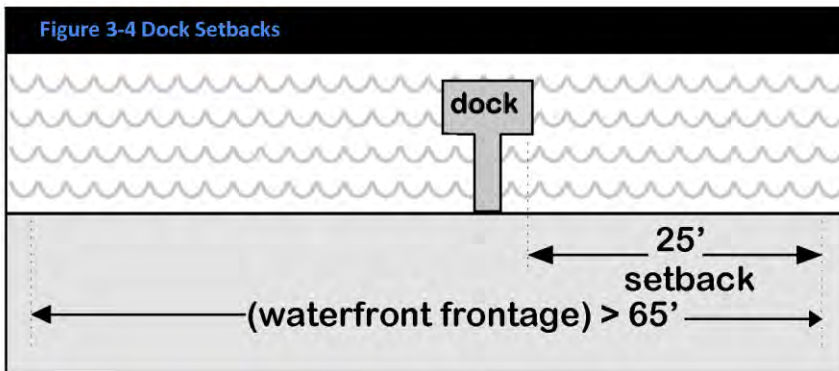
33 *B. How permitted.* See section 2.40, Table 2-5 (Table of Permitted Uses).

34 **3.17.2 Standards.**

35 *A.* No boathouse, boat slip, pier, or similar structure shall be erected or constructed to exceed  
36 a height of 15 feet above mean high water. An additional 42 inches is allowed for guardrails  
37 on sundeck roofs only. The main pier or walkway shall not exceed six feet (6') in width.

- 39 B. Docks, marginal docks, boathouses, boat slips, piers, and/or similar structures may be  
40 constructed waterward of the mean high water line if:
- 41 1. All local, state and federal requirements are met, and
  - 42 2. The structure will not materially impair navigation, cause scouring and erosion of the  
43 shoreline or river bottom, or otherwise adversely affect the public health, safety and  
44 welfare.
- 45 C. No artificial lighting is allowed higher than 15 feet above mean high water.
- 46 D. No more than two boat slips are allowed for each single-family dock.
- 47 E. Boathouses shall not be used for dwelling purposes or contain any sleeping or living quarters.
- 48 F. No boathouse shall exceed 20 feet in width and 40 feet in length.
- 49 G. Docks, marginal docks, boathouses, boat slips, piers, and/or similar structures, singly or  
50 collectively, shall not occupy an area more than ten times the lot width expressed in feet at  
51 the mean high water line (i.e. 70 feet of lot width equates to a maximum of 700 s.f. of dock  
52 area). For lot widths of 100 feet or more, a maximum of 1,000 square feet of dock area may  
53 be allowed for single-family residential homes along the Halifax River and in all artificially  
54 created waterways (i.e. canals) without state and/or federal approval. For lot widths of 100  
55 feet or more, Aalong the Halifax River, a maximum of 1,000 square feet of dock area may be  
56 allowed without state and/or federal approval, unless required by state or federal law in certain  
57 instances when state owned submerged lands are involved. The area of a dock shall be  
58 calculated by measuring all existing and proposed docks and related structures beginning at  
59 the mean high water line and extending waterward, except that the maximum area shall not  
60 include the access walkway to the dock terminal platform.
- 61 1. Subject to local, state, and/or federal approvals, an additional ten square feet above the  
62 maximum 1,000 square feet of dock and/or related structures may be added for each  
63 additional ten linear feet greater than 100 linear feet of waterfront frontage along the  
64 Halifax River measured at the mean high water line (i.e. 110 linear feet of shoreline  
65 frontage allows up to 1,010 square feet of dock and/or related structures). All state and  
66 federal permit approvals shall be submitted to the town prior to the commencement of  
67 any construction.
  - 68 2. All commercial and multi-family docks and related structures are subject to section 3.9,  
69 Boat slip regulations and other applicable local, county, state and/or federal  
70 requirements.
- 71 H. A dock and/or related structure is allowed if it:
- 72 1. Is not used for living or the storage of materials other than those associated with  
73 recreational use; and
  - 74 2. Is constructed or held in place by pilings, including floating docks, so as not to involve  
75 filling or dredging other than that necessary to install the pilings; and
  - 76 3. Will not violate water quality standards, impede the flow of water, adversely affect flood  
77 control, or create a navigational hazard; and

- 78 4. Is accessory to a developed lot with a minimum waterfront frontage of 65 feet measured  
 79 at the mean high water line. Lots with a waterfront frontage of less than 65 feet may be  
 80 allowed a dock or similar structures on a case-by-case basis, provided that navigation is  
 81 not impeded, the ability to dock boats on adjacent properties is not impaired, [all other](#)  
 82 [dimensional standards of this section can be met, and a variance has been granted.](#)
- 83 I. Docks in artificially created waterways (i.e., canals) shall not impede navigation and protrude  
 84 into the waterway more than 25 percent of the width of the waterway measured from the mean  
 85 high water line.
- 86 J. Subject to federal and state regulation, the replacement or repair of non-conforming docks  
 87 and mooring piles shall be allowed in accordance with sections 7.4 and 7.5, if:
- 88 1. No fill material other than the piles is used.
- 89 2. The replacement dock or mooring pile is in the same location, configuration and  
 90 dimensions as the existing or original dock or mooring pile.
- 91 K. Docks and related structures (including access walkways, boathouses, boat slips, piers,  
 92 mooring piles, or other similar structures) shall not be constructed or erected closer than 25  
 93 feet from any side lot line or side lot line extended into a waterway (Figure 3-3). Marginal  
 94 docks shall not be constructed or erected closer than ten feet from any side lot line or a side  
 95 lot line extended into a waterway (Figure 3-4) No newly constructed dock shall impede the  
 96 navigation or docking ability to existing docks on adjacent properties.



- 97
- 98 L. No more than one boathouse may be erected or constructed on an individual waterfront lot.



99 M. No boathouse, covered dock, [or access walkway](#) shall have enclosed sides. No screening or  
100 other visually blocking materials shall be attached or otherwise added to any required  
101 guardrails.

102 N. A boathouse or covered dock without a sundeck shall have a pitched roof with a slope ratio  
103 between 2.5:12 and 4:12.

104 O. Construction standards.

105 1. Construction materials and methods shall be employed in compliance with the Florida  
106 Building Code, Chapter 16: Structural Design. Compliance with this standard shall be  
107 certified on a plan sealed by a Florida-registered architect or structural engineer.

108 2. All wood members must be pressure treated or have an equivalent strength that meets or  
109 exceeds the durability of pressure-treated wood.

110 3. All fastening devices, nails, screws, bolts, and similar devices shall be highly corrosive  
111 resistant.

112 a. All light-gauge fastening devices such as nails and screws shall be stainless steel  
113 and all bolts shall be stainless steel or hot-dipped galvanized.

114 b. All hurricane anchoring devices shall be hot-dipped galvanized or stainless steel.  
115 "Hot-dipped galvanized" means at least two ounces of zinc coating per square foot  
116 after fabrication.

117 4. Boathouse roofs acting as a sun deck shall be designed to provide for 60 pounds per  
118 square foot deck loading for occupants. If the boathouse provides for boat suspension,  
119 the maximum lift capacity of the hoisting device shall be considered in the design and  
120 still provide a minimum 60 pounds per square foot for occupants of the sun deck. Stairs  
121 and guardrails must be provided for all sun decks consistent with standard building code  
122 requirements. No baluster shall exceed 1.5 inches in diameter. No lighting may be  
123 affixed to a sun deck.

124 P. This section does not preempt any federal or state regulation or prohibit any federal or state  
125 enforcement action.

126 \*\*\*

127



**Meeting Date:** July 23, 2024

**Agenda Item:** 8-B

## **Report to Planning Board**

**Topic:** Amendment to Planning Board By-Laws, Article III, Section 1, changing regular meeting time from 10:00 am to 2:00 pm

**Summary:** Members of the Planning Board and Town Council met for a Special Joint meeting on June 4, 2024; Agenda Item 7 was a discussion of amending the Planning Board By-laws to change the regular meeting time.

### **For Discussion & Board Comment**

**Or – Proposed Motion:** To recommend approval of the Planning Board By-Laws

**Requested by:** Mr. Lear, Planning & Development Director

**Approved by:** Mr. Disher, Town Manager



## MEMORANDUM

TOWN OF PONCE INLET, PLANNING AND DEVELOPMENT DEPARTMENT

*The Town of Ponce Inlet staff shall be professional, caring, and fair in delivering community excellence while ensuring Ponce Inlet residents obtain the greatest value for their tax dollar.*

**To:** Planning Board  
**From:** Patty Rippey, AICP, Principal Planner  
**Through:** Darren Lear, AICP, Planning & Development Director  
**Date:** July 9, 2024  
**Re:** Planning Board By-Laws Amendment

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**Meeting date:** July 23, 2024

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### INTRODUCTION

Members of the Planning Board and Town Council met for a Special Joint meeting on June 4, 2024. Agenda Item 7. was a discussion of amending the Planning Board By-laws to change the regular meeting time.

### AUTHORITY AND PROCESS

Pursuant to LUDC Section 6.2.2.C., the Planning Board shall meet at regular intervals and other times as it may deem necessary. It shall adopt written by-laws and procedures necessary for the administration of its responsibilities, as consistent with the Code of Ordinances, and the LUDC. By-laws and procedures shall be approved by Town Council. Amendments or modifications to the by-laws shall be submitted to the Town Council for final approval.

### AMENDMENT TO BY-LAWS

The draft version of the revised Planning Board By-Laws, Rules and Procedures is attached to this report. Additions are underlined, deletions are ~~struck through~~. Specifically, under Article III Meetings, the regular meeting time is proposed to be amended from 10:00 AM to 2:00 PM. The scheduled meeting time for quasi-judicial meetings will remain at 5:30 PM. No other changes are being initiated.

### Attachment:

Planning Board By-Laws, Rules and Procedures



TOWN OF PONCE INLET  
**PLANNING BOARD**  
**BY-LAWS, RULES AND PROCEDURES**

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THESE BY-LAWS are adopted in accordance with Section 6.2.2 of the Town of Ponce Inlet Land Use and Development Code. They shall be considered supplemental to any Ordinance or Resolution adopted by the Town Council which affects the Town of Ponce Inlet Planning Board (hereinafter, referred to as the “Planning Board”). Should there be a conflict between these Bylaws and any Town Ordinance or Resolution, in effect, at any time, then the Ordinance or Resolution shall control.

The Planning Board of the Town of Ponce Inlet, Florida shall be governed by the Charter and Code of the Town of Ponce Inlet and the rules of procedures set forth herein and adopted by the Planning Board.

**CREATION**

A Planning Board is hereby created which shall have the power and duties of a Planning Commission and a Board of Adjustment, consistent with Section 7.01 of the Charter. It shall also have the power and duties of the local planning agency in accordance with the Community Planning Act (2011), F.S. Ch. 163.3161 et. seq. It shall be referred to in the Articles as the Planning Board. It shall have the following membership, duties, responsibilities, and limitations:

**ARTICLE I**  
**OFFICERS, MEMBERS AND DUTIES**

**1. MEMBERSHIP, TERMS OF OFFICE.** The Planning Board shall consist of five (5) regular members and two (2) alternates, who are appointed by the Town Council. Each regular member shall be appointed for a three-year term, in staggered sequence. Alternate members shall be appointed for a term of one (1) year. No official or employee of Town government shall serve on the Planning Board. Each member of the Planning Board shall be a qualified elector of the Town of Ponce Inlet. Preference will be given to full-time residents.

**2. REMOVAL FROM OFFICE, VACANCIES.** All members of the Planning Board shall serve at the sole pleasure of the Town Council and may be removed at any time without cause and without a hearing. If a Board member has either three consecutive absences from regular meetings or five absences within one rolling year from regular meetings, that member shall be automatically removed from the Board. The Town shall not attempt to differentiate between what one might consider an excused absence vs. an unexcused absence. However, a Board member may appeal to the Town Council for reinstatement if the situation was temporary in nature and he/she is able to resume their responsibilities to the Board. In addition, as a preemptive measure, a Board member may request in writing a leave of absence from the Town Council for illness, family emergencies, etc. A granted leave of absence will not be counted towards the absences of that member for that rolling year. Any vacancy occurring during an unexpired term shall be filled with an alternate member or if no available alternates, by advertising the vacancy until filled.

**3. CHAIRPERSON.** A Chairperson shall be elected by the Planning Board from among its members. The Chairpersonship shall be for (1) one year beginning on the first regularly scheduled meeting. The Chairperson shall decide upon all points of order and procedure, subject to these rules, unless directed otherwise by a majority of the Planning Board in session at the time. The Chairperson shall appoint from the Planning Board membership any committee found necessary to investigate matters not quasi-judicial in nature before the Planning Board. The Chairperson shall sign all Orders of the Planning Board.

**4. VICE-CHAIRPERSON.** A Vice-Chairperson shall be elected by the Planning Board from among its members at its first regularly scheduled meeting or whenever the position becomes vacant. The Vice-Chairperson shall serve as Chairperson in the absence of the Chairperson. Upon vacancy of the Chair, the Vice-Chairperson will serve as Chairperson until a new Chairperson is elected at the next regular meeting.

**5. SECRETARY.** Town staff shall assign a Board Secretary. The Board Secretary shall be an employee of the Town of Ponce Inlet. The Board Secretary shall keep all records, conduct all correspondence of the Planning Board, cause to be given the required legal notice of each public meeting, and shall generally take charge of the clerical work of the Planning Board. The Board Secretary shall open the meeting in the absence of the Chairperson and Vice-Chairperson.

The Board Secretary shall take, or cause to be taken, the minutes of every meeting of the Planning Board. These shall show the record of all important facts pertaining to each meeting and hearing, every resolution acted upon by the Planning Board and all votes of members of the Planning Board upon any resolution or upon the final determination of any question, indicating the names of members absent or failing to vote. The Secretary shall present the draft copy of the minutes to the Planning Board for approval at the next regular meeting. The Secretary shall keep as a permanent record the minutes of every meeting of the Planning Board. The Secretary shall keep all records open to the public during normal business hours but, in no event, shall relinquish the original of any record to any person except as provided by law.

**6. COMPENSATION.** Planning Board members shall serve as volunteers without compensation, but may be reimbursed for such travel, mileage, and per diem expenses as may be authorized by the Town Council, or as otherwise provided by law.

**7. POWERS AND DUTIES.** The Planning Board shall have powers and duties as stated in section 163.3174, Florida Statutes, (as may be amended from time to time), section 6.2.2.D of the Town's Land Use and Development Code (as may be amended from time to time), and the following:

- A. To hear, review, and make recommendations to approve, approve with conditions, or disapprove applications for quasi-judicial land use decisions, including but not necessarily limited to: quasi-judicial rezonings, site plan reviews, final development plans, subdivision plats, special exceptions, conditional uses, street vacations, sign permits, variances when tied to a land use application, changes in structures and uses, and scenic roadway variances. Such recommendations shall include whether a proposal is consistent with the Comprehensive Plan.

- B. To hear, review, and make recommendations regarding proposals for legislative decisions to amend the official zoning map or sections of the land use and development code, if the town council determines, in its discretion, to refer a proposed legislative change to the board for recommendation.
- C. To hear and decide appeals and variances as provided for in the land use and development code and the code of ordinances. Further appeals may be taken to the town council.
- D. To perform such other planning duties and functions not inconsistent with the comprehensive plan, code of ordinances, or the land use and development code, or as directed by the town council.
- E. To hear and decide appeals of orders, decisions, or determinations of the planning and development department director in the enforcement and interpretation of this code. The board may, upon appeal, reverse, affirm, or modify any order, requirement, decision or determination of the planning and development department director. Further appeals may be taken to the Town Council.

## **ARTICLE II APPOINTMENT PROCEDURES**

The procedure for appointment of individuals to the Town's Boards shall be as follows:

1. Whenever a vacancy occurs on any Town Board, the Town Council shall be notified promptly by the Board Secretary.
2. The Board Secretary will advertise the vacancy on the Town's website and on the Town bulletin board and in any other locations which are deemed economically appropriate to fill the vacancy.
3. The Board Secretary will provide the interested candidate(s), the appropriate information about the board.
4. The Board Secretary will create and maintain an application for Boards which has been approved by the Town Council. This application must be completed by any potential applicant for initial appointment. The applications will be accepted by the Board Secretary, who will verify residency through voter registration before forwarding them to the Town Council for consideration.
5. Though all board members serve at the pleasure of Council, preference for re-appointment shall be given to the current seat holder. Board members seeking re-appointment shall submit in writing to the Town their interest in re-appointment at least 30 days prior to the expiration of their term. The board secretary will re-confirm their residency and will provide the Town Council information regarding the appointee's attendance and training.
6. New applicants are strongly encouraged to attend the Town Council meeting for

consideration of their application.

7. Any member appointed as Alternate #1 to the board shall automatically progress to the first available vacant regular seat on that board, without having to go back to the Town Council for promotional appointment. Alternate #2 shall then automatically progress to the Alternate #1 seat.

8. Members of Boards which are required pursuant to state regulations to complete an affidavit of financial disclosure (Form 1) must submit this to the Supervisor of Elections office within thirty (30) days of initial appointment.

### **ARTICLE III MEETINGS**

**1. REGULAR MEETING.** Regular meetings of the Planning Board shall be held once each month, on the 4<sup>th</sup> Tuesday of the month. Board meetings shall generally begin at ~~10:00 AM~~ 2:00 PM, however, meetings shall begin at 5:30 PM if the meeting agenda includes one or more quasi-judicial hearings, the Planning and Development Director directs as such, or if a simple majority of all members determines that a 5:30 PM meeting time better suits the public interest due to anticipated agenda item(s). All regular meetings shall be held at the Council Chambers. The time and place of the regular monthly meeting may be changed by affirmative vote of a simple majority of all members. At least twenty-four (24) hours' notice of the time and place of the regular meetings shall be given by the Secretary to each member of the Planning Board.

**2. SPECIAL MEETINGS.** Special meetings of the Planning Board may be called at any time by the Chairperson, Town staff, or by affirmative vote of a simple majority of all members. At least forty-eight (48) hours' notice of the time and place of special meetings shall be given by the Secretary to each member of the Planning Board.

**3. CANCELLATION OF MEETINGS.** Whenever there are no applications, appeals or other business for the Planning Board, or whenever so many members notify the Secretary of inability to attend that a quorum will not be available, the Chairperson may dispense with the regular meeting and the Board Secretary shall provide a written or oral notice to all members as soon as possible prior to the time set for the meeting.

**4. QUORUM.** A quorum shall consist of three members of the Planning Board for the transaction of business.

**5. CONDUCT OF MEETINGS.** All meetings shall be open to the public. The order of business at regular meetings shall be as follows:

1. Call to order and Pledge of Allegiance
2. Roll Call and Determination of Quorum
3. Adoption of Agenda
4. Approval of Minutes
5. Report of Staff
6. Correspondence and Disclosure of Ex-Parte Communication
7. Hearing of Cases

8. Business Items
9. Public Comment
10. Board Discussion
11. Adjournment

**6. ADJOURNED MEETINGS.** The Planning Board may adjourn a regular meeting or special meeting if all business cannot be disposed of on the day set, and no further public notice shall be necessary for resuming such a meeting if the time and place of its resumption is stated at the time of adjournment and is not changed after adjournment.

**7. EX-PARTE COMMUNICATIONS.** In accordance with Section 286.0115, Florida Statutes, Town Council has passed Resolution 2007-18. Disclosure of ex-parte communications made pursuant to the Resolution and this paragraph should, if possible, be made at the beginning of the public hearing at which a vote is taken so that persons who have opinions contrary to those expressed in the ex-parte communication are given a reasonable opportunity to explain or respond to the communication. Adherence to the following guidelines, as set forth in Resolution 2007-18, shall remove the presumption of prejudice from ex-parte communications with Planning Board members.

a. *Communications between staff and public.* Oral and written communications between staff and members of the public shall be permitted and encouraged.

b. *Communication between the Planning Board and the public.* Members of the Planning Board of the Town shall not be prohibited from receiving and participating in oral or written ex-parte communications regarding quasi-judicial matters before the Planning Board, if all requirements of Resolution 2007-18 are followed as to any ex-parte communication, and any presumption of prejudice arising out of such ex-parte communications is hereby removed and declared non-existent.

1. Any oral ex-parte communication with a Planning Board member relating to pending quasi-judicial action shall not be presumed prejudicial to the outcome of the matter if the subject matter of the communication and the identity of the person, group or entity with whom the communication took place is disclosed and made a part of the record in the quasi-judicial proceeding before final action on the matter.

2. Any written communication to a Planning Board member from any source regarding a pending quasi-judicial matter shall not be deemed prejudicial to the outcome of the matter, if the written communication is made part of the record in the quasi-judicial proceeding before final action on the matter.

3. Planning Board members shall not be prohibited from conducting site visits or receiving expert opinions regarding quasi-judicial matters pending before them, and such activities shall not be presumed prejudicial to the outcome of the matter if the existence of the investigation, site visit, or expert opinion is disclosed and made a part of the record in the quasi-judicial proceeding before final action on the matter.



4. Resolution 2007-18 does not subject Planning Board members to Part III of Chapter 112, Florida Statutes, for not complying with the Resolution.

c. *Communication between Planning Board members and staff.* Written and oral communications between Planning Board members and staff shall be limited to the facts of the application or case. Ex-parte discussions of the positions or arguments of the applicant or any opposing party are discouraged. All such communications shall be disclosed and made a part of the record in the quasi-judicial proceeding before final action on the matter.

d. *Communication between Planning Board members and Town Attorney(s).* Attorneys for the Planning Board may render legal opinions when requested but shall not engage in factual determinations or advocate one party's position over another, except to the extent necessary to respond fully to a purely legal question.

#### **ARTICLE IV VOTING**

1. **VOTE.** A simple majority of members present shall be necessary to render a decision. The Chairperson shall have one (1) vote in all issues voted upon by the Board.

2. **REPRESENTATION, PERSONAL INTEREST.** Pursuant to Section 112.3143, Florida Statutes, no Board member may vote on a matter in which (s)he shall be personally or financially interested. An Alternate member will be required to sit in as a voting member for that matter. If a Board member has a voting conflict, (s)he must orally declare the conflict in the meeting and abstain from voting. The member may participate in discussions, but only if (s)he first orally declares his/her conflict of interest. Board members claiming a conflict must complete the memorandum of voting conflict (Form 8B) within 15 days after the vote occurs, for inclusion in the meeting minutes.

#### **ARTICLE V APPEALS**

1. **APPEALS.** The Planning Board shall hear and decide appeals from any interpretation, order, requirement, decision, or determination of the Planning and Development Director in the administration and enforcement of the Land Use and Development Code. Appeals may be taken by any person aggrieved or by any officer, board, department or agency of Town government adversely affected by any decision of the Planning and Development Director. Aggrieved parties must file a notice of appeal specifying the grounds with the Planning and Development Director and the Town Clerk within thirty (30) days after rendition of the order, requirement, decision or determination. The notice of appeal shall be on a form prescribed by the Planning and Development Director.

2. **PROCEDURE FOR FILING APPEALS.** Upon receipt of the Notice of Appeal and payment of any appeal fee established by resolution of the Town Council, and after due public notice and notice to all owners of contiguous property, the Planning and Development Director shall transmit to the Planning Board all documents, plans, papers or other materials relating to the appealed decision.

**3. WITHDRAWAL OF APPEALS.** If appeal is withdrawn before public notice is given, the appeal fee shall be returned to the applicant, minus the application processing fees. In such event, the fact of withdrawal shall be noted on the original and both copies of the application with the signature of the applicant attesting withdrawal. The original shall be retained by the Secretary for the files of the Planning Board and one (1) copy shall be returned to the applicant.

## **ARTICLE VI HEARINGS**

Witnesses may be called, sworn and cross-examined at hearings. Factual evidence may be submitted. The Planning Board shall not be limited to consideration of such testimony and evidence as would be admissible in a Court of Law. However, the Planning Board shall only consider the sort of evidence on which reasonable, prudent persons would be accustomed to rely on in the conduct of their affairs. Hearsay evidence may be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions. Irrelevant and unduly repetitious evidence shall be excluded. The Chairperson may establish appropriate time limits for arguments but such time limits shall be equal for the Planning and Development Director and the applicant. The Chairperson may request that only a representative or representatives speak on behalf of an entire group or portions of a group presenting arguments to the Planning Board. The applicant, agent or attorney shall direct all presentation, questions and arguments to the Planning Board only. Arguments between the parties shall not be permitted. The Planning Board reserves the right to ask questions at any time. Only where alternative documentary evidence, such as drawings or photographs, cannot adequately portray the issues under consideration may the applicant, Planning and Development Director, or any Planning Board member request a view of the site. If a majority of the Planning Board determines that a view of the site is necessary, then the matter shall be continued until the Secretary coordinates a convenient time for all parties and members of the Planning Board to reconvene.

## **ARTICLE VII DECISIONS**

Pursuant to Section 10.2.6 of the Land Use and Development Code, if a variance does not begin to serve the purpose for which it was granted within 12 months from the date of rendition of the written order, or if its use is thereafter abandoned for 12 consecutive months, it shall expire. A shorter or longer period of time may be set by the Planning Board so long as the applicant applies for an extension prior to the expiration.

## **ARTICLE VIII REHEARING**

1. If it is alleged that the Planning Board has overlooked or misunderstood certain facts or points of law, a rehearing of any decision of the Planning Board may be granted to rehear its prior decision. The rehearing may be proposed either on the motion of any member voting on the prevailing side, or on the motion of any person aggrieved by its decision. The motion shall be in writing, filed with the Planning and Development Director within ten (10) working days after the

rendition of the decision, and shall state its grounds. The person requesting the rehearing shall send a notice by Certified Mail to all interested persons, stating the date, time and place the motion for rehearing will be heard by the Planning Board.

2. If the Planning Board grants such a motion, it shall state its reason for doing so and set a time, date and place for another public hearing upon due public notice pursuant to the Land Use and Development Code.

3. The Planning Board shall not otherwise hear any matter based upon the same facts or issues as were previously decided by the Planning Board until at least one (1) year has elapsed from the date of rendition.

**ARTICLE IX  
AMENDMENTS**

Amendments or modifications shall be submitted to the Town Council for final approval.

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Reviewed and approved as amended for exclusive use by the Town of Ponce Inlet, FL this \_\_\_<sup>h</sup> day of July 2024.

Town of Ponce Inlet

\_\_\_\_\_  
Lois A. Paritsky, Mayor

Attest:

\_\_\_\_\_  
Kim C. Cherbano,  
Town Clerk



**Meeting Date:** July 23, 2024

**Agenda Item:** 8-C

## **Report to Planning Board**

**Topic:** Board Member Training

**Summary:** The Town Attorney will review Quasi-Judicial hearings

### **For Discussion & Board Comment**

**Requested by:** Mr. Lear, Planning & Development Director

**Approved by:** Mr. Disher, Town Manager

# CONDUCTING QUASI-JUDICIAL HEARINGS ON LAND USE MATTERS

Clifford B. Shepard

Town Attorney

Ponce inlet, Florida

[cshepard@shepardfirm.com](mailto:cshepard@shepardfirm.com)

*Special thanks to:*

Susan L. Trevarthen, Esq., FAICP

Weiss Serota Helfman Cole & Bierman

## Outline

- Planning Board as LPA
- The Difference Between Legislative and Quasi-Judicial Hearings and Decisions
- Relationship Between Comp Plan and LUDC
- Characteristics of Quasi-Judicial Decisions
- *Ex Parte* Communications and Quasi-Judicial Bias
- Findings of Fact
- Best Practices

# Planning Board as LPA

- LPA – Local Planning Agency
- Fla. Stat. § 163.3174
- Responsible to conduct comprehensive planning program, including:
  - ✓ *preparing plan or plan amendment after hearings to be held after public notice*
  - ✓ *making recommendations to the Town Council regarding adoption or amendment of the plan*
  - ✓ *monitoring/overseeing effectiveness of plan (EAR process)*
  - ✓ *reviewing LUDCs for consistency*
  - ✓ *other tasks as assigned by Town Council*

# Setting Policy = Legislative

- Adopting or amending the Comprehensive Plan
- Includes large and small-scale plan amendments
- Adopting or amending Land Use Development Code (LUDC)
- All legislative (also known as quasi-legislative) decisions in land-use practice involve setting policy

# Legislative Hearing Process

- Broad notice (*i.e.* posted agenda, newspaper publication)
- Wide-ranging public hearing, including consideration of pure preferences and opinions, conjecture and assumptions
- Presentation of evidence: anything relevant
- Substantial discretion: Board as policy-makers
- Can take a public or private position ahead of the hearing - *Izaak Walton League of America v. Monroe County*, 448 So.2d 1170 (Fla. 3rd DCA 1984).

# Fairly Debatable Standard of Review

- There must be a reasonable basis to support the action.
- Very deferential standard.
- Akin to a bar debate.
- **The Court:**
  - may not second guess the wisdom of the local government's action; and
  - must affirm if there is any reasonable basis for the decision and that there are no constitutional violations.

## Applying Code and Comp Plan = Quasi-Judicial

- Application of the Code and/or the Comp Plan to specific properties
- Cannot create new policies to govern the decision (legislative process)
- Site-specific application of Land Development Regulations (Examples: rezonings, site plans, conditional uses, variances, administrative adjustments, plats, special exceptions, licenses, permits)
- **Key elements:**
  - finding of facts regarding the specific proposal
  - exercise of judgment and discretion in applying adopted policies to the specific situation

## Quasi-Judicial Hearing Process

- Notice to owner and affected persons
- Sworn testimony – swear or affirm (all at once, or one at a time)
- Parties (City, applicant, affected persons) have the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any relevant matter, and rebut evidence
- Applicant and affected parties entitled to more than the 3 minute rule because their rights are uniquely affected
- Board acting as judges



## Hearing Process Continued...

- Where evidence conflicts, the Board has the responsibility of deciding how much weight to accord each piece of evidence.
- Continued hearings: must be present for all, or must review the complete record of portions missed.
- Record-keeping is important – keeping all things exhibits and things handed up to the Clerk or shown to the Board.
- Review is on the record. No ability to create additional evidence after decision is made.
- Board should give due consideration to the professional judgement of your zoning and planning staff, considering their training and experience. But the question of what the Code means is a question of law for which the Board must make its own decision, as the creator of the law.

## Affected Parties? Objectors With Standing to Sue

- A person who has a **legally recognizable interest** which is or will be affected by the action of the zoning authority in question has standing.
- **May be shared in common with other members of the community** (an entire neighborhood), but not every resident and property owner of a municipality can, as a general rule, claim such an interest.
- **Must be a definite interest exceeding the general interest** in community good shared in common with all citizens.
- **Relevant factors:**
  - **proximity** of property to the property to be zoned or rezoned,
  - **character of the neighborhood**, including the existence of common restrictive covenants and set-back requirements
  - **type of change** proposed
  - **entitlement to receive notice** under the zoning ordinance is a factor, but is **not controlling**.

## Burden of Proof for Quasi-Judicial Matters

- The **burden is on the applicant** for a rezoning, special exception, conditional use permit, variance, site plan approval, etc. to demonstrate the application **complies with the requirements** of the applicable ordinance and that the use sought is **consistent with the applicable comprehensive plan**.
- The **burden then shifts to the government** to present **competent substantial evidence** that the application does not meet applicable criteria under the code and that maintaining the status quo on the property **accomplishes a legitimate public purpose, and is not arbitrary, discriminatory, or unreasonable**.
- Quasi-judicial decisions generally are based on their facts and do not set precedents.

## Ex. – Variance Standards

- Special conditions and circumstances exist that are peculiar to the land, structure, or building involved and not typical of other lands, structures, or buildings in the same zoning classification; and
- The special conditions and circumstances do not result from the actions of the applicant; and
- Literal interpretation of this code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning classification and would create an unnecessary and undue hardship on the applicant; and
- Strict adherence to the provision does not promote the purpose for which it is intended; and

## Variance Standards – cont'd.

- The variance does not conflict with a town policy such as preservation of dunes, water conservation, or preservation of natural vegetation; and
- The variance is the minimum variance that will make possible the reasonable use of the land, building or structure; and
- The variance is in harmony with the general intent and purpose of the LUDC and does not injure the area involved.

## Important Provisions

- **Chapter 1 - PLAN INTERPRETATION**
- It is the responsibility of the director of planning and development or a duly authorized representative to interpret the Comprehensive Plan and its application to public and private land and to uses and/or activities permitted thereon. Plan interpretations shall be based on the applicable text, maps, figures, and tables within the Comprehensive Plan along with the plan's support document. When making plan interpretations, the Comprehensive Plan shall be construed as a complete document and no specific goal, objective, or policy shall be used independently.

## Important Provisions

- **9.1.2 - Responsibility for interpretation.**
- The director of planning and development shall have the duty and responsibility of interpreting the comprehensive plan and the LUDC. The director's responsibility to interpret is limited to the standards, regulations, and requirements of the LUDC. It does not include interpretation of any technical codes adopted by reference in the LUDC, or override the responsibilities given to any commission, board, or official named in the LUDC. The director shall be authorized to promulgate any rules and procedures found necessary for the implementation of the comprehensive plan and the LUDC.

## Competent Substantial Evidence

- ✓ Evidence a reasonable mind would accept as adequate to support a conclusion
- ✓ Substantial Competent Evidence from lay witnesses/residents must be “fact based”
- ✓ Subjective preferences (“love it”/“hate it”) are not fact based and do not constitute Substantial Competent Evidence
- ✓ Conjecture or assumptions are irrelevant to the issues

## Competent Substantial Evidence

- Example: Harm to Property Values
  - Is there testimony from an appraiser about the impacts of a similar project?
  - Is the similar project truly similar?
  - Does the evidence in the record reflect reduced values, or are you just relying on personal knowledge?
  - Don't just tell, **SHOW**. What may be obvious to local citizens will not be known by a reviewing court unless its in the record.
  - Property owners testifying from personal knowledge of appraisals, sales prices or cancelled contracts resulting from similar development or from the pending application should be supported with the documents themselves.

## Findings of Fact

- The Fla. Supreme Court ruled that local government “will NOT be required to make findings of fact” to support its decision on an application for rezoning.
- However, written findings of fact are a good idea in case of appeal to support the local government’s quasi-judicial decisions because they:
  - Are essential to effective strict judicial scrutiny of quasi-judicial decisions.
  - Greatly reduce the possibility of arbitrary or politically-motivated rezoning decisions, thereby providing protection for property rights.
  - Ensure mindfulness of consistency with Comp Plan requirement; if local government makes written findings of fact to support their consistency determinations, local government officials will focus more closely on the relationship between proposed rezoning and goals, objectives and policies of the Comp Plan.

## Ex-Parte Communications

- An ex parte communication occurs when a party to a case, or someone involved with a party, talks or writes to or otherwise communicates directly with a Board member about the issues in the case **without the other parties' knowledge**.
- Example: A Board member meets with the applicant or an opponent without the public present.
- **Attributes of ex-parte communications on local quasi-judicial matters:**
  - ✓ Occurs outside the official hearing
  - ✓ Usually one-sided (opposition or support)
  - ✓ Does not allow the other side an opportunity to respond
  - ✓ Can be in any form – written, verbal, electronic, etc.

## Ponce Inlet Reso 2007-18 & Planning Board Bylaws provide:

- Ex-parte communications are **not presumed prejudicial if disclosure is made** at the beginning of the public meeting.
- Must disclose the following information for the record:
  - ✦ The subject matter of the communication and the identity of the person, group or entity with whom the communication took place
  - ✦ Written communications should be submitted into the record
  - ✦ Disclose the existence and nature of any investigations, site visits and expert opinions received

## Bias in Quasi-Judicial Hearings

- Bias (a predetermined opinion that is not susceptible to change), undisclosed ex parte communications, and close family or business ties can **disqualify Board members from participating or voting** as a matter of due process – even if there is no statutory conflict of interest
- Those participating in quasi-judicial proceedings have a right to expect **impartial decision-making on the basis of the evidence presented**. Decision-makers should **not take a position** on a quasi-judicial application until each party (City, applicant, affected person) has made its presentation at the hearing. Doing so deprives a party of its constitutionally protected right to a fair hearing.
- Board members should **not** actively involve themselves in efforts to support proponents or opponents of a quasi-judicial land development action. To do so could subject the City and the individual Board member to a lawsuit.

## Voting Conflict of Interest Statute Allows Abstention for Quasi-Judicial Bias

- Section 286.012, Fla. Stat. **Voting requirement at meetings of governmental bodies.**—A member of a ... municipal governmental ... commission... who is present at a meeting of any such body at which an official decision... is to be taken or adopted **may not abstain from voting** in regard to any such decision...; and a vote shall be recorded or counted for each such member present, **unless**, with respect to any such member, there is, or appears to be, a possible **conflict of interest** .... If there is, or appears to be, a possible conflict. . . , the member shall comply with the disclosure requirements of s. 112.3143.... **If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice.**

## QJ Hearing Standard of Review

- Narrow and limited review by certiorari on three issues:
  - Whether procedural due process was accorded;
  - Whether the essential requirements of the law were observed; and
  - Whether the decision was supported by competent substantial evidence
- Petitions for writ of certiorari must be filed within 30 days of rendition of the development order to be reviewed.
- Denials must cite to the legal authority for the decision.

## Best Practices for Quasi-Judicial Decisions

- **BE AN OBJECTIVE DECISION-MAKER**
- Do not prejudge the case - avoid making up your mind beforehand.
- Provide objective decisions based on all the facts and evidence presented.
- Follow your community's plan and the local zoning codes, and local land development codes.
- Base decision on the information available to you at the meeting, including the staff report, the site visit, relevant information presented at the meeting, and public comment.
- **MAKE THE BEST DECISION POSSIBLE BASED ON ALL OF THE INFORMATION PRESENTED TO YOU**



## More Best Practices

- **BE AN EFFECTIVE BOARD MEMBER**
- Prepare well for the meetings
- Keep the meeting tempo the same at the beginning and end
- Seek to understand each other's positions and opinions
- Be civil to each other so the public will be civil to you
- Have a bias for action
- Explain your rationale, but don't lecture
- Make your final action clear to the public

## More Best Practices

- **MAKE SOUND DECISIONS & DEFENSIBLE MOTIONS**
- Ask applicant if he/she agrees. If not, why not? Verify understanding and assumptions before voting. Allow rebuttal as needed.
- Restate and discuss criteria to support the motion.
- Follow competent substantial evidence, not the Roar of the Crowd
- Repeat the "gift wrapped" motion provided by staff if you agree
- Motions different than staff-recommended motion
  - Develop defensible public record based on evidence in the record
  - May not be arbitrary
  - Denials must provide a reason, in writing, to the applicant

## Even More Best Practices

- Adding Conditions of Approval?
  - Make sure they do not overlap or conflict with the staff-recommended conditions
  - Should relate to the criteria for approval
  - Rational nexus test
  - Rough proportionality test
  - Section 70.45, Fla. Stat., exposure for unlawful exaction

# QUESTIONS?



**Meeting Date:** July 23, 2024

**Agenda Item:** 8-D

## **Report to Planning Board.**

**Topic:** Discussion to reschedule the November and December Planning Board meetings

**Summary:** N/A

**For Discussion & Board Comment**

**Or – Proposed Motion:**

As determined by the Planning Board.

**Requested by:** Mr. Lear, Planning & Development Director

**Approved by:** Mr. Disher, Town Manager

# November 2024

Sun	Mon	Tue	Wed	Thu	Fri	Sat	
						1	2
3	4 Cultural Services Board 5:30 PM	5	6	7	8	9	
10	11 Veterans Day *Town Hall Closed*	12	13	14	15	16	
17	18	19	20	21 Town Council 2:00 PM	22	23	
24	25 Code Board 9:30 AM	26 Planning Board TBD	27	28 Thanksgiving Holiday *Town Hall Closed*	29	30	

# December 2024

Sun	Mon	Tue	Wed	Thu	Fri	Sat	
1	2 Cultural Services Board 5:30 PM	3	4	5	6	7	
8	9	10	11	12	13	14	
15	16	17	18	19 Town Council 2:00 PM	20	21	
22	23 Code Board 9:30 AM	24 Christmas Holiday *Town Hall Closed*		25	26	27	28
29	30	31					