MINUTES OF THE PLANNING BOARD
May 8, 2018

MEMBERS PRESENT: Chairman Paul Ritz, Nathan Monk, Nina Campbell, Kurt Larson, Jared Moore, Danny Grundhoefer, Victor Jordan

MEMBERS ABSENT: None

STAFF PRESENT: Brandi Deese, Assistant Planning Services Administrator, Leslie Statler, Planner, Steve Richards, Code Enforcement Officer, Rusty Wells, Assistant City Attorney, Lysia Bowling, City Attorney, Don Kraher, Council Executive, Robyn Tice, Clerk's Office

OTHERS PRESENT: John McFarland, Diane Mack

AGENDA:

- Quorum/Call to Order
- Swearing in of New Board Member – Mr. Victor Jordan
- Approval of Meeting Minutes from April 10, 2018
- New Business:
    1. Request for Site Plan Approval for 5057 N. 9th Avenue – Publix
    2. Consider Amendment to LDC Chapter 12-10 Floodplain Management
    3. Consider Amendment to LDC Section 12-2-6 Residential/Office Land Use District & LDC Section 12-2-8 Commercial Land Use District.
    4. Consider Amendment to LDC Section 12-4-6 Temporary Signs and LDC Chapter 12-14 Definitions.
- Open Forum
- Adjournment

Call to Order / Quorum Present
Chairman Ritz called the meeting to order at 2:01 pm with a quorum present.

Swearing in of New Board Member – Mr. Victor Jordan was sworn in by the Clerk's Office.

Approval of Meeting Minutes
Mr. Larson made a motion to approve the April 10, 2018 minutes, seconded by Ms. Campbell, and it carried unanimously.

New Business

Request for Site Plan Approval for 5057 N. 9th Avenue - Publix

John McFarland, Jacobs Engineering, has submitted an application for aesthetic approval for exterior modifications to the property located at 5057 N. 9th Avenue.

This property is located within the North 9th Avenue Corridor Management Overlay District and is subject to the review provisions as outlined in Section 12-2-24. The improvements proposed include a canopy roof structure at existing supermarket entrance to provide protection from the elements for both patrons approaching and an exterior shopping cart stack area.

Mr. McFarland presented to the Board. Chairman Ritz advised the canopy fit the character of the supermarket. Ms. Campbell explained it was appropriate with the structure, and there was a need for it. Mr. Jordan observed the treatment was for one door and asked why the treatment was not appropriate for the second entrance. Mr. McFarland advised that so many of the stores have vestibules for cart storage; the thought here would be to protect shopping carts and combining it with an entrance canopy. He advised the company treated entrances differently. Mr. Larson asked if this design was standard, and Mr. McFarland advised he had not seen this one before. He stated they had a plan to place bollards in front of two existing ramps. Mr. Monk wanted clarification as to why this project was before the Board, and Chairman Ritz explained that with the 9th Avenue Corridor Overlay, projects would now come before this Board for aesthetic approval. Mr. McFarland stated the base would be split face concrete block which has a textured finish. Mr. Monk explained he preferred anything over textured cinderblock. Chairman Ritz suggested specifying some type of brick with a color to match the building in the motion, and stated the project would return for an abbreviated review by the Chairman for verification. **Mr. Monk made a motion that a tan colored brick be used as the product in place of split-face concrete block to return in an abbreviated review. It was seconded by Mr. Grundhoefer.** Mr. McFarland explained there might not have been a lot of thought put into the cultured stone. Mr. Monk explained the size of the cinderblock versus the size of the brick implies value and time. Ms. Campbell noted the textured surface on the right side and asked if there were any other options. Mr. McFarland stated they were trying to use the existing colors of the building, and there were several products which looked like cultured stone. Mr. Grundhoefer pointed out everything being discussed was foreign to the existing materials, with the desire being something durable and more elegant. He was agreeable with the brick since it would be attainable and compatible to the existing materials. **The motion then carried unanimously.**

Consider Amendment to LDC Chapter 12-10 Floodplain Management

Mr. Bill Weeks, Chief Building Official, is requesting consideration of a Land Development Code Amendment to Chapter 12-10 – Floodplain Management. This amendment is a mandate directly from the State of Florida Division of Emergency Management and will enable the City to remain compliant with the Community Rating System (CRS). By maintaining the City's CRS rating, our citizens are able to enjoy discounts on their flood insurance premiums. The attached proposed language will completely replace the existing Chapter 12-10 and would satisfy the requirements of the state.

Mr. Weeks explained that currently there are over 300 communities in the National Flood Insurance Program (NFIP) for the State of Florida with different floodplain ordinances. Participation in the program to reduce future floodplain risks makes federal flood insurance available against flood losses. Action was required by our community to repeal and replace local floodplain management regulations. Chairman Ritz offered that coming into compliance with this ordinance would be a positive direction and would bring Pensacola into compliance. Mr. Larson pointed out as being a responder who inspects facilities after an

event, if the ordinance was not approved as submitted, we would not be eligible for the lower income families to obtain the grant monies available and would hinder rebuilding. Mr. Monk agreed it was something the Board needed to do. Mr. Weeks advised that currently Pensacola was a Class 7 community with a 15% designation and by adopting this ordinance, we could become a Class 6 more easily which would give an additional 5% discount. **Mr. Jordan made a motion to approve, seconded by Ms. Campbell. The motion then carried unanimously.**

Consider Amendment to LDC Section 12-2-6 Residential/Office Land Use District & LDC Section 12-2-8 Commercial Land Use District.

On April 12, 2018, City Council referred to this Board for review and recommendation an Amendment to Land Development Code Section 12-2-6 Residential/Office Land Use District and 12-2-8 Commercial Land Use District. This proposed amendment would require all permitted uses requesting a drive through component to be subject to LDC Section 12-2-78 – Conditional Use Permits. If approval is recommended, staff will make the appropriate changes in each section of the code under each zoning district due to the cumulative nature of our code. The amendment would include all businesses that have a drive through component such as banks, pharmacies, dry cleaners, and restaurants. Chairman Ritz explained this amendment covered the entire city limits. Ms. Deese confirmed every drive-thru would come before this Board and the City Council for approval. Mr. Monk did not understand the motivation since we have more and more small local businesses with a drive-thru and did not see any reason to add another element to become an impediment to small businesses and a nuisance to big corporations. Mr. Grundhoefer explained if a person wanted to place a drive-thru next to a residential zone because it would be allowed, might not be an appropriate situation. The Board would look favorably on an establishment such as Taco Bell if it was not adjacent to residential, and the Board could actually review for aesthetic appeal. Ms. Campbell advised she would actually support this amendment.

Mr. Andrew Landis Power stated you could have the best of both worlds if you specified if they were in so many feet of a residential area, they would come before the Board. Ms. Deese advised there was a $2000 filing fee for a Conditional Use Permit application. Mr. Monk thought of young entrepreneurs having a small coffee shop or dry cleaner enduring a $2,000 filing fee when they could be denied while corporations would have no problem. This might cause the make or break of small businesses. Ms. Campbell offered if $2,000 would make or break them, they didn't need to go into business. Mr. Monk explained the small business might not even choose to apply. **Ms. Campbell made a motion to accept the amendment as presented, seconded by Mr. Grundhoefer. The motion was denied 4 to 3, with Mr. Monk, Mr. Larson, Chairman Ritz, and Mr. Moore dissenting.**

Consider Amendment to LDC Section 12-4-6 Temporary Signs and LDC Chapter 12-14 Definitions.

In June 2015, the United States Supreme Court issued a decision in *Reed v. Town of Gilbert, Ariz.*, - U.S.-, 135 S. Ct. 2218 (2015) which clarified that temporary signs must be regulated in a content-neutral manner. This ruling impacted sign codes across the country, including the City of Pensacola's, because temporary signs are typically regulated by sign message. The Land Development Code currently provides specific regulations for temporary signs including real estate, political, construction, holiday displays, portable, garage sale, temporary banners, architectural or other temporary signs. These regulations are content-based and must be revised. Mr. Derek Cosson's comments have also been provided to the Board.

Chairman Ritz advised there was visual clutter with temporary signs especially during election times and agreed with Mr. Cosson's comments on the placement distance. He explained he lives on a road with a very large right-of-way, and if he went to the property line and stepped back 5 feet, he would

be quite a distance from the road and not visible. With that in mind, he preferred a shorter distance from the property line. Ms. Deese clarified the new ordinance would consist of a table with the maximum sign heights and square footage and four footnotes. Mr. Monk noted the decision from the Supreme Court and the desire of the City to conform, but he was still waiting on an answer regarding panhandling, and he was not in a rush to push this through especially in an election season. Mr. Jordan confirmed temporary signs could be up for one year or three days after the event takes place. City Attorney Bolin advised the Board needed to find a method to regulate temporary signs on a content-neutral basis. She pointed out the document was examined very carefully by Code Enforcement and Inspections to contain what was best for our community. This was the approach many cities were taking to revise the ordinances. Mr. Monk asked if the content-neutral approach would be limited to signs which were placed on metal brackets and placed in the ground or ones held by human beings. Ms. Bolin explained they would look at the definition of a sign in the Code which would not lend to a sign held by a human being. She directed the Board to page 5 for the language "Signs which are erected for a period of time not to exceed one (1) year." Per the Board's request, Ms. Deese read the definition of a sign from the current Land Development Code Section 12-14-1 "*Sign means any device, display or structure or a part thereof, which advertises, identifies, displays, directs or attracts attention to an object, person, institution, organization, business, product, service, event or location by the use of words, letters, figures, designs, symbols, fixtures, colors, illumination or projected images.*" Chairman Ritz emphasized the Board was not evaluating the content of the sign.

Diane Mack addressed the Board and stated they had been given a can of worms; what is before the Board is bad law, and what has happened is bad law making. She had read the Supreme Court decision word for word but noted that decision was delivered three years ago, and asked the Board not to rush into it. She explained the Council should be asked if they wanted to totally eliminate any kind of sign in the right-of-way which is a policy issue. She advised the Board needed to hear from Code Enforcement what would be workable and efficient enforcement. She recommended the Board conduct a workshop for fact finding with realtors, politicians and non-profit organizations. Mr. Jordan asked how the ordinance came before the Board, and Ms. Bolin advised they had drafted the ordinance for Council. Ms. Deese clarified that from time to time there were Code amendments from specific departments. This request was from a combination of departments including the City Attorney's Office, Code Enforcement and Building Inspections. **Mr. Monk made a motion for a workshop sometime after November 6, which was not a motion to approve but to workshop this particular ordinance with those agencies mentioned. It was seconded by Mr. Jordan.** Ms. Deese clarified that Planning staff does not deal with this particular Code section and noted it would not be appropriate to comment.

Steve Richards of Code Enforcement stated the constitutionality of the ordinance was questioned and brought to Administration who found there were some problems. The revised ordinance was more concise than the original one, and he explained he could get the information on who brought this ordinance forward. Chairman Ritz asked if often there were issues with improperly placed signs. Mr. Richards advised they worked with two ordinances dealing with temporary signs; this one identified political signs and the placement and length of time. He stated they worked all angles, and the ordinance was basically invalid, and they could not enforce it. Ms. Bolin stated they had anticipated that since the decision came down they would need to amend the Code, and Mr. Wells and Ms. Morris

worked on the redraft of the Code which is pending for Council approval. Chairman Ritz clarified the Board was acting on the revision of the ordinance and was it right for Pensacola. If the motion was approved, it would not go to City Council. Ms. Deese explained staff would notify Council staff on the Board's recommendation. The time limits state Planning Board has 45 days to make a decision unless a longer or shorter period is specified. Mr. Larson liked the idea of examining the distances of the property lines. Since the process required time, Chairman Ritz suggested the review process begin before November 6. Mr. Grundhoefer explained there were no dramatic changes in the ordinance, with the biggest element being allowing signs on the right-of-way, and he was embarrassed at the amount of existing signage on the right-of-ways. He explained one of the tasks of the Board was to protect the beauty of the city for its citizens. Mr. Richards advised the problem would only get worse.

Ms. Mack again addressed the Board and stated the fact the Supreme Court handed down its decision did not invalidate the current ordinance. Mr. Monk failed to see the sense of urgency on signage with $15 fines, when real human beings have been arrested repeatedly for doing basic human functions without any answer; the sudden need for this change did not make sense. Mr. Jordan asked if Enforcement had been told to not enforce the ordinance, and Mr. Richards stated they were instructed by the City Administrator to hold off on enforcement of this particular ordinance and forward it to the Legal Department. Ms. Bolin explained that the current ordinance was valid until it was either changed by Council or challenged in court, however, they anticipated that Council could go forward with an ordinance without going through the Planning Board. It was a decision of Administration not to enforce, since it was anticipated that there would be new language. Chairman Ritz agreed the Board had set dates further down the calendar to allow interested parties to be involved. Mr. Wells advised he had worked on the ordinance, and the reason for the ordinance coming before the Board was the provision in the LDC that states the Council itself cannot amend the LDC without first bringing the issue before the Planning Board for its recommendation. He also stated the Council was probably not aware this document was with the Board today. Through the process of recodification, he noted many sections were amended which conflicted with what the signage should be. The City Administrator had asked the City Attorney to look at the political sign issue and come up with a proposed alternative to meet the criteria, and because the political sign was one of several issues in the temporary sign code section, she chose to provide an ordinance which dealt with all temporary signage. This ordinance was patterned after many cities in Florida. He explained putting off a decision until after the elections was a good decision, but it would not be a solution Mr. Richards could use without some direction from the City Administrator.

Mr. Monk said it sounded like someone who was running for office brought up the situation. Mr. Moore pointed out we all get angry about lawsuits for misspent tax dollars and asked about the timeline for a workshop. Ms. Deese explained it would be the same as a regular meeting with the normal advertisements, but no quorum was required since action would not be taken. Whatever consensus was found by the Board would be presented at a regularly scheduled Board meeting as an agenda item. Mr. Monk pointed out if the workshop was before the election, anyone who was running for office would have to address this issue, and he did not feel signs were the number one issue facing Pensacola. Passing it as is and if you had $100,000 in your campaign fund, you could place political signs on every property your friend owns; it would be the "wild wild west" for political signs except they would not be in right-of-ways. Mr. Grundhoefer suggested the Board should act sooner

than November. Chairman Ritz explained if the process began in August and followed a specific timeline, it could take until after November to complete.

Ms. Bolin advised they had consulted with Code Enforcement, and it was correct legally based on what other communities were doing; it was content neutral, and as indicated, a revision was in the works, but the ordinance needed to be amended. Chairman Ritz asked for the earliest date available for the workshop. Ms. Deese confirmed that part of the process was looking at the Escambia County ordinance which had recently been amended, and this could serve as an example to consider. Ms. Deese explained that she would contact members in the next day or so for each member's availability for a workshop. Ms. Bolin advised she would work with Ms. Deese and obtain input from Ms. Mack and other key people and provide other examples of ordinances for the Board.

Mr. Monk amended his motion to have a workshop prior to the July 2018 Board meeting, seconded by Mr. Jordan, and it carried unanimously. Ms. Deese clarified that the Board was tasked to provide Council with a recommendation, and with postponing in favor of a workshop, the Board was withholding a recommendation, but she would still notify through Council staff the Board's decision and to make them aware that the issue would eventually come to Council.

Open Forum – None

Adjournment – With no further business, Chairman Ritz adjourned the meeting at 4:08 pm.

Respectfully Submitted,

Brandi C. Deese
Secretary to the Board