

PLANNING AND ZONING BOARD MINUTES
THURSDAY, JUNE 1, 2023 - 1:30 PM
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA

PRESENT: Chairman Jeb Bittner; Vice Chairman, Jose Prieto; **Members:** Robin Pelensky, Timothy Velde, Alternate Member, Elliese Shaughnessy and Alternate Member, Jake McCrae **Also Present:** Planning Director, Jason Jeffries; Public Works Director, Matt Mitts; City Attorney, John Turner and Deputy City Clerk, Sherri Philo

Excused Absence: Jason Ground

Today's meeting was called to order at 1:30 p.m.

I. PRELIMINARY MATTERS

A. Agenda Additions and/or Deletions

None

II. APPROVAL OF MINUTES

A. Regular Meeting – May 4, 2023

Mr. Prieto made a motion to approve the minutes of the May 4, 2023 Planning and Zoning Board meeting. Ms. Shaughnessy seconded the motion and it passed unanimously.

III. PUBLIC COMMENT

None

IV. DISCUSSIONS

A. Plantings in Right of Way

Mr. Jason Jeffries, Planning Director, said this item is before the Board at the request of Mr. Matt Mitts, Public Works Director. He reported that an issue has come up regarding the new Right-of-Way Ordinance that was adopted in 2022 with regards to plantings in the right-of-way and Mr. Mitts would like to get some feedback from the Board.

Mr. Matt Mitts, Public Works Director, gave a Power Point presentation (attached to the original minutes). He said the City's current policy is that plantings are generally not allowed in the right-of-way unless it is a City project. The City's adopted policy states, "*the abutting property owner shall not place any landscape materials other than sod or turf within the right-of-way.*" He said they have had a few property owners come to the City who wanted to put in rocks, small plants, or Florida friendly native plants in the right-of-way. However, although those objects may not be a hazard or a public safety threat they were prohibited because the Code states that it shall be turf grass. There is also an issue if there are existing plantings in the right-of-way and the property owner does some improvements, such as updates their driveway, installs a STEP System, etc., the City is faced with the difficult situation of telling the property owner that even though they have had plantings in the right-of-way for years they cannot replace them. He stated that right-of-ways are dedicated for

transportation, utilities, and public safety and is not owned by the adjacent owner. If they do allow landscaping in the right-of-way they have to communicate to the property owners that it will be completely at their risk. His recommendation is that the Public Works Department would review these on a case by case basis. He referred to the slide that showed the proposed right-of-way plantings. He explained that they want to have a list of pre-approved plants that are low and Florida friendly that do not require a lot of fertilizer or water use that they could give property owners when they come in for a permit.

Mr. Velde referred to the slide that showed the ideal right-of-way condition on Bougainvillea Lane. He said this area was different than the areas shown on the other slides that had existing plantings. He explained that the other slides looked like the pictures were taken in subdivisions and usually the homeowners would have irrigation that would go to the street. On Bougainvillea Lane if they were to do plantings in the right-of-way, there was nothing in any of the backup information about any irrigation policies or rules or regulations. He felt there should a statement on what kind of irrigation they could have in the right-of-way. He also thought there were some better suggestions or other choices that they could add to the list of permitted plantings.

Mr. Jeffries said this issue came about over a Code Enforcement case and he thought there was someone in the audience who would like to address the Board. He felt that the Board might want to hear their comments and concerns before they provide their feedback to staff.

Ms. P.K. Barrie said that she lives on Iris Lane and in 2022 she had the STEP System installed and a substantial amount of the landscaping in the right-of-way was completely destroyed. She had her lot surveyed and had the City mark the utility lines. She consulted with five (5) different landscapers and no one told her that she needed a right-of-way permit. She hired a landscaper at a five (5) figure price to restore the landscaping in her front yard and in the right-of-way. On May 8, 2022 they laid out all the plants and started installing them on May 9th. Then a City Code Enforcement Officer stopped the landscapers and told them that all the landscaping had to be removed from the right-of-way. The Code Officer left without giving them their name or a business card and would not wait to speak with her. When she found out about this she called the Water and Sewer Department and Mr. Dallas Jenkins, Manager of the Water and Sewer Department, was at her house within the hour. He told her that not one thing they were installing had any threat to the City's utilities, line of sight, or to the STEP System. He told her that he did not have any problem with her leaving the landscaping there. She said that she wanted to know who the Code Enforcement Officer was because she didn't want to have any issues. Mr. Jenkins called Mr. David Gay, City Surveyor, from her front yard and told him what was going on. Mr. Gay told him that she would have to take everything out and put down sod. He asked that she call Mr. Mitts. She said that she then left a message for Mr. Mitts to contact her. She then went to the Muni-Code system to see if she could find the section of the Code, but was unable to locate it. She called Mr. Gay and asked if she could put in a different type of drought resistant plant that is not technically turf, but looks like long tall grass. Mr. Gay told her that he spoke with Mr. Mitts and there was no possible variance and there was nothing they could do. She told Mr. Gay that her neighbor down the street installed landscaping and Mr. Gay told her that the City was involved in an enforcement action against that landscaper. She said that she took out the landscaping, which was at a very significant expense. She explained that she installed the landscaping, had to take the landscaping out, and then had to pay for the yard to be redesigned. She said that Mr. Gay came to her house after the landscaping was removed and she asked him about her neighbor because her neighbor removed Eureka Palm Trees from the front of her right-of-way and planted one in the right-of-way next to her lot line. Mr. Gay said her neighbor is going to have to take that out. She said that she decided to do what was asked and put down sod. She said that one of her neighbors told her landscaper that she was going to put in a large Oak Tree and he asked the City if he could put in a tree and was told no. She said that she gave her neighbor Mr. Gay's telephone number and asked her to please not get into the same situation that she was in by putting in

landscaping and having to take it out. Her neighbor went ahead and installed an Oak Tree and completely landscaped her front yard. She said that she called Mr. Gay and asked him why did she have to take out all her landscaping and her next door neighbor completely landscaped her yard and it didn't seem like there was a problem. Mr. Gay told her that the City decided to stop enforcing this Code while waiting to speak with the Board. She said that her neighbor's yard looks great and she was not here to ask the City to have anyone remove their landscaping from the right-of-way. What she is asking is that the City educate the landscapers. She said they need to know that they need a right-of-way permit. Also, there has to be alternatives besides grass. She said that she has been watering her sod four (4) times a day using City water, which is like gold. She also had to purchase sprinklers and hire an irrigation expert. She was in favor of the City having some flexibility besides sod. She felt there should be some alternatives. She felt that the people who have already installed landscaping that doesn't harm the utilities or create sight problems, they should be given retroactive right-of-way permits so they don't have to rip out their landscaping. She said the "status quo" is not working and it is really unfair. She said that she wanted the Board to hear firsthand what it is like and how it feels when she was told by the City that all neighbors would be treated the same, which helped convince her to take out all her landscaping and then a week later her neighbor installed trees and hedges with nothing being done about it. She said that was not fair.

Mr. Bittner said that he was sorry that she had to go through this. He said this has more to do with communication and knowledge than what is actually being planted. He said one of the problems when they get into people said it is "our yard" or "their yard," but what they are really talking about is public land. The right-of-way does not belong to the homeowner. He said that he did not see a need to change the Code. He thought that they needed to educate residents and contractors. He thought something should be discussed for preexisting conditions separately. He explained when someone plants in the right-of-way with the City's permission and then they move there will be another preexisting condition. He said they need to think about the staff requirements of having to individually approve or disapprove every lot in the City. He said the photographs of the plants were beautiful, however when you plant the entire right-of-way there will be species that will grow tall, that will die, there could be volunteer Oak Trees from seedlings growing through it, etc., so it would not always look like the photographs of suggested plantings. He said they may be drought tolerant, but they are not drought resistant. He thought this needed a lot more discussion. He asked would they do this where there is only curb and gutter or where there is a flat shoulder. He said many neighborhoods that have curb and gutter are typically used for off-street parking on a temporary basis, such as lawn services, a party, etc. He said if they plant this type of material in the right-of-way then they would have double parking on the street, which makes it impassable for fire, health, and safety.

Mr. Prieto asked who is responsible to maintain the plantings in the right-of-way.

Mr. Mitts said by Ordinance the property owner is responsible for maintenance.

Mrs. Pelensky said there are areas in the City where the right-of-ways are heavily shaded. Putting sod in those areas and keeping it looking like it should does not happen. She said landscape is site specific. It is not a one fits all. It does not work that way with plant material. She said that she would like to hear from more than just one person. She said landscaping is very site specific and it would be hard for them to come up with something that was going to make everyone happy. She said that she did not care for the Ordinance in making it absolutely not an option to put anything in but turf. She said the plants staff was suggesting would not be her choice. She did not feel that it was her right as a Board member to tell a homeowner that these were the only things that they could look at. She understands that it is in the right-of-way, but people look at it as an extension of their yard. She felt that there were a lot of people in the City who would have a lot to say about this and they should have the opportunity to say what they think about this.

Mr. Jeffries said staff felt that because the property owners were responsible for maintaining it that they should be able to put in some sort of plants. He noted that they would need to make sure that whatever they plant does not interfere with maintenance of the road, traffic safety, stormwater, etc.

Mrs. Pelensky said the Florida Department of Transportation (FDOT) has rules for plantings in the right-of-way where they have to be maintained and could only be at a certain height.

Mr. Mitts noted that right-of-way permits are free. Their goal is compliance and they want the right-of-ways to be safe. They are willing to work with the homeowners, which is why he was proposing this policy.

Mr. Bittner said this is a significant change to how the streets would look if they just opened the door and allowed any plants in the right-of-way as long as they don't grow any higher than six (6) inches. He said they could wind up with all kinds of stuff. He asked who is going to enforce this. He said they were making a decision based on a population of individuals who are upset with the current policy. He said there are all kinds of questions that he does not think they have the answers to in order to make any changes in the policy today. He would like to see it vetted more and have more stakeholders in attendance. He said there was no example shown in the photographs provided in the Power Point presentation that those hedges would not supply the same privacy if they were pulled back within the right-of-way line. They could still have their privacy. They just could not add the right-of-way to their yard. He said these issues are manageable under the current Code. He questioned what if someone sells their house and the purchaser does not want to maintain the right-of-way.

Mr. David Gay, City Surveyor, said since they have been enforcing the Code it has only affected the people who do the right thing and get a permit. He said currently the Clusia Hedges seems to be the popular plant and people are not getting a right-of-way permit and are planting them as close to the road as they can. He said that they let Ms. Barrie know about the Ordinance because staff was told to enforce it. Ms. Barrie did the right thing and got the right-of-way permit and was punished. He said for every person who is trying to do it right there are 100 people who are doing what they want because it is their yard and they don't get the permit.

Mr. Bittner said it is the people who don't care that are creating the issue.

Mrs. Pelensky said that Ms. Barrie had a reputable landscape installation company do the work for her, which to her showed that they don't know that a permit is required. She said that she is a Landscape Architect so she knows the rules of the right-of-ways, however she has never heard of a landscape permit. She does not think that the landscape contractors know that a permit is required.

Mr. Gay said by Code, any work in a right-of-way requires a permit. He said people believe their property goes all the way to the edge of the road so they don't think permits are needed because they are planting in their own yard. He wanted to clarify that it was not a Code Enforcement Officer who approached Ms. Barrie. It was the City's Surveyor/Inspector who warned Ms. Barrie that she could potentially be in Code Enforcement if she kept going with the plantings.

Mrs. Pelensky said that she didn't think homeowners and contractors know about this.

Mr. Mitts said there are only a handful on landscaping contractors so it would not be an issue for staff to send them a letter or to call them to make them aware of this.

Ms. Barrie said that she did let her neighbor know about this and gave her Mr. Gay's telephone

number. She also had the City put a stake in her neighbor's yard so she would know where the right-of-way was located because she didn't want her neighbor to go through what she went through. However, her neighbor went ahead and put in the landscaping anyway.

Mr. Bittner asked in 2022 through this year, how many interactions have there been where someone has had that type of complaint. He questioned in a population of thousands, were they talking about 100 people or 50 people a year that is driving this.

Mr. Gay said there were probably 100 instances of people planting the Clusia Hedges in the last couple months that were planted as close to the road as they could.

Mr. Prieto said this sounds more like a code enforcement issue. He said it is in black and white what they could do.

Mr. Gay said that is where they are getting to if they are going to enforce sod only then there would be a lot of code enforcement cases needed.

Mr. Prieto thought that was the answer.

Mr. Bittner said they need to get the word out to the community on what is allowed and what is not allowed.

Mr. John Turner, City Attorney, asked that the Board takes a recess so that he could speak with staff.

The Board took a break at 2:28 p.m. and reconvened at 2:32 p.m.

Mr. Jeffries said staff received the Board's feedback and comments and would take this before the City Council to get their direction.

B. Permitted Uses In Commercial Districts

Mr. Jeffries went over the draft Ordinance on permitted uses in commercial districts with the Board members accompanied by a Power Point presentation (attached to the original minutes).

Mr. Bittner referred to page nine (9) of the draft Ordinance, lines 5 and 6. He suggested that they remove *laundry drop-off, parcel mail services, and printing and copy services* and put them into general services.

V. PLANNING DEPARTMENT MATTERS

Mr. Jeffries reported that there would be a few quasi-judicial hearings at their June 15, 2023 meeting. He said there would not be a meeting on July 6, 2023.

VI. BOARD MEMBERS' MATTERS

None

VII. ADJOURNMENT

Today's meeting adjourned at 3:24 p.m.

/sp