

**PLANNING AND ZONING BOARD  
MEETING MINUTES  
CITY COMMISSION CHAMBERS  
THURSDAY, OCTOBER 12, 2023  
6:00 P.M.**

**Chair Fountain** called the Planning and Zoning Board Meeting to order at 6:00 p.m. in the City Hall Chambers located at 120 E. Pomelo Street, Lake Alfred, Florida.

**Board Members in Attendance:** Chair Ike Fountain, Vice-Chair Brenda Arnold, Board Member Herb Nigg, Board Member Ron Pestone, Board Member Scott Gearhart, Board Member Daley, and Alternate Board Member John Reinert. A quorum was present.

**Board Members Absent:** Board Member Bancroft Fisher and Alternate Member Cathy Long

**Staff:** Community Development Director Ameer Bailey, City Attorney Seth Claytor, City Clerk Linda Bourgeois, Code Enforcement Officer Carl Watson, and City Planner Erika Tulloch.

**Chair Fountain** presented the September 25, 2023, Planning and Zoning Board Workshop Minutes for approval.

**Alternate Board Member Reinert** made a motion to approve the September 25, 2023, Planning and Zoning Board Workshop minutes. The motion was seconded by **Vice Chair Arnold**. The motion was unanimously approved.

The September 25, 2023, regular Planning and Zoning Board minutes will be presented on the next agenda for consideration of approval.

There were no audience members in attendance.

**Director Bailey** began the presentation on the review of ULDC section 3.8.12 Swimming Pool and Enclosures. She said Section 3.8 of the City's Unified Land Development Code (ULDC) defines accessory uses and structures. An accessory structure is an incidental and subordinate structure (not exceeding 50 percent of the building square footage of the principal structure), permitted within a given zoning district. The use of which is incidental to that of the principal structure on the same lot or parcel. Accessory structures include but are not limited to, a pool, screen enclosures, a deck, or a patio.

The section also regulates accessory uses and structures for construction, placement, and use, in order to ensure that they do not adversely affect nearby residents and/or surrounding properties. In addition, the accessory structure shall meet all requirements set forth in individual zoning districts, and other applicable provisions of this Code. Section 3.8.12 specifically addresses pools and enclosures.

The staff proposed the following language:

**Setbacks.** For purposes of setback measurement, the term "swimming pool" shall include all surrounding decking and vertical supports for screen enclosures.

- 1.) Swimming pools shall have a minimum of five (5) feet clear walking path separation ~~from~~ between the swimming pool (edge of water) and the primary structure ~~or any other structures~~ (attached or detached).
2. Detached ~~S~~swimming pools shall meet the accessory structure setbacks.
3. Swimming pool decks attached to the primary structure shall meet the side

setback requirements for the primary structure.

She said that the staff finds that the proposed Unified Land Development Code text amendments are consistent with the City of Lake Alfred's Comprehensive Plan and recommends approval to the City Commission of the City-initiated text amendments.

**Alternate Board Member Reinert** shared a personal experience and said we should err on the side of caution and leave the buffered space.

**Chair Fountain** shared his experience with a 3-foot walk space around the pool and said in twenty years there were no accidents. He was in favor of reducing it to a three-foot walkway around the pool.

The City Attorney said since we were considering a reduction in the walkway space, Senate Bill 250 would not apply because it is not more burdensome or restrictive.

The floor was opened to public comments and seeing no one the public comments were closed.

**Alternate Board Member Reinert** made a motion to recommend approval to the City Commission of the text amendments with the modification to keep the five-foot clear walk path from the primary structure and a three-foot walkway around the rest of the pool. The motion was seconded by **Board Member Gearhart**. The motion was unanimously approved.

**Director Bailey** began the presentation on the review of ULDC Section 2.3.2.G - Compliance with the Downtown Overlay District (DOD) standards. She said During a recent application review, staff recognized the opportunity for improvements based on the recent increases in property values and assessments. These changes in values over time have changed the intent of the original provisions and do not allow the type of flexibility previously envisioned. The staff proposed the following language.

1. *New Construction* refers to site preparation for and construction of an entirely new freestanding structure, whether or not the site was previously occupied. The area of development shall be the area of the site containing the new freestanding building(s), additions, existing structures, facilities and/or improvement(s) proposed by the applicant or required to serve those new construction proposed by the applicant.
2. *Minor Exterior Improvements* include the exterior improvement, attached expansion, and/or replacement of structures where the value of such ~~work is~~ improvements are less than 50 percent (%) of the ~~assessed~~ appraised value of all buildings on the parcel at the time of building permit issuance and if an improvement is less than either (i) 50 percent (%) of the existing structure's floor area; or (ii) 2,000 square feet. The appraised value shall include the value of other such work performed within the previous 24 months, ~~but not before the effective date of this Overlay District.~~ The appraised value shall utilize the square footage construction costs from the International Code Council, latest edition, to estimate the value of both the existing and proposed structure(s).
3. *Substantial Exterior Improvements* include the exterior improvement, attached expansion, and/or replacement of structures including parking lots and stormwater facilities where the value of such ~~work is~~ improvements are 50 percent (%) or more of the ~~assessed~~ appraised value of all buildings on the parcel at the time of building permit

issuance ~~or~~ and if an improvement exceeds either (i) the lesser of 50 percent (%) of the existing structure's floor area; or (ii) 2,000 square feet. The appraised value shall include the value of other such work performed within the previous 24 months, ~~but not before the effective date of this Overlay District.~~ The appraised value shall utilize the square footage construction costs from the International Code Council, latest edition, to estimate the value of both the existing and proposed structure(s).

**Board Member Pestone** asked about the appraised value of the property. Director Bailey explained the difference between the appraised and assessed value of buildings.

The discussion surrounded comparing it to today's construction costs, the proposed changes being fairer and more equitable when assessing the properties, the proposed changes would provide resources for estimations through standard mechanisms, and this amendment would allow more flexibility to the smaller local businesses.

**Alternate Board Member Reinert** asked for specific information and Director Bailey provided a hypothetical situation using the old State Farm building as an example.

A discussion ensued about the assessed value not accounting for inflation or the current costs of building materials, and since it now costs more to build the owners are disadvantaged by time. Further discussion surrounded that the Polk County Property Appraiser would be the standard resource for information, the overarching goal of this amendment is to maintain a certain image in the downtown corridor, and this change would allow staff to make small modifications.

**Director Bailey** said the code was intended to accommodate minor circumstances and the modifications to the code will make it more flexible.

The Planning and Zoning Board members continued the discussion and spoke about the appraised value and the dollar value possibly being tied to the notice of commencement.

**Board Member Pestone** said that the square footage was a good way to evaluate the project costs.

**Board Member Nigg** said he was struggling to understand the proposed language and requested to say it with the exact intent of the city. He continued and said that he thought that the proposed amendments could be considered more restrictive if a business runs into a problem if they get turned down.

A discussion ensued about appraisal costs, the bid selection process of getting at least three bids, it was best practice to select the middle bid, and the request for language to ensure that the bids always default in favor of the applicant.

The City Attorney said whenever there is a discretionary action on behalf of City staff, City staff must use objective criteria in making a determination. City staff must use express written criteria related to how the City is going to make a selection and/or determination. The criteria, if related to the use of multiple appraisals, is generally articulated within the ordinance itself. That way if it is ever called into question, it won't be an arbitrary and capricious type or an unreasonableness type decision on the part of City staff.

**Director Bailey** said we would need to modify the last paragraph some and she shared that the staff liked the International Code Council for the cost of the construction. There is a legitimate standard there versus someone just turning in costs that may or may not make sense. She said maybe we could make it a universal standard to use as what it would cost to construct the building now as it is sitting there existing and using the same value system for what is being built. Then you are actually looking at apples and apples. Essentially instead of comparing appraised and assessed, you are comparing the standard value of what the construction costs of what it would be today and the same standard for the value of what it would be for the building they want to construct. It would be using the square footage of the existing building and the square footage of the proposed building.

**Alternate Board Member Reinert** recommended specifying the current version of the International Code Council in the language modification. He also recommended removing the statement of the reputable source or specifying what other reputable sources are because opinions vary on what is a reputable source.

The City Attorney clarified and said that, if you have the cost of construction versus an appraised value by a licensed appraiser of Florida, it would be the board's preference that it would be the amount most favorable to the applicant.

Many board members stated that was correct.

**Board Member Pestone** said you could use Means cost as the whole industry uses it all the time, saying it was a standard for estimating costs. They use it across the country, and it is adapted to the specific area where you are located.

**Director Bailey** said the city will leave the appraised value, the 50%, and the 2,000 square feet. When we get to the last portion, instead of saying in lieu of an appraisal, we will say the appraisal shall be based on the square footage of the construction costs for the existing structure and the proposed structure as indicated in the latest edition of the version of the International Code Council.

The City Attorney said the Board should make a motion to amend or modify the amendment and then take a vote on the amendment. The second motion would be the text amendment as a whole. The voted-on amendment or modification would then be included with the text entire amendment. This will bootstrap it.

The floor was opened to public comments and seeing no one the public comments were closed.

**Alternate Board Member Reinert** made a motion that the Planning and Zoning Board recommend approval of the following modifications [The appraisal shall be based on the square footage of the construction costs for the existing structure and the proposed structure as indicated in the latest edition of the version of the International Code Council] of the city-initiated text amendments in Section 2.3.2.G of the Downtown Overlay District standards. **Board Member Pestone** seconded the motion. The motion was unanimously approved.

The text amendments now include the modification.

**Board Member Nigg** requested the modified language be read into the record. Director Bailey said the appraisal shall utilize the square footage of the construction costs for both the existing and proposed structure from the latest version of the International Code Council.

The floor was opened to public comments and seeing no one the public comments were closed.

**Alternate Board Member Reinert** made a motion that the Planning and Zoning Board recommend approval of the text amendments. **Vice Chair Arnold** seconded the motion. The motion was unanimously approved.

**Chair Fountain** presented the next business items for discussion.

3. ULDC Section 9.2.2.C - Planning and Zoning Board
4. Planning and Zoning Board Rules of Procedure

**Director Bailey** presented and said she had color-coded the Unified Land Development Code (ULDC) and the By-laws to show what can be changed by the board in the By-Laws and what was tied to the ULDC and would have to be approved by the City Commission through text amendments.

The staff said some of the questions received from the Board related to the purpose and appointments. The number of members, and the difference between regular and alternate members. The number of members, type of member, and the term for each member are approved by the City Commission as they are stated in Section 9.2.2.C.2. She said the only feedback received as to the by-laws was to specify and add “business” to the three-day requirement of the agenda packet to read three business days prior to the meeting. In previous discussions, the topics were training, conduct, and membership of the board.

The staff reviewed the purpose of the Planning and Zoning Board and reviewed the statutory requirements, the City Commission appointments, and the membership. She reviewed the history of the creation of the Planning and Zoning Board, the challenges faced with having a consistent quorum in the past, the composition of the Planning and Zoning Boards and Board of Adjustments of neighboring cities, and the terms of the members. The staff recommended evaluating the members of the board and considering a smaller number of members for the Board, retaining the use of alternates, and no changes to the length of the terms. The staff did not receive any other questions regarding changes to Section 9.2.2.C.

**Board Member Nigg** said he had emailed the staff and wanted to know why Alternate Board Member Reinert could not be a regular member. Director Bailey said we had seven regular members and two alternates. He continued and said we have seven members tonight and Director Bailey pointed out that Board Member Fisher and Alternate Board Member Long were not in attendance. She said Alternate Board Member Reinert was assigned to an alternate position and has been in that position for almost three years. Board Member Nigg asked if when he was finished with his three-year term would the City make him a regular member and Director Bailey said he could reapply to be appointed by the City Commission as an alternate or a regular member.

**Alternate Board Member Reinert** suggested removing the term alternate or regular and you are a board member, he wanted it to remain at a nine-member board and stated that it should be at

large and not restricted to particular areas of the City. He said then there would be other areas that it would be impacted such as a quorum consisting of five members.

**Chair Fountain** asked if there was any meeting that you were not [able to participate] and Director Bailey said there has only been one meeting where there were eight members attended and Alternate Board Member Long sat down at the table with the staff.

**Alternate Board Member Reinert** said with the explosive growth we have been experiencing that you are going to want to have more people involved up here. He said there were three open spots when he came on and they are now all filled. Having more people gives more ideas than having five people on the board. He said he thinks that for the Chair and Vice Chair, there should be a maximum of a two-year limit on the positions. He continued and spoke about the five-minute speaking limit.

**Director Bailey** said the way it generally works is the applicant has thirty minutes, the members of the public have five minutes, and a group has thirty minutes. It is indicated in yellow on the document because it is a part of the Code of Ordinance established by the City Commission.

A discussion of the board occurred about the five-minute speaking limit, the applicant still had the opportunity to rebut any testimony provided, and generally, the applicant would reserve five minutes after all the opposition had spoken to rebut. Further discussion was on the applicant's speaking time being reduced to twenty minutes, the definition of a group, a group is not defined by law, and you will recognize a group when they come to the meeting.

**Vice Chair Arnold** said she would like to leave it at a five-minute time limit and **Board Member Daley** agreed saying if it was not broken, we don't need to fix it.

It was agreed by consensus of the Planning and Zoning Board that the five-minute speaking limit was fair for the public and the thirty minutes was fair for the applicant. There were no proposed changes to the language.

**Board Member Pestone** said he wanted to specify that the agenda packet be distributed three business days before the meeting because it is difficult to review the packet if you are busy on a weekend.

The board agreed to change it to three "business" days.

The Chair asked if there was a consensus of the board to have a nine-member board without any alternates.

**Board Member Pestone** said he would agree with that.

**Board Member Daley** disagreed and said the current setup of the board has been very effective and has worked for many years. She said that she is okay with the seven members and two alternates and the current term limits that we have.

**Board Member Gearhart** said he liked the nine members' idea.

**Board Member Nigg** said he doesn't like the idea of a system that has two classes of people. He said he thinks we should go with no alternates.

**Vice Chair Arnold** said she would like to see it left as it is because we have not had any problems with the alternates or regular board members. She said if we were having issues with board members just not showing up then she would say yes.

**Board Member Daley** said we are here to represent the city and residents of the city and how we can best serve them. It is not about us. We are volunteers because we want to do this. We are looking out for the mom and pops and the people who live here. This board has worked fine for many years. We do not all agree, but we can do it respectfully and professionally. She is not in favor of the proposed changes.

**Board Member Pestone** said he was in favor of the nine-member board without any alternates.

There were four Planning and Zoning members favorable to making it a nine-member board with no alternates.

There was a discussion that not all board members were present, the rules of order, a quorum was present, and the appreciation of having all board members state their positions.

The City Attorney recommended taking their recommendation for a nine-member board to the City Commission. He said you could be putting yourselves in a situation where a potential issue may arise related to a quorum. He appreciates the involvement and says he would finalize the By-Laws after getting the authorization from the City Commission.

That was the only item in the 9.2.2.C.

**Board Member Pestone** asked how it goes to the City Commission and the staff said just like any text amendments this will go as a request for the change.

**Alternate Board Member Reinert** made a motion that the Planning and Zoning Board send a recommendation to the City Commission to appoint nine members to the planning and zoning board. [striking out ~~seven~~, replacing it with nine, and then striking out ~~and two alternate members~~].

**Chair Fountain** asked how many City Commissioners the City had and Director Bailey responded that there were five. And we need nine?

**Board Member Daley** said it was about the residents of the City and like Chair Fountain just said, we have a City Commission, that makes the decisions and has five members, why do we need nine?

**Chair Fountain** called for a second and **Board Member Pestone** seconded the motion. The floor was opened for discussion.

**Alternate Board Member Reinert** said he would not ever want to stifle people who wanted to get involved. What we are saying is if we had two additional people here who were willing to take the time out of their day, and if they were here, my opinion wouldn't matter. If we had all nine here today, I would not even be allowed to make a motion because he is not a regular member. I am a second-class citizen on the board as an alternate.

**Board Member Daley** said she didn't view him as a second-class citizen. Again, if the City

Commission operates with five board members, why do we need nine?

**Vice Chair Arnold** agreed.

The floor was opened to public comments and seeing no one the public comments were closed.

**Board Member Nigg** called the question.

The City Clerk conducted a roll call vote.

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|--------------------------------|-----|
| Alternate Board Member Reinert | Aye |
| Board Member Gearhart          | Aye |
| Board Member Nigg              | Aye |
| Vice Chair Arnold              | Nay |
| Chair Fountain                 | Nay |
| Board Member Pestone           | Aye |
| Board Member Daley             | Nay |

The motion carried and the recommendation will be sent to the City Commission.

**Director Bailey** said the staff recommendation is twofold, there are certain things in the By-Laws, that have nothing to do with this, and then you have some that would be based on the City Commission's decision if they approve this. The term limits and business days discussion are separate from the membership discussion, you could move and vote to approve those types of things tonight. You would not be able to change anything related to the recommendation to the City Commission such as changing the quorum or role of the alternates until the City Commission's decision is made.

**Chair Fountain** opened the floor for discussion on the two-year term limit of the Chair and Vice Chair as suggested by Alternate Board Member Reinert.

**Alternate Board Member Reinert** said he didn't think people should be staying in those positions for forty years just because they can.

**Director Bailey** provided clarification and said at the beginning of each year this board votes on who the Chair and Vice Chair are going to be. The By-Laws allow for the board to select because if they like the Chair and want to keep the Chair they could as long as they wanted.

**Alternate Board Member Reinert** said the problem is we have done it for so long, we will just leave Ike on there because he has always been the Chair. Ike does a good job so we will just leave him there, it becomes a Good Ole Boy society. He would like to see some form of a term limit.

**Board Member Daley** said he is an effective Chairman and has been for years. This is something we vote on each year. She continued and said at the last board meeting she was disturbed by some of the actions. She said she is a female each of us in here has a mother, sister, daughters, and aunts and she thinks we all need to be more respectful of each other and the City staff. When she left the last meeting, it was not a good feeling. We all deserve respect.



**Board Member Pestone** said he doesn't disagree with that. He said that he does think it is a problem when everyone agrees and if it winds up to be somewhat of a heated discussion so be it. Many great decisions have been made over heated discussions. He doesn't have a problem with that.

**Board Member Gearhart** is fine with the way it is right now because we have a choice each year to change it or not if they are doing a good job.

**Board Member Nigg** said he could go either way but added that term limits are healthy.

**Vice Chair Arnold** said she would like it the way it is.

**Board Member Pestone** said he liked the term limits, especially in the present as they seem to make sense.

**Board Member Daley** said she agreed to leave it the way it is.

**Chair Fountain** said he was like Board Member Nigg he could go either way.

**Alternate Board Member Reinert** said after a chair has been in the position 15 years they could become corrupt and then said this was nothing against the Chair personally.

**Chair Fountain** said there was no offense taken.

**Director Bailey** added an interesting fact that there were no term limits for the members for serving on the Planning and Zoning board nor are there any term limits on the City Commission either.

**Chair Fountain** said he would rather see the term limits on the membership and then you would never have an issue with the Chair or Vice Chair serving multiple years.

The floor was opened to public comments and seeing no one the public comments were closed.

**Alternate Board Member Reinert** made a motion to limit the Chair and Vice Chair to a two-year limit term followed by one year off and then they can come back on. **Board Member Pestone** seconded the motion.

The City Clerk conducted a roll call vote.

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|--------------------------------|-----|
| Alternate Board Member Reinert | Aye |
| Board Member Gearhart          | Nay |
| Board Member Nigg              | Aye |
| Vice Chair Arnold              | Nay |
| Chair Fountain                 | Nay |
| Board Member Pestone           | Aye |
| Board Member Daley             | Nay |

The motion failed.

The Chair opened the floor for discussion on the three business days for the agenda packet to be distributed.

**Alternate Board Member Reinert** said he did not want to get the agenda packet on a Tuesday evening for a Thursday meeting. He is recommending no later than 6:00 PM on Monday.

There was no further discussion.

The floor was opened to public comments and seeing no one the public comments were closed.

**Board Member Pestone** made a motion for the agenda packet to be given to them three “business” days prior to the meeting. The motion was seconded by **Board Member Nigg**. The motion was unanimously approved.

The Planning and Zoning Board recessed at 7:44 PM and reconvened at 7:52 PM.

**Board Member Daley** asked to be excused and left the meeting at 7:52 p.m. The board granted the request.

The City Attorney presented on the Planning and Zoning Board Fundamentals – Due Process.

Topics covered were:

- General history of Home Rule
- Planning Basics
- Quasi-judicial proceedings and the Public
- The Florida Legislature and Preemption
- Comprehensive Plan
- Development Orders and Permits
- Consistency with the Comprehensive Plan
- Case Law and Rulings regarding Consistency Holdings
- Legislative vs. Quasi-Judicial
- Basic Elements of Quasi-Judicial
- Legislative Enactments

Board Questions and Comments during and after the presentation were the following:

**Board Member Pestone** asked if they were to ask the staff about the consistency questions and Director Bailey said they are answered in every staff report. He said 80% of this we would rely on the staff and we would be out of our job if the material was in compliance with the code. We have to depend on the staff.

*Sworn Testimony.* The City Attorney spoke about how the board members could not provide testimony related to an application; however, as residents and long-term residents of the City, board members would be in a position to solicit testimony pertaining to relevant issues.

Further discussion was on Senate Bill 250 if they wanted to change the Comprehensive Plan and it was shared by the City Attorney that there has not been any interpretation yet on and/or for SB 250.

**Board Member Nigg** shared his desire to learn more about Senate Bill 250.

**Director Bailey** presented on the Unified Land Development Code training.

**Director Bailey** presented and explained the review and approval process. She continued and explained that the Technical Review Committee (TRC) was comprised of Consultants, the City Attorney, Engineers, Surveyors, and the City staff. She said the staff reports were directly generated from the TRC Review and she would be willing to rename them the TRC Report.

At 9:21 p.m., Vice Chair Arnold left the meeting.

The staff reviewed the purpose of the Planning and Zoning Board.

- a. Local planning agency in accordance with F.S. 163.3174
- b. Advise. Advise and make recommendations to the City Commission regarding applications or designations on property within the City.
- c. Interpret. Interpret and determine the intent of provisions set forth of this Code that are unclear or in conflict with other regulations.
- d. Consider. Consider the need for revision or addition to regulations in this Code or the Comprehensive Plan, and recommend changes to the City Commission.

The staff reviewed the application process, the authority, and the types of final decisions. The staff continued and reviewed each current project by name, the application types, and the level of review of each of the current projects.

The staff reviewed Section 9.3 of the review and approval process and the Use Table.

**Board Member Pestone** asked if the B indicated a final board decision and Director Bailey responded yes. He then asked if there would be a stub out at Taco Bell for the traffic to travel to the 7-11 and Director Bailey replied yes.

chair

At 9:31 p.m. Board Member Nigg left the meeting.

**Director Bailey** reviewed the DOD Section 2.3.2 and stood for any questions.

There were none.

Without any further discussion, the Planning and Zoning Board meeting was adjourned at 9:35 p.m.

The next Planning and Zoning Board meeting is scheduled for November 9, 2023.

Respectfully submitted,



Linda Bourgeois, BAS, MMC, ADAC  
City Clerk