

Excerpt from draft minutes from the Planning & Zoning Board meeting held on November 7, 2017

ID 2017-701

2C) DISCUSSION OF BYLAWS FOR THE PLANNING AND ZONING BOARD

City Attorney Julie Klahr, explained that there had been rules and regulations adopted by a prior Board many years ago and some of those rules had since changed. She said the Board's duties, authorities, roles and responsibilities were dictated by the City Commission and set forth in the City's Code of Ordinances, as well as by State Statute. She said it was through the Statutes that the City Commission derived its direction to delegate authority to them. She said the bylaws were generally not referred to as bylaws, but the Board could adopt Rules of Procedure that would guide their action. She advised that the Board could look at the rules that were provided many years ago to the prior Board as a stepping stone from which they could work. She said her office could assist and work with them. She said the bylaws that were provided as examples "stepped on the toes" of what had already been provided for in the City's ordinances. She said they should rely on the Code as it were written and take it from there. She said her recommendation would be to adopt Rules of Procedure to govern how they conducted their meeting.

Mr. Arserio agreed and he recommended they look at the rules currently in place and update them to match the Code. He suggested they might want to add the order in which the roll was called as she had mentioned in the Board of Adjustment meeting earlier. Ms. Klahr said that it was just an example of the type of rules they might adopt.

Mr. Zucchini said he was okay with the rules of order from 1992, and that he agreed with most of the items. He suggested that they define a quorum which he said should enable a majority decision, i.e., three or five members present. He said if there were a vacancy, it should be filled from the Board of Adjustment as per City ordinance.

Mr. Angier said he believed that quorum had already been defined as being at least three of the five members so there was no need to redefine it.

Mr. Mangeney asked whether the amended ordinance that had been made for the Board of Adjustment had also been made for Planning and Zoning. He asked for it to be read out loud as it would serve as a good base point from which to work off for the updated Rules of Order and Procedure.

Andrew Pinney said he read from Ordinance 2017-20 at the Board of Adjustment meeting which he said related more to the scheduling of the Boards. He said the old language about having the Planning and Zoning Board start first was struck out and the new language read, "Meetings of the Planning and Zoning Board shall be held once per month unless cancelled by the Chair for the lack of agenda items. Meetings of the Planning and Zoning Board may be held at the call of the Chair and at such other times as the Board may determine. Meetings shall be held in the Commission Chambers of the City Hall of the Margate unless said chambers are unavailable. The Board may, by the adoption of its own rules and regulations consistent with the provisions of this division, establish a regular meeting night and rules for the calling of regular and special meetings of the Board."

Mr. Mangeney asked whether the ordinance defined a quorum. Attorney Klahr said that it did not. Mr. Mangeney said the old rules referred to Robert's Rules of Order; he asked if the ordinance did as well. Attorney Klahr said she had not looked for reference to Robert's Rules, but noted that many municipalities required their boards to operate under Robert Rules. Attorney Klahr said there was a provision regarding Robert's Rules in the City Code but it was not specifically for this Board. She said that since it was what the Commission was regulated by, it was generally what the boards and committees used to guide themselves.

Mr. Angier asked whether it would be the City Commission's decision as to what constituted a quorum, the number of board members needed to hold a meeting, and, if one were absent, that they must have someone from the Board of Adjustment. Attorney Klahr responded that generally it would be the City Commission as they were the ones who appointed the Planning and Zoning Board, adding that they had already given some delegation of authority to the Chair of the Planning and Zoning Board to fill temporary vacancies. Mr. Angier commented that during orientation board members were advised that their meetings would be held according to Robert's Rules of Order and, as such, they were under the assumption that a quorum was three. If it were to change, he asked whether it would be the board members or the City Commission to make the change. Attorney Klahr said it would most likely be set by the Commission if they wanted them to do something different. She said that was generally how many of the boards in the Code were set whereas a quorum was identified as a majority of members. She said there were various boards of different numbers and some of them had different quorum requirements because they had a different number of members. Mr. Angier asked, specifically for the Planning and Zoning Board, if the Commission would need to decide what a quorum was, and how many members would need to be present to hold a meeting and make decisions. Attorney Klahr said that was correct.

Mr. Zucchini disagreed. He referenced the Rules of Order and Procedure and read the last item, "These rules of order may be amended, added to, or suspended by a majority of the Board at any meeting." He said the Board could decide to define a quorum as enough people to break a tie, because it was not defined for them. He commented how they had been deadlocked on a few issues that evening. He said there should be enough members to break a deadlock, i.e., either three or five. He said provisions already existed in the ordinance that the Board shall replace a member with the Board of Adjustment if there were an absence.

Attorney Klahr asked the Chair if she could provide a clarification on a response to a question he had posed to her. She said her suggestion would be that if the Board made some decision or determination that the Commission did not agree with, ultimately the Commission would be the arbiter of that determination. She said the Board had authority because the Commission bestowed it upon them, and if the Commission did not agree with a rule or procedure that the Board might adopt, they would ultimately make the determination either by their acquiescence to the rule or by adopting a different rule.

Discussion ensued about Mr. Zucchini's recent comment with Mr. Angier asking whether a board member would need to be sent home in the event that one board member was missing or whether they would select someone from the Board of Adjustment so that a quorum could be achieved. Mr. Zucchini said a board member would not be sent home. Mr. Arserio clarified that what was meant was that they would need to add someone to prevent a tie

breaker. Mr. Zucchini said if there were two people missing, then the Board would not need to fill those two spots, adding that the Board was not allowed to replace more than one member.

Mr. Arserio commented that the ordinance was not written correctly as it should have listed quorum. He asked what would happen if only the Board Chair showed up. He said that since the City ordinance indicated that only one person could be appointed and it did not identify quorum requirements, the meeting would have to be cancelled.

Mr. Zucchini asked if he could ask a question of Vice Mayor Schwartz, who was seated in the audience, because he said he believed the City Commission had discussed the issue of allowing the Board to add one representative from the Board of Adjustment. Mr. Angier asked Vice Mayor Schwartz if she would like to respond.

Vice Mayor Arlene Schwartz said the Commission made the decision because it felt that it was being misunderstood that the Chair had the right to appoint one person if two board members showed up for a meeting. She said it was her personal opinion that a quorum was one more than half; for example, for seven people, a quorum would be five; and, for five people, a quorum would be three. She said that if two people showed up, the Chair would appoint one and they would never have a deadlock because they would have an odd number. She said if the Chair were the only person to show up, there would be no need to appoint one person as they still would not have a quorum and a meeting could not be held. She said the whole idea was to make sure that the members of their Board had the lasting vote to determine an item that came before them rather than what happened at a prior meeting when three members from another Board had the majority to rule on items that came before the Board of Adjustment. Having a majority from another board could possibly change their opinion, and appointees might not necessarily have had all the information to make a decision. She said a quorum in the Commission's mind would have been three in their case, and that the Chair could only appoint one person.

Mr. Mangeney asked if the Commission envisioned a fifth person being appointed if only four board members appeared. Vice Mayor Schwartz said "no." She said the reason it came before them was because three members of the Planning and Zoning Board sat on a Board of Adjustment meeting, and the reason they had three was because one of the members felt that having four members could have resulted in there being a deadlock. She said the Commission envisioned three which would never leave them in a position of having four and a deadlock vote. She also commented that, depending on the board, petitioners may have paid money to have their items heard and, if they were deadlocked, they would be worse off. Mr. Arserio said he agreed with the spirit of the Statute but his only concern would be that they were doing it to ensure that they would have a quorum because there had been attendance issues in the past. Mr. Arserio expressed a concern about only one person showing up, the Chair being able to only appoint one person so there would not be a quorum, and the business person having to pay. Vice Mayor Schwartz said there should not be an additional burden placed on the petitioner who came to the meeting in good faith.

Mr. Angier said he thought part of the Commission's decision to appoint one person from the other board was based on the concern that the Board of Adjustment had three members from the Planning and Zoning Board on it and the Board of Adjustment felt as though they were no longer the Board of Adjustment. He said appointing one member from Planning and Zoning

would have given them a quorum so they could hold their meeting. Vice Mayor agreed. She also pointed out a scenario where staff might have made a recommendation to deny and the Board of Adjustment members who had reviewed the back-up might have felt differently, but the three Planning and Zoning Board members might have agreed to go along with staff's recommendation because it sounded reasonable to do so. However, she said it may not have been what the full board of the Board of Adjustment might have chosen to do. She said it was envisioned years ago that only one person would be appointed so that a quorum would be three. Mr. Angier restated that three was a quorum, and Vice Mayor Schwartz said that was correct in her mind and, though she could not speak for the other commissioners, she believed they were all in agreement that three was a quorum.

Mr. Angier asked Attorney Klahr and Vice Mayor Schwartz if the definition of three being a quorum needed to be codified. Vice Mayor Schwartz said that based on that evening's discussion and the interpretation of "shall" and "temporary," it appeared that it should be put in print so that the question did not come up again. Mr. Angier asked if it needed to come to her as a staff recommendation. With Attorney Klahr's concurrence, Vice Mayor Schwartz suggested that they do so because there had been an issue with how the language was perceived by both boards. She said she understood that the City Attorney saw it as them having the right to do it, but they did not necessarily have to, while others interpreted it as them having the right and that they absolutely must do so because of the word "shall."

Mr. Arserio asked what would happen if two board members came to a meeting and the Chair decided that they did not want to [appoint a third member]. Mr. Angier said if two members were missing, and they had three members present, they had a quorum and they did not need to have anyone from the Board of Adjustment. Vice Mayor Schwartz agreed.

Mr. Mangeney commented that, while he was not there that evening in his capacity as an attorney, neither he nor Attorney Klahr thought the use of "shall" meant that the Chair must act. Vice Mayor Schwartz concurred. He said, "He shall be granted the authority," was clearly permissive. He pointed out that if the Board adopted a rule that read "he must" and the language in the ordinance was permissive, he would not be comfortable with the Board having bylaws that were more restrictive than the ordinance. Vice Mayor said that would put them back in the same position that if three of the Board members did not show up, then they would be looking at a stacked deck with members from the other board.

Mr. Zucchini said he recalled at the last Commission meeting, that the commissioners interpreted "shall" to mean "must." Vice Mayor Schwartz responded that they actually changed the word "may" to "shall" so that "may" was no longer permissive.

Mr. Mangeney said, "He shall have the authority" meant that his authority was not permissive. He said if it said, "He may have the authority," that would be a problem. "Shall have the authority" was not "he shall be obligated to appoint." He said if the commissioners wished to change the language, they should but he would never vote for a provision of their rules that contradicted the language of the ordinance. He said the Commission adopted an ordinance that gave the Chair the ability but not the obligation to do it. He said he did not understand why the Board would place an obligation that had not been created by the Commission. Mr. Arserio said the rules needed to be cleaned up and they should define a quorum.

Vice Mayor Schwartz said staff understood that the Board had come to the conclusion that there should be no less than three people to make a quorum. Mr. Angier asked if the Board should go

through City staff in order to bring something to the Commission. Vice Mayor Schwartz agreed that they should since they were an advisory board. Mr. Angier suggested to staff that something be placed before the Commission about codifying the definition of a quorum for the Planning and Zoning Board and Board of Adjustment as well as whether "shall" or "must" meant that someone from another board absolutely had to be placed on their board in a board member's absence even after the definition of a quorum was had been codified. Vice Mayor Schwartz commented that the use of discretion was being questioned as far as whether "shall" meant one must do so or that one had the discretion to do so.

Attorney Klahr commented that from the context of interpretation, it was very unclear in the way it [ordinance] was crafted if the intent were that somebody would be required to do something under one set of circumstances but not under another. She said they could help clarify it. Vice Mayor Schwartz responded that it would be a good idea because even though it had not come up for many years, it had now and she had seen the 2-2 votes. She said in the Commission's mind, it was nothing more than adding one more person to make a quorum. Mr. Angier commented that even though an item had a 2-2 vote, the item still moved forward to the City Commission as the Planning and Zoning Board was a recommending body.

Mr. Arserio said he agreed with the spirit of it, and that it just needed to be cleaned up because many times he went by the way things were written.

Vice Mayor thanked the Board for calling on her. Mr. Angier thanked the Vice Mayor.

Mr. Mangeney asked whether the ordinance required the appointment of a secretary. He said it seemed redundant because the job of the secretary was to take minutes which was being by staff, as well as maintaining the records, providing notices, etc. He said all the work of a secretary was being done by professional staff. Attorney Klahr said that the Code of Ordinances read that the Board was entitled to adopt rules and regulations of procedure. She said rather than calling them bylaws, she suggested they be called Rules of Procedure.

Andrew Pinney read from Section 2.86 Creation; appointment; terms; officers; advisors, "A city planning and zoning board for the City of Margate is hereby created and established, consisting of five (5) members. The said board members shall be appointed by the city commissioners, and shall serve without compensation and at the pleasure of said city commission. All appointments shall be for a two-year period. The members of the said board shall elect a chairman, a vice chairman, and a secretary from its membership..."

Attorney Klahr said in that context, generally the secretary would be someone to oversee to ensure that the clerk was taking the minutes and other things and coordinate them and bring them back to the board. She said there was no other role or responsibility of that office.

Mr. Arserio mentioned the order in which the vote was taken, and there was a short back and forth about what order was being used. Rita Rodi clarified that in her experience the Chair voted last, the Vice Chair second last, and the rest were based on their seniority on the board. She said in this case, the other three members were appointed at the same time, so she called them in alphabetical order.

Mr. Mangeney said he thought the commissioners should eliminate the secretary position. Mr. Angier said he agreed. He said the position of secretary may have been important at one time

but staff currently did a great job and none of the board members had the time to perform it. He said the secretary position was just a title with no function. Mr. Arserio agreed.

Attorney Klahr said there were several items in the existing rules that needed to be updated. She said staff would update them and they would be brought back before them for their consideration. Mr. Mangeney asked if the Board would operate under the existing rules until they were updated; Attorney Klahr said that was correct.

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