

A workshop meeting of the City Commission was held on July 5, 2011 at 5:30 p.m. in the Commission Chambers at the Municipal Administration Building. The meeting was called to order by Vice-Mayor Terrye Y. Howell.

COMMISSIONERS PRESENT: Jonathan Thornhill; Terrye Y. Howell; John Paul Rogers; Betty Wojcik; Mayor Michael S. Carter via conference call.

COMMISSIONERS ABSENT: None.

CITY REPRESENTATIVES PRESENT: Judith H. Delmar, City Manager; Albert C. Galloway, Jr., City Attorney; Clara VanBlargan, City Clerk; Jacquie Hawkins, Deputy City Clerk

[The minutes are recorded, but are not transcribed verbatim.]

Agenda Item 1. Roll Call

Agenda Item 2. Shooting Range in the City of Lake Wales

The full staff memo is incorporated into the minutes.

[Begin agenda memo, Kathy Bangley, Assistant Director of Planning and Development]

At its workshop on February 2, 2011 City Commission tasked staff with bringing forth a recommendation on allowing shooting ranges in the city limits of Lake Wales.

Shooting ranges can be classified as indoor or outdoor amusement uses for consideration in zoning. However, the prohibition of the discharge of firearms under Chapter 15 in any setting other than a safety or training course has stopped the city from being able to approve such establishments to date. Both of these uses exist in our use chart today in commercial and industrial districts.

Amusement establishment, indoor – is a special exception use in C-1, C-2, C2-R, C-3, C-4, C-5 and I-2.

Amusement establishment, outdoor – is a special exception use in C-2, C-3, C-5, and I-2.

A special exception is approved by the Planning and Zoning Board and requires a public hearing. Public notice includes an advertisement in the local newspaper as well as letter notification to all property owners within 300 feet of the subject location.

Those land uses which have the potential of disturbing other land uses in the zoning district require a special exception use permit and discretionary review. There are criteria set forth in Chapter 23 section 433 by which all special exception use permit applications are reviewed. The proposed location (building or site) is assessed for consistency with the comprehensive plan, impact on development and economic value of properties in the neighborhood, general compatibility with existing land uses in the neighborhood, suitability in terms of size, type and location on the site, environmental impact and the like.

Governor Rick Scott has recently approved HB45 regarding the existing state law preemption of firearms and ammunition regulation. Effective October 1, 2011 the ability of local governments to impose restrictions on firearms and ammunition will be dramatically narrowed and the penalty for doing so will be severe. This new law is in reaction to the local government non-compliance with the 1987 law that gave the State preemption in this area.

HB 45 does not prohibit zoning ordinances that encompass firearms businesses along with other businesses; i.e. you must consider a gun shop the same as you would any retail business. This supports staff's conclusion that shooting ranges should be considered as amusement uses either indoor or outdoor.

Lake Wales may need to repeal Chapter 15 section 2 which prohibits the discharge of air guns, BB guns, bows and arrows, firearms, fireworks and slingshots with few exceptions. It is this section that prohibits the discharge of a firearm for recreational purposes and has been a main factor in the shooting range discussion.

Please note that the American Legion property located on 9th Street is zoned PF-Professional. This zoning designation is not included as an appropriate district for amusement uses. Professional districts are defined as follows: *This district is designed to permit a mix of offices, medical and light commercial businesses and medium density residential uses on major roadways and to provide areas of support businesses to major facilities such as hospitals.*

Furthermore the comprehensive plan land use designation is RO – Residential-office and defined as follows: *The primary function of the Residential-Office (RO) classification is to permit low intensity office and commercial uses in conjunction with residential use.*

[End agenda memo]

Vice-Mayor Howell asked Commander Ira Anderson, American Legion Post 71, to speak first.

Mr. Anderson made comment to information that he distributed to the City Commission in regards to Agenda Item 2. Comments included the following:

- He questioned the actions of those in charge who allow flagrant violation of ordinances such as with the middle schools archery program.
- After two years, the issue of them getting a firing and archery range permit is still in question. The question should not be whether or not the range should be allowed, but what will be needed to accomplish the project in a timely fashion.
- According to State law, Chapters 790.22, 790.25 and 790.333, it is the responsibility of every American to attend some sort of instruction on firearms to insure safety for themselves, their families, their community, state and country. The public policy of the State of Florida is to encourage the safe handling and operation of firearms. It mandates appropriate training for persons licensed to carry concealed firearms and for persons licensed to hunt in the state. Sport shooting and training ranges throughout this state provide the location for which this important public purpose is served and at which the firearms training mandates are fulfilled. Unnecessary litigation and regulation by government agencies of sport shooting and training ranges impairs the ability of residents of this state to ensure safe handling of firearms and enjoy the recreational opportunities ranges provide.
- House Bill 45 [HB 45] which passed into law on April 2011 is the State's way of saying "don't hinder in anyway the right of the citizens of our Country to bear arms." It's a felony to do so and the State will take action.
- A clause in the Professional Zoning allows this type of school. Anytime a person steps onto a firing range they are in school and competition. A Range Master is present to ensure they learn range safety and how to handle a weapon responsibly.
- At its February 2, 2011 Workshop meeting, the City Commission asked staff to return with a recommendation within 60 days on how to allow a shooting range in the City limits. Mr. Anderson said it's been five months. Without permission from the City to proceed, the American Legion is

unable to apply for grants or loans to fund the project. The Legion has attempted to abide by and follow all of the requirements laid before it and has encountered roadblock after roadblock.

- Mr. Anderson said, "Let's not stand in the way of our rights to bear arms and/or learn how to handle those firearms. Instead, let's work together in creating an environment in the City that tells the rest of the world that we are free and willing to protect that freedom in any manner needed, including the call to arms.

Commissioner Rogers asked if it would be a conflict if he participated in the discussion since he sells guns and ammunition. City Attorney Chuck Galloway said, for purposes of a workshop, it does not matter because no decision is being made. He said he would look at that question when a vote is needed.

Ms Bangley reviewed the agenda memo she prepared for Agenda Item 2 that was distributed to the City Commission in the agenda packet and explained the purpose of HB 45 and the financial penalties imposed on elected officials and staff that violate the act. She said that Chapter 15, Section 2 of the City's Code of Ordinances is now in opposition to HB 45 and will have to be changed to bring it in compliance. However, HB 45 does not prohibit, she quoted from a section thereof, "zoning ordinances that encompass firearm businesses along with other businesses, except when zoning ordinances are designed for the purpose of restricting or prohibiting the sale, purchase, transfer, or manufacture of firearms or ammunition as a method of regulating firearms or ammunition, which is in conflict with this subsection and are prohibited." Ms. Bangley said this section influenced staff's recommendation that a shooting facility in this City be considered as an "amusement use." She said we already have indoor and outdoor amusement uses for land use and zoning scenarios established in the City's Code, which are allowable by special permit in certain zoning districts. Special permit criteria are already set up so they would not be unique to shooting ranges.

Commissioner Wojcik asked if HB 45 is saying that people can shoot whatever they want, wherever they want. Ms. Bangley said the City's existing zoning laws are still in effect, which will dictate where it is appropriate. She would have to look at a gun shop the same way she would any retail establishment.

Commissioner Wojcik asked Ms. Bangley where one can shoot a gun and what types of guns are allowed. Mr. Galloway said he would have to look at this in more detail because more than one section of the Code of Ordinances addresses it. It may cover what can and cannot be done in the Code but will require some specific review to address that question. It may be that we need to repeal it. Commissioner Wojcik said there is a big difference between shooting a gun and selling one.

Vice-Mayor Howell asked if considering it an amusement and the appropriateness of the location could be considered at the present meeting. Ms. Bangley said it could be considered but the specific location of the American Legion lot is not appropriate because it is not zoned for indoor and outdoor amusement as it is set up in the City's Code. The reason we were unable to make a decision previously was that there was a prohibition on discharging a firearm in the City except in a bona fide school or training course. That was one of the obstacles to the American Legion's request. The other obstacle to their request is their zoning district. To change its zoning would be in conflict with the Comprehensive Plan based on the land uses in the surrounding areas and therefore would not be permissible by law.

Commissioner Rogers said it was his understanding that the public school has an archery training course. According to the City's Charter [Code], the shooting of bows and arrows is not permissible. So, if we allow one to do it, then we would have to allow someone else to do it. Ms. Bangley said she was not sure how to answer that, but it was her understanding that the archery program was part of their physical education curriculum. No one from Polk County public schools called the City of Lake Wales to ask prior to that happening. Staff was approached about somebody having an archery demonstration in the park and that was turned down in accordance with City Code, Chapter 15.

Commissioner Rogers said it was his understanding that the American Legion is attempting to have a shooting school and Mr. Anderson said that was correct. Commissioner Rogers said input from the public

was needed to find out if there are any objections. In regards to the shooting range, if we are going to allow the schools to shoot bow and arrows in violation of the City's Code, then we need to allow others to do so. Ms. Bangley said she understood that the archery program is located at Hillcrest Elementary which is located on SR60, so the zoning there may be different. She said without her zoning map, she could not verify that. Ms. Bangley said she never looked at this from the aspect of whether or not it was appropriate for the American Legion to do it, but from the aspect of the appropriate uses in a zoning districts. If we make it okay in this PF zoning district we would be making it okay in every PF zoning district in the City. It is not permissible by law to make it okay only in the PF zoning district on Ninth Street.

Commissioner Rogers suggested finding out what the zoning districts are that surround the schools to see what the difference would be.

Ms. Delmar asked if the American Legion was planning to only use the pistol range for educational purposes. Mr. Anderson said it would be used for teaching and education in conjunction with the high school's ROTC pistol team. He said he was also this district's chairman for the ROTC sports shooting team for Polk County.

Mr. Anderson told Ms. Bangley that he thought a way had been found for a PF zone to have inside entertainment. Ms. Bangley said the possibility for an accessory use had been discussed but it was determined that this is more intensive than the primary use. In any case, the accessory use cannot be more intensive than its primary use. Ms. Anderson said the primary use for the property is to have an American Legion Post 71. It would have to be determined what would be more intensive, an American Legion Post or pistol range and archery range. Ms. Bangley said it is an American Legion Post whether or not you have a pistol range. The point being, the accessory use of a pistol range is more intensive from an impact in what it does. A group meeting in a building fits the zoning district. A pistol range by nature has more of an impact on the area.

Commissioner Rogers said the police station has a firing range and asked what the zoning was for that. Ms. Bangley said C-2R zoning district, commercial residential zoning. She said that would abide by what staff is recommending. An indoor range would be allowable in a C-2R zoning district via special permit.

Commissioner Wojcik asked if anyone could put a rifle range on a residential site or commercial properties if they say it would be for recreation or amusement use. Ms. Bangley explained that they would have to get a special exception permit, which is a special permit issued by the Planning and Zoning Board. There are 10 different criteria that are assessed when looking at any special permit. She provided scenarios on how to do that.

Mayor Carter, via conference call, said according to Chapter 15, Section 2, it is illegal to discharge a fire arm in the City limits whether it is recreational or not. Also, it does not seem to be compatible with a PF, professional zoning, or consistent with RL classification in conjunction with the residential use. Mayor Carter said, regarding Mr. Anderson claim of right to bear arms, it was just a matter of allowing it in the right location and it was his opinion that Mr. Anderson was requesting not only a pistol range but a rifle range as well.

Vice-Mayor Howell asked the City Attorney to look into what can and cannot be done as soon as possible. Mr. Galloway said the existing Code of Ordinances needs to be analyzed in the light of HB 45, the new legislation that becomes effective October 1, 2011, as well as all the questions presently raised by the Commission.

Ms. Delmar pointed out that staff ultimately will need a policy decision from the City Commission as to whether or not it wants to approve a use of this nature in a residential land use.

Vice-Mayor Howell said the analysis by the City Attorney will determine if the Code needs to be changed and if so, what changes.

Commissioner Thornhill said we need to work together to see what to do because in his opinion, Chapter 15 does need to be revised.

Due to time constraints, it was the consensus of the City Commission to discuss Agenda Item 3, Further Discussion of Backflow Inspection Program, at the end of the 6:00 p.m. City Commission meeting.

There being no further business, the meeting was adjourned at approximately 6:00 p.m.



Mayor/Commissioner

ATTEST:



City Clerk