

**MINUTES REPORT**  
**BOCA GRANDE HISTORIC PRESERVATION BOARD**  
**AUDITORIUM, BOCA GRANDE COMMUNITY CENTER**  
**131 FIRST STREET WEST, BOCA GRANDE, FL 33921**  
**MAY 11, 2022**  
**10:00 A.M.**

**MEMBERS PRESENT:**

|                             |                  |
|-----------------------------|------------------|
| Bill Caldwell III           | Rebecca Paterson |
| Paul Eddy                   | Peggy Stanley    |
| Jerry Edgerton (Vice Chair) | VACANCY          |

**MEMBERS ABSENT:**

Dennis Maloomian (Chair)

**STAFF PRESENT:**

|                                 |   |
|---------------------------------|---|
| Courtney Gordon, Senior Planner | Anthony Rodriguez, Zoning Manager         |
| Janet Miller, Recording Clerk   | Amanda Swindle, Assistant County Attorney |

**OUTSIDE CONSULTANTS**

Gloria Sajgo (APLANADAY LLC)

**Agenda Item 1 - Call to Order – 10:00 a.m./Review of Affidavit of Publication**

Mr. Edgerton, Vice Chair, called the meeting to order at 10:00 a.m.

A roll call was taken and the following members were in attendance: Rebecca Paterson, William Caldwell, Jerry Edgerton, Paul Eddy, and Peggy Stanley. A quorum was present.

Ms. Swindle, Assistant County Attorney, stated the Affidavit of Publication for today's meeting is legally sufficient.

**NOTE:** For the audio recordings for this meeting, go to:

<http://www.leegov.com/dcd/committees/committeesearch>. Once the page pulls up, click on the blue hyperlink that says "Boca Grande Historic Preservation Board (BGHPB)." There will be an audio recording for each item to help keep the recordings from being too large for the public to open. Contact Janet Miller at 239-533-8583 or [jmiller@leegov.com](mailto:jmiller@leegov.com) if you need assistance.

**Agenda Item 2 – Approval of Minutes – April 13, 2022**

**Mr. Caldwell moved to approve the April 13, 2022 meeting minutes, which motion was seconded by Ms. Stanley. The Vice Chair called the motion and it was passed 5-0.**

### **Agenda Item 3 – Request to File a Historic Designation**

#### **A. HDC2022-00003, 233 Banyan Street, Boca Grande, FL 33921**

Change in Status: Contributing to Non-Contributing for 233 Banyan Street.

Mr. Rodriguez announced that Mr. Earl Hahn accepted a position with another local government and is no longer with Lee County. Although Mr. Rodriguez reviewed the case with the Board, he noted that Mr. Hahn had been the one to prepare the documentation for it.

Mr. Edgerton opened this item to the applicant's representative.

Ms. Sajgo stated that when her client wanted to add a slight dormer to their property, it was discovered that the property was listed as "*contributing*" instead of "*non-contributing*." Ms. Sajgo reviewed some possibilities of how this property was overlooked and given an incorrect status at the time that the Boca Grande properties were designated. At the time that it was designated, the property was mainly vacant, so it should not have been given a "*contributing*" status.

The Board had no questions of the applicant's representative or staff.

Mr. Edgerton opened this item for public comment. No members of the public wished to comment, so the public comment segment was closed.

**Mr. Caldwell made a motion to direct HDC2022-00003, 233 Banyan Street, Boca Grande, FL 33921 to public hearing, which motion was seconded by Mr. Eddy. The Vice Chair called the motion and it was passed 5-0.**

### **Agenda Item 5 - Items by Staff**

#### **A. Information on Solar Collectors in Historic Districts**

Ms. Swindle stated the following:

- During last month's meeting, Ms. Swindle was asked to review current state law regarding solar collectors in historic districts. Lee County is not unique in facing this issue.
- There is a Florida Statute which essentially would prevent a local government from adopting an ordinance that would have the effect of prohibiting the installation of solar collectors. The historic district review process stems down from federal law, so the historic review process does trump the state statute regarding solar collectors. However, it does not completely preempt it.
- What Lee County must do, and what other local governments have done, is take a look at potentially developing guidelines that could be incorporated into our design standards regarding solar collectors.

- She noted that the National Park Service has some guidance on their website. Their line of thinking is that if the solar panels are installed in a way where they cannot be seen from the street, it is compatible with the historic building upon which it is installed.
- The City of Key West has developed a hierarchy to their review. If it becomes impossible to install solar panels in a way that is completely not visible from the street, there is a hierarchy of locations to review with the goal of minimizing the impact and trying to preserve as much of the historic character of that resource as possible.
- Previously, Mr. Hahn asked the Board if staff could approve some of these applications administratively if the solar panels could be installed in a manner that were not visible from the street. Ms. Swindle was in favor of that suggestion, but in instances where the solar panels would be visible, she felt this Board should review them.
- Ms. Swindle suggested the Board make a motion to direct staff to begin the process of adding some verbiage to their design standards regarding solar panels that this Board could review at a future date.

Mr. Edgerton referred to a recent approval made by this Board where the discretion was left up to the installers as to where to place the solar panels.

Mr. Swindle stated the National Park Service Guidelines actually charge this Board with reviewing solar panel installation applications to make sure they are installed in a manner that does not damage the architectural characteristics of the building and does not impact the overall character. She noted the National Park Service has some interesting examples of very ostentatious solar panels that are very disruptive. In instances like that, it should be reviewed by this Board.

Mr. Edgerton asked what this Board could do since they already approved a previous project and gave them that discretion.

Ms. Swindle stated there was nothing the Board could do at this point because the approval was already given. The representatives for that case will have the flexibility to place the solar panels where they like. Ms. Swindle also mentioned that in instances where solar panels must be visible, the National Park Service recommends looking for locations at the rear gardens or pergolas. If those locations are not feasible, then solar panels can be visible from the street. She noted there are also certain limitations regarding sizing of the solar collectors so that someone does not put more on than they need for that property. Also, the National Park Service will not approve installations which damage or obscure the roofs or exterior of the house.

Ms. Stanley felt it would be helpful when receiving solar panel application packets to know the usage. In other words, to know the extent to which those solar collectors would satisfy the energy of the house or how much extra they are generating.

Ms. Swindle stated that suggestion is consistent with what the City of Key West does. They want to know that the installation shall not exceed the power generation greater than needed for the property and this information must be provided.

Mr. Edgerton opened this item for public comment. No members of the public wished to comment, so the public comment segment was closed.

**B. Pending Historic Cases (where they are in the process)**

Mr. Rodriguez reviewed the pending cases outlined on the agenda and provided their statuses to the Board. He believed the three SCA cases would be able to be scheduled for the June meeting. He also noted that the two ADD cases were completed and the applicants for those cases have their approvals in hand.

Mr. Rodriguez introduced Courtney Gordon, Senior Planner, with the Zoning Section. He noted she would be assisting with both historic preservation boards and the Special Certificate of Appropriateness type cases.

Ms. Gordon also introduced herself and reviewed her background with the Board.

**Mixed-Use in Downtown Boca Grande (Commercial District)**

Mr. Edgerton asked for an update on discussion that took place last month regarding mixed-use in downtown Boca Grande (Commercial District).

Ms. Swindle stated that no formal work had taken place on this issue yet. One of the main difficulties is the Gasparilla Act because it is a very specific, special law.

Ms. Paterson stated that Charlotte County has a mixed-use overlay that they use (a special district).

Ms. Swindle stated that Charlotte County does not have the Gasparilla Act.

Ms. Paterson asked if the Gasparilla Act precludes mixed use.

Ms. Swindle stated it does.

Mr. Rodriguez stated that the Gasparilla Act precludes any application for rezoning or precludes the Board of County Commissioners from approving any rezoning other than to a single-family residential zoning district. He noted there are some properties in the downtown Boca Grande area that are commercially zoned that do permit dwelling units in addition to permitting certain commercial uses, so there might be some opportunity there to provide some units. He also asked that everyone keep in mind that there are not only issues from a zoning standpoint, but an overall density regulation, which he reviewed with the Board. Mr. Rodriguez stated staff would look into having a mixed-use overlay similar to Charlotte County, but it would require further review because the County already has a mixed-use overlay elsewhere in the County. Zoning staff will need to discuss it with Planning staff to see if the mixed-use overlay should be expanded to include parts of Boca Grande or if a separate overlay should be created specific to Boca Grande.

Mr. Rodriguez stated staff would update the Board on this periodically, but due to staffing shortages, current workload, and other special projects, he was not certain how quickly it would be addressed.

Ms. Paterson stated she would provide staff with some addresses they could use as examples. She noted many of the properties are “*contributing*.”

Mr. Rodriguez stated that a “*contributing*” status creates another layer.

Mr. Edgerton opened this item to the public.

Mr. Jeffrey Farrington, business partner with Mr. Kevin McLaughlin, discussed a vacant lot they own that is in between two other buildings. They have tried to develop the property twice before, but ran into issues due to FEMA and the County’s various regulations. He noted they were interested in maintaining the character of the community, but it must be economically viable. With construction costs and all that is required to meet the County’s requirements, it is very costly. They want to be able to put a residential use on the second floor, but that does not seem to be allowed even though a residential use requires the least amount of parking. He encouraged the Board and staff to find a way through this dilemma. On a separate issue, he asked that the 3<sup>rd</sup> Street Bistro (SCA2022-00006) item be placed on the June 8<sup>th</sup> agenda because they need to be able to move forward with that project.

Ms. Paterson asked if it would be considered a “*taking*” of someone’s property if they cannot improve their property due to all the various regulations.

Ms. Swindle stated it would not be a “*taking*” by the County especially when considering FEMA, construction requirements, and the Gasparilla Act. It would not be a regulatory “*taking*” in that sense. She noted that a property owner does have an opportunity to obtain a Minimum Use Determination that would allow them to develop the property in some way.

Mr. Rodriguez reviewed the Minimum Use Determination process with the Board and noted it would allow the property owner to develop one single-family residence on the property to avoid a situation where there would be a “*taking*,” but he did not feel this option is what the Board had in mind for the community.

Mr. Edgerton asked if this Board would need to ask for the resources in order for staff to review this issue.

Mr. Rodriguez stated he would be discussing it with the Community Development Director and County Administration to see if the Board of County Commissioners can direct staff to begin some research into this issue. He agreed to provide the Board with status updates periodically.

Mr. Tom Fleming stated he owned a building on the opposite side of the street from Mr. Farrington and Mr. McLaughlin’s. They have a retail business on the ground floor (Boca Grande Outfitters) and offices on the second floor. He was interested in developing the second floor for residential use for when family is visiting because things tend to get tight with everyone in their 1,500 square

foot cottage. He asked about the minimum standards for affordable housing that seem to be 125% of median income. He asked if that was for the whole county or Boca Grande.

Ms. Swindle stated it was for the United States.

Mr. Rodriguez stated it was based on census data.

Mr. Fleming stated he had heard that on a case-by-case basis, it might be possible for someone to be given relief so a property can convert from commercial office to residential.

Mr. Rodriguez stated that was true as long as the residential use is permitted in the underlying zoning district. It would be permitted subject to compliance with whatever applicable zoning regulations are on the books at the time.

Mr. Fleming asked if it would be possible for the building he is referring to.

Mr. Rodriguez stated he would need to do more research.

### **Building Heights**

Ms. Barbara Edgerton asked if there had been any oversight regarding building heights on Boca Grande by Lee County other than merely looking at plans versus what happens when the builder actually gets out there.

Mr. Rodriguez stated that the measurement and verification of building heights as it relates to construction drawings is a function of the Building Inspections Office, so he did not have an answer to this question at this point.

Mr. Edgerton stated that previously when this question came up, it seemed to be based on the honor system where it is left up to the architects. People are finding this to be a questionable approach.

Mr. Caldwell, General Contractor, explained how the building heights are handled. When a contractor puts in their foundation, they are required to have an updated foundation survey. The foundation survey is required to have the elevations on it. It must be turned into the Building Department prior to pouring in the slab. With this process in place, it is an easy calculation to see if it matches up with the working drawings. He also noted that the elevation drawings have a cross section on them that shows the height of the building. He explained this further with the Board and public.

Mr. Rodriguez explained that State Statute allows private providers to provide inspections. When a developer or property owner elects the private provider inspections, everything is attested to the affidavit that the building, as constructed, meets the construction drawings. The County is not involved in the inspections because it is a third party inspection. Given how busy the County is, there are many individuals who elect to have that private provider inspections, in which case the County does not do the inspections.

### **Agenda Item 6 – Adjournment – Next Meeting Date**

The next Boca Grande Historic Preservation Board meeting is scheduled for Wednesday, June 8, 2022, at 10:00 a.m. The meeting adjourned at 10:35 a.m.