

Names of Commrs.	M	S	V Y	V N
<u>ROLL CALL</u>				
Dockswell				
Hardin	x			
Moss				
Phillips				
Burrie		x		
Fisher				

CITY COMMISSION MEETING MINUTES

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REGULAR ITEMS - CONTINUED

P.H. 2016-62; ORD. NO. 2016-....: TIME 02:02:35 ITEM 19

AN ORDINANCE AMENDING CHAPTER 155, "ZONING CODE," OF THE CODE OF ORDINANCES OF THE CITY OF POMPANO BEACH, FLORIDA, BY AMENDING SECTION 155.4303., "STANDARDS FOR SPECIFIC ACCESSORY USES AND STRUCTURES," TO PROVIDE A DEFINITION OF AND STANDARDS GOVERNING LOCATION OF ATHLETIC COURTS OR FIELDS; BY AMENDING SECTION 155.5302, "FENCES AND WALLS," TO PROVIDE STANDARDS FOR FENCING PROVIDED AS PART OF A PERMITTED ATHLETIC COURT OR FIELD; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE:

The Ordinance was read by title only.

MOTION: To approve Ordinance upon first reading.

ROLL CALL

Dockswell
Hardin
Moss
Phillips
Burrie
Fisher

Robin M. Bird, Development Services Director, stated that the ordinance creates a new accessory use for athletic courts and fields such as tennis courts or basketball courts located at single-family homes, schools, or hotels. The text amendment also revises the standards for fencing provision in conjunction with those athletic courts. Currently, the code exempts fencing from all height standards for these courts. Therefore, staff recommends a maximum height of 14 feet provided the location, transparency and materials meet certain standards. Finally, at the March 23, 2016 Planning and Zoning Board meeting, the text amendments were unanimously recommended.



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Angela Hill, 780 Southeast 22nd Avenue, Pompano Beach, FL 33062, stated that the matter before the Commission is being brought forward by staff in an effort to thwart the legal argument that has been made towards a tennis court erected by one of her neighbors. She noted the City was made aware of it when they filed an appeal last year regarding the director's decision to allow the court to move forward.

Ms. Hill indicated that when she and her neighbor purchased their home at 760 Southeast 22nd Avenue, there was no tennis court across the canal in view so they could see through to the canal/intercostal. However, they received information that the tennis court was being built, which created the issue. She met with Robin Bird, Development Services Director, to bring to his attention the 25-foot setback in the property for anything to be built. The City pulled the permit because it was issued in error. However, the homeowner made a big deal about it, which led to the City reversing its decision to grant the permit to the homeowner.

Ms. Hill stated that she met with Robin Bird along with her neighbor, Karen Tynan, to discuss the setback allowances. In sum, she had decided to compromise and accept a 15-foot allowance. However, a decision was made by the City to allow the homeowner to move forward with a 10-foot instead. Ms. Hill stated that she contacted all the commissioners to include her own, Comr. Dockswell, but she was advised to take the matter before the Zoning Board of Appeals (ZBA).

Ms. Hill mentioned they engaged the services of an attorney and went to the Zoning Board of Appeals, where the matter has been prolonged for quite some time. Notwithstanding, she indicated that the opposing side and staff already knew the argument of her attorney that they were intending to state as fact. At the ZBA meeting, the attorney for Mr. Bird stated that she did not have standing to bring the matter forward because she was not the homeowner. Ms. Hill concluded that would be true if it was a legal structure, but it was built illegally and that is the crux of her contention regarding the matter.



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Finally, Ms. Hill stated the ZBA ruled that she did not have standing. Consequently, she and her neighbors are taking the matter to the Circuit Court, because she believes that they do have standing. Ms. Hill appealed to the Commission not to rule on the proposed change of this particular zoning rule regarding sports courts, until after they have had their day in the circuit court and the legal process is exhausted.

Mayor Fisher asked if the City would be thwarting the rights of Ms. Hill and her neighbors who are pursuing this matter in the courts.

Mark E. Berman explained that the matter was an appeal of the determination or decision or interpretation of the Development Services Director before the ZBA. He understands these proposed modifications are to bring clarity so that there is no question as to how someone would interpret it. Therefore, the Development Services Department is recommending the changes so that there is no question as to its interpretation. However, during the appeal process, should the City change its code, the court would be bound by the current code of the City, in terms of their interpretation. Therefore, the issue would be moot.

In sum, Mr. Berman indicated that the City can change its code to reflect more accurately the intent of the code so there is no question for interpretation.

Ms. Hill stated that if the City Commission ruled to make the proposed changes, it would require exemptions that include violating the 15-foot setback from the rear of the property, which is against the water as well. Therefore, someone will be allowed to build a sports court with a 14-foot fence that is 5 feet from the water. Ms. Hill stated that when she had built her pool she was not allowed anything over 36 inches that was 5 feet from the water.

Furthermore, Ms. Hill indicated that this includes a chain link fence with no hedging required. As well as there is no accommodation for rules of play times, no lighting restrictions, and no noise abatement restrictions, which will open a “Pandora’s box.” These ordinances have been in place for many years and because of one homeowner, the City is planning to “scrap them all.”

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Ms. Hill stated that this is affecting not only her but also all her neighbors on the water. In fact, they have spent over \$60,000 in lawyer's fees to get this matter resolved, and she cannot understand why the City would change the rules in the middle of the game.

Tony Hill, 760 Southeast 22nd Avenue, Pompano Beach, FL, stated he is disappointed that he had to attend this meeting for this item. The matter under discussion has cost them a lot of money and anguish. The fact is, if the City is clarifying an existing law they are not in violation of state law. He indicated he was advised if they make up a new law then it is not allowed.

Mr. Berman said he would not provide advice contrary or consistent with Mr. Hill's counsel. Therefore, the legal advice from his counsel is the advice.

Mr. Hill indicated that previously, they had met with the Mayor and Comr. Dockswell and all they have been asking for is a fair hearing. Moreover, if the homeowner had built a tennis court that was legal within the setbacks that followed the zoning code, then they would have nothing to say about the matter. The fact is he did it. Instead, Mr. Bird made up the rules to allow the tennis court, which is the part they are contesting.

In addition, Mr. Hill indicated that they were railroaded at the ZBA meeting and were told they could not contest anything, and that they had no place in the City to complain. Therefore, they appealed to the circuit court. However, he believes this is a clear attempt to try to circumvent what they are doing and he explained his reasons. First, the way the proposed changes are written does not include any rules of play and it is open for a person to do whenever and whatever they want to do on a sports court. In fact, a sports court in a condominium development or at a park requires hours of play, and hours for the lighting. There are also buffer zones between residential and parks so there is not tennis court 5 feet from a bedroom window. However, this item would allow somebody to have a tennis court 5 feet into the property.

Mr. Hill indicated that fences have been allowed to be six (6) feet tall for many years and now Mr. Bird wants to change that to allow 14 feet high fences. In fact, there is no definition of a sports court being offered by staff. In addition, the setbacks for the accessory use structures under the zoning



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code is all 15 feet. However, staff is suggesting 5 feet. Therefore, in the zoning code this court would be the only thing allowed 5 feet from the water and 14 feet high. Moreover, a normal tennis court is 60 x 120 feet, which is bigger than a 75 x 100 foot lot that is zoned RS-2. A special permit is required to build a tennis court, but this would allow someone in a residential neighborhood to get a permit arbitrarily.

Mr. Hill stated that another point to note is in the zoning code under the general standards for accessory uses and structures, where it specifically has some criteria to allow an accessory use structure. However, the way the proposed ordinance is written it violates three out of four of the rules. Therefore, he urged the Commission to vote against these changes.

John Gassett, 2517 Southeast 14th Street, Pompano Beach, FL 33062, stated that he lives on the water but he would not want to see a 14-foot wall when he looks out at the back of his house, because they bought their house with the ability to have a water view. Therefore, he urged the Commission not to allow this item to move forward.

Tom Terwilliger, 3160 Northwest 1st Avenue, Pompano Beach, FL, stated he did not hear any statement of a pressing need to make these changes and there is no imminent danger. It appears that there is no need for the Commission to act immediately and it would not hurt if they waited. Therefore, he suggested that the Commission consider tabling this ordinance and wait until after the circuit court ruling is satisfied. Staff can then bring it back for further consideration.

M. Ross Shulmister, 560 Southeast 12th Street, Pompano Beach, asked if there is some place in the code, in which it governs lighting that spills over on to other properties.

Mr. Bird responded in the lighting section of the code it allows for less than a foot-candle to spill over to neighboring properties. In addition, there is a noise ordinance that covers certain decibel during the day and after 11 o'clock, the decibels go down.

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Ms. Hill stated that Mr. Shulmister sits on the Zoning Board of Appeals; therefore, the Commission should not allow him to speak on this matter. In fact, he wrote a 12-page dissertation on why they did not have standing for something that was illegal. Therefore, she expressed her frustration at being railroaded in this matter.

Vice Mayor Burrie asked how many homes are there in the City that have a tennis court.

Mr. Bird replied that he does not know.

Vice Mayor Burrie asked how many applications the City has had to build a tennis court.

Mr. Bird replied this is the first one he has had.

Vice Mayor Burrie indicated that she has agreed to most of the suggested changes by Mr. Bird for the zoning code because they make sense. However, there is too much argument on the part of the residents that have appealed to the Commission, so she could not vote for this change at this particular time. She stated that there are too many unanswered questions.

Mr. Bird indicated that the code should be considered as it is today. Currently, if a volleyball court is built in a person's backyard, a permit may not be required for digging it out to put sand in. However, the code has an exemption for recreational courts. Therefore, a person could go zero lot line and there would be no maximum height as it is today. The concern is, there are no restrictions in the backyard once anybody digs out anything and calls it a court. Whether they apply for a permit or not they could be at zero lot line and go with the height exemption. Notwithstanding, during the rewrite of the code there was a specific exemption that was put in by the consultants who foresaw that people would have recreational facilities at their house. Therefore, there is no specific definition for courts, which leaves it up to the director to determine whether it is a permitted accessory use.

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In sum, Mr. Bird indicated that in this case, there is nothing to block the view of a neighbor directly adjacent to them. The height was determined from the height of a tiki hut, which the commission passed previously. So regulations were found that staff could liken it to restrain what is currently in place.

Comr. Phillips indicated that he trusts Mr. Bird's decision-making skills in the zoning arena; however, he is hesitant to move this item forward because it is in the courts, and the time involved for a court ruling is not made clear. Therefore, it would appear that the City could circumvent that outcome by enacting these changes. Notwithstanding, the affected parties have spent a lot of money on this matter. However, this is not to say that the City's administrator does not have a standing position.

An extensive discussion followed among the Commission and Robin Bird regarding the City's current code to allow setback and fencing on the canal and adjacent properties for property owners desiring to construct an athletic court or similar structures such as a pool, shed, and so forth.

Comr. Moss asked what if the item was postponed to a future date would any pending permits be impacted.

Mr. Bird replied he did not think so. However, should there be a new application prior to the courts settling the subject matter under discussion, then he will need to declare a zoning in progress on the Planning and Zoning Board's action.

Mayor Fisher concluded that if the Commission decided to table the item there would be no definition on when the item would be re-heard. However, if the item was stricken, it would not give Mr. Bird the zoning in progress opportunity if an applicant should come through.

In sum, Mr. Berman mentioned that if the Commission tabled the item for six (6) months, in an abundance of caution, the City would re-advertise the ordinance.

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Burrie	X		X	
Fisher			X	