



# City of Anna Maria

P.O. Box 779 10005 Gulf Drive  
Anna Maria, FL 34216-0779  
(941) 708-6130 Fax (941) 708-6134  
SUNCOM: 516-6740

**MINUTES  
PLANNING & ZONING BOARD MEETING  
CITY OF ANNA MARIA COMMISSION CHAMBERS  
TUESDAY, NOVEMBER 10, 2015 – 4:00 P.M.**

**Pledge of Conduct:**

We may disagree, but we will be respectful of one another. We will direct all comments to the issues. We will avoid personal attacks.

**CALL TO ORDER**

Chair Crane called the meeting to order at 4:00 p.m.

**PLEDGE TO THE FLAG**

**ROLL CALL**

Chair Crane welcomed new P&Z Boardmember Jim Conoly.

**Present:** Boardmember Margaret Jenkins, Boardmember Carl Pearman, Chair Jonathan Crane, Boardmember Maureen McCormick, Boardmember David Youngs, and Boardmember Jim Conoly.

**Also Present:** Public Works/Planning/Building Administration Char Patterson, City Attorney Becky Vose, and City Planner Alan Garrett.

**NEW BUSINESS**

**1. Public Hearing – Ordinance #15-807 - An Ordinance of the City of Anna Maria pertaining to Vacation Rentals**

*Planner Garrett* read the Ordinance title.

*City Attorney Vose* informed the City has been in litigation over the Ordinance. Since the last time the P&Z reviewed the Ordinance, the City Commission has discussed the issue extensively, there have been numerous court hearings, and most recently began a mediation process.

Reference was made to the red-lined copy of the Ordinance provided to the P&Z that day. The implementation dates have been updated in the new copy. However, they may be amended again from March 1, 2016 to April 1, 2016.

Many of the previous restrictions referenced in the initial Ordinance have now been removed. The City Commission is looking at having Ordinances of general applications throughout the City that will address similar issues. Restrictions that have been removed includes noise provisions. The Commission determined Noise Ordinance provisions should be applied Citywide for all properties.

The proposed Ordinance is a 'Registration Ordinance' vs. a 'Permitting Ordinance.' City Attorney Vose reminded the FL Legislature placed a restriction on FL Cities, whereas Cities and Counties cannot prohibit or regulate the duration or occupancy of Vacation Rentals.

The Registration will require coming to the City. Those who do not register will be handled through the Code Enforcement process. Many Cities and Counties actively use the Special Magistrate process to impose fines and create liens on properties. The Special Magistrate form of regulation will be utilized in Anna Maria to enforce the problem rentals.

*Chair Crane* questioned if the City felt it would lose the argument if they were to take a contractor's license from them if they were in violation.

Planner Garrett informed when he became Anna Maria’s City Planner ten years ago, he suggested regulating short-term rentals at that time – but was informed it was “not a problem.”

*Chair Crane opened the public comment portion of the Public Hearing.*

**Public Comment**

*AMI Sun Newspaper Reporter Joe Hendricks, Sarasota, stated the most recent fee was established at \$750 per Registration. Based on the Ordinance changes, Mayor Murphy will be reducing that amount.*

*Hearing no further public comment, Chair Crane closed the Public Hearing.*

**Motion: Boardmember Young moved that Ordinance 15-807 be approved as revised.**

**Action: Motion failed due to lack of Second.**

**Note: The Ordinance will be submitted to the City Commission with the Planning & Zoning Board having ‘No Recommendation’**

2. **Pursuant to Section 114-51 of the Code of Ordinances of the City of Anna Maria, Applicant Shawn Kaleta, is requesting an appeal to the Planning and Zoning Board, requesting Staff to issue a building permit for a single-family home located at 205 Elm Avenue.**

*Chair Crane questioned if this issue was actually an appealable situation. After reviewing the Florida Statutes, he found where in one area it was an appeal, in another it is a decision and what the appeal is based on.*

Chair Crane stated it was his understanding that a Building Permit was not issued for 205 Elm Avenue, and there was no rejection. Therefore, he felt the basis of the appeal will be because of non-action. He asked City Attorney Vose if that was how the issue should be handled.

*City Attorney Vose agreed with Chair Crane’s comments.*

**Public Comment**

*Randolph (Randy) Smith, Najmy, Thompson Attorneys, Bradenton, addressed the Board representing Applicant Shawn Kaleta who had filed the appeal on the case.*

Mr. Smith addressed Chair Crane’s comments relating to actions versus non-action. He asked Chair Crane if because there’s no documentation from the Building Official stating the permit had been denied, if Chair Crane felt there was no issue before the Board.

Mr. Smith explained that:

- Application was submitted July 8, 2014.
- Also submitted on July 8, 2014 were four other applications – all for the same type of building permit.
- The Building Official approved the four other applications within a 15-day period. He did not approve the 205 Elm Avenue permit. He ultimately (approximately October) advised the applicant the application was denied based upon the moratorium enacted because of the size and scale of use – building plan having five bedrooms.
- Mr. Smith stated per FL Statutes, the permit should have been acted upon within 30 days (no later than August 17, 2014).
- September 27, 2014 the City Commission held an Emergency Meeting adopting the moratorium. The Ordinance was then enacted in December 2014 – made retroactive to September 27, 2014.
- Mr. Smith feels the action to deny the application was improper due to a case where it was recognized the moratorium was made retroactive to the September 27, 2014 date. He then referenced the case that states an application cannot be denied based upon solely regulations that are not pending at the time the application is submitted. He noted the moratorium was not in effect on July 8, 2014 when the application was submitted.

Discussion followed relating to the Building Permit application tracking sheet, and comments made by Public Works Director McKay. Also discussed was former Building Official Bob Welch's memos, Public Works Director George McKay's right-of-way application review list, etc.

Review of the other permits submitted on the same day were reviewed by Mr. Smith. *Boardmember McCormick* noted it appeared, at some point, revisions were requested of the Applicant.

*Mr. Smith* informed the exact same floor plan was submitted in April 2014 for another location. That plan was approved by the Building Official. Thereafter, five sets of plans were then submitted all having the exact same floor plan – one of being the Elm Avenue plan.

*Chair Crane* asked what action Mr. Smith felt the P&Z Board should give on this issue.

*Mr. Smith* felt the responsibility of the P&Z Board was to take actions and appeals, then report to the City Commission with the recommendation the permit should be allowed to go through the process notwithstanding the provisions of the September 27, 2014 moratorium.

*Chair Crane* felt there were too many unknowns - except that the other building permits were approved. Based on the other permits being approved, he felt it would suggest the Elm Avenue permit had problems. However, there was no testimony on that fact.

*City Attorney Vose* informed this meeting serves as the Evidentiary Hearing that was requested. It is up to the Petitioner to present whatever evidence he wishes to present. She further noted the 30-days was not "30-calendar days", that it's "30-working days".

*Chair Crane* suggested the Hearing be continued to allow Mr. Smith to have witnesses and documentation.

*Boardmember Pearman* asked if someone had inquired of the Building Department why the Elm Avenue permit was not issued.

*Mr. Smith* explained he did not have anyone that afternoon who could testify as to why the permit was not issued.

*Boardmember Pearman* referred to notes on the application written by former Building Official Bob Welch. He felt the notes indicated that by the date of the moratorium, Mr. Welch still did not have the proper documentation needed.

*City Attorney Vose* informed Mr. Smith has the option of having Mr. Welch subpoenaed.

*Boardmember McCormick* asked if there was any other documentation regarding information between the Project Manager and the City. She pointed out the application specifically calls out an elevation certificate discrepancy, and also drawing concerns. She did not believe the permit was held back knowing there will be a moratorium enacted, and that it appears that this permit application was held up for many reasons.

*Chair Crane* opened the meeting up for public comment.

**Public Comment**

*Hearing on public comment, Chair Crane* closed public comment.

*Chair Crane* stated the P&Z Board could deny or recommend approval, or continue the meeting until further testimony and/or documents come forward.

*Boardmember McCormick* explained that since there was no documentation package between Mr. Welch and Mr. Smith’s client, it would seem the burden of proof had not been met. To her, it appeared the City had asked for information that was not received. She then presented the following motion:

**Motion: Move to deny the request that staff issue a Building Permit for a single-family home located at 205 Elm Avenue.**

**Action: Moved by Boardmember Maureen McCormick, Seconded by Boardmember Carl Pearman. On Roll Call Vote, the motion to deny carried unanimously.**

- 3. **Public Hearing - Pursuant to Section 114-133 (c) of the Code of Ordinances for the City of Anna Maria, the applicant is requesting a conversion of a non-conforming use for the Rod & Reel Motel. 877 North Shore Drive – Lots 1 & 2, Block 4, Shore Acres Subdivision  
Applicants: John and Suzette Buchan**

**City Planner Presentation**

*Planner Garrett* announced the Hearing notices had been submitted to surrounding property owners. The required signage was posted on the property, and a Notice placed in the newspaper.

The Rod & Reel Motel is considered a non-conforming use - that per code, cannot be intensified. The Applicants are requesting a swimming pool at the Motel. Ms. Buchan has addressed the request by reducing the number of occupants, reducing the coverage, etc.

Planner Garrett felt the P&Z need to look at some of the non-conforming use provisions. Feeling the Motels are the character of the City, he did not feel they would want them to go away. He noted if the motel was torn down, it could result in two houses being built in its place. He testified about working with Ms. Buchan - and that she runs rental facilities in Bradenton Beach, has been excellent to work with, has provided the City will all information requested, and to his knowledge there have never been any complaints relating to her properties.

Planner Garrett stated in order for the Motel to be successful, it needs to be updated with what people desire – larger rooms and a swimming pool. If the P&Z approves the request, the approval would be attached to the concept plan submitted that deals with the reconfiguration of the rooms to lower the occupancy, and reduction of the coverage.

**Applicant Presentation**

*Applicant Suzette Buchan* provided background information relating to the History of the Historic Rod & Reel Motel. Ms. Buchan explained the history of the Rod & Reel Motel, and that it is very quaint, clean, and in a nice location. Noting the property is non-conforming, Ms. Buchan stated it is in desperate need of repair.

Ms. Buchan proposes the motel be changed to a lower density 28-rooms versus 38-room motel; that there are no enlargements made to the present facility; it will maintain the same footprint; and include an exterior renovation, including the grounds. In her opinion, it would be an improvement to the area, and that it contributes to the Rod & Reel Pier. She reminded the Rod & Reel Motel is a Historic property.

Ms. Buchan then discussed her last project of creating a five-room motel in Bradenton Beach instead of the property being torn down. She asked for the P&Z Board’s support for her request at the Rod & Reel Motel.

*Ms. Buchan* responded to *Boardmember Pearman’s* question relating to how she would get the appropriate coverage and impervious surface.

*Planner Garrett* pointed out a new Ordinance will become effective January 1, 2016 that the pools would be considered impervious surfaces. Anyone applying prior to January 1 would not have to comply with the new Ordinance.

Further explanation was provided relating to the coverage, with *Ms. Buchan* noting there will be more concrete than the area the new pool will cover. Also, they have a shared Parking Agreement with the City.

*Chair Crane* stated he lives close to the motel and asked if the Applicant felt the eight parking spaces could be created onsite, rather than having shared parking with the City.

*Ms. Buchan* responded noting they could have double parking, but it would be difficult when people are not related.

*Planner Garrett* suggested rather than two single rooms that would bring two separate vehicles, *Ms. Buchan* may want to look at having a suite for a family where they would come in one car. Doing so would reduce the number of vehicles – or allow for tandem parking.

*Ms. Buchan* explained that she does not allow any sofas, futons, cots, etc.

*Planner Garrett* noted the City may want to state sofas, futons, cots, etc. are not allowed as a condition of approval.

*Boardmember McCormick* was happy the Applicants were wanting to improve the motel rather than tearing it down.

Continued discussion followed relating to the Rod & Reel Motel to include discussion relating to the shuffleboard.

*Chair Crane* opened the public comment portion of the Hearing.  
*Hearing no public comment, Chair Crane closed the Public Hearing.*

**Motion: Move to approve the application by Applicant’s John and Suzette Buchan for conversion of the non-conforming use for the Rod & Reel Motel located at 877 N. Shore Drive with the stipulation there shall be no more than 28 occupants.**

**Action: Approved. Moved by Boardmember Maureen McCormick, Seconded by Boardmember David Youngs.**

**Motion carried – All Aye.**

**MINUTES**

**Consider approval of October 20, 2015 Planning & Zoning Board Meeting Minutes.**

Noting he was absent for the October 20 meeting, *Boardmember Youngs* asked about *Chair Crane’s* comment that discussion relating to the Local Construction Board be placed on the next meeting agenda.

*Chair Crane* explained the City Commission has formed and approved a Local Construction Board. Complaints about contractors can be heard, and the City can also bring matters before the Local Construction Board. He suggested the item be carried over to a future meeting.

**Action: Move that the October 20, 2015 Planning & Zoning Board Meeting Minutes be approved as written.**

**Action: Approved. Moved by Boardmember Carl Pearman, Seconded by Boardmember Maureen McCormick.**

**Motion carried – All Aye.**

*City Attorney Vose* noted that was a big concern. She pointed out the City had been in front of two different Judges. The first Judge had been recused due to a conflict. The current Judge appears to be very fair. From a practical standpoint, there would be a good chance those in non-compliance or violation would have to have a large number of violations before actually losing their license. If the City tried taking a license, the contractor would immediately take the City to court. *City Attorney Vose* further noted Flagler County's Vacation Rental Certificate did not include the ability to remove a contractor's license.

Additional Ordinance language clarification included:

- Fines will be set by the City Commission separate from the Ordinance. Explanation followed relating to the Special Magistrate process.
- The ROR has been excluded from the Anna Maria Vacation Rental Registration. The purpose of the Ordinance is to address commercial operations in the residential areas – R-1 and R-2 Districts. The ROR being the Retail/Office/Retail District is essentially commercial. Therefore, the argument of needing to regulate Vacation Rentals differently than single-family homes – because they were located within an exclusively residential district – would not apply.
- The proposed Ordinance serves as a series of regulations with additional ones to follow.
- *Planner Garrett* informed the Commission have instructed staff to have a workshop relating to the ROR District to see if it needs slightly strengthened, look at different regulations, coverage issues, parking, setbacks, etc. – so there will not end up being strictly residential along Pine Avenue - that would leave the larger homes as larger rentals.

*Boardmember Pearman* asked to go on record that he did not agree with eliminating the ROR from the Ordinance.

*City Attorney Vose* explained removing the ROR was part of the litigation.

Discussion and explanation followed.

- Upon the Code Enforcement Officer finding violations of the Building Code at the first visit, would trigger the Code Enforcement process.
- A bedroom will be defined in the Ordinance as defined in the Florida Building Code. If a bedroom is built illegally, it will not be included as a bedroom for purposes of the Vacation Rental Registration. It was noted the language did not appear in the proposed Ordinance and would be reinserted.
- The City will immediately contact Manatee County, Florida Department of Revenue, and/or the Florida Department of Business Regulations in the event an Applicant does not have the appropriate registrations with those entities. According to *City Attorney Vose*, FL Statute states local governments cannot hold up permitting applications, etc. due to lack of required State Licensing.
- Sec. 108.64, Exemption for pre-existing rental agreements. *Boardmember McCormick* asked about the Penalty of Perjury and if the only penalty was a fine – and would the Applicant registration still be considered.

*City Attorney Vose* informed it would only be a fine.

*Chair Crane* felt anything submitted to the City should be under Penalty of Perjury.

*City Attorney Vose* informed the Registration document will have a sworn to statement.

- *Chair Crane* stated there may be stronger provisions in some of the other City Ordinances, but did not see anything other than fines to address the violations.

*City Attorney Vose* reminded the City cannot foreclose a Code Enforcement Lien against a homesteaded property. Non-homestead properties are different. *City Attorney Vose* explained how the foreclosure process works.

- Many of the existing rentals have current rental agreements in advance – some up to 2017. Under the Florida and Federal Constitutions, the City cannot interfere with the Rental Agent's contractual obligations. To take away a License with persons having agreements and expecting to rent, would create immediate litigations against the City.

Mayor Murphy will be computing and recommending the fees for the Vacation Rental Registrations.

- *Boardmember McCormick* discussed how during her research, Islamorada, Florida's regulations had been upheld in court. She was concerned Anna Maria's Ordinance will create huge Code Enforcement Department requirements. It was further noted Islamorada had existing language in place prior to 2011.

**Adjournment**

**On motion made by Boardmember Pearman, and seconded by Boardmember McCormick, the meeting adjourned at 5:40 p.m.**

*Diana L. Percycoe*  
Diana L. Percycoe, CMC, City Clerk

Minutes approved: *March 22, 2016*