



City of Anna Maria

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MINUTES CITY COMMISSION REGULAR MEETING FEBRUARY 26, 2015 – 6:00 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 Webb called the meeting to order at 6:00 p.m.

PLEDGE TO THE FLAG

ROLL CALL

Present: Mayor Dan Murphy, Vice-Chair Nancy Yetter, Commissioner Dale Woodland, Chair Chuck Webb, Commissioner Doug Copeland, and Commissioner Carol Carter.

Also present: City Clerk/Finance Director Diane Percycoe, Interim City Attorney Ricinda Perry, and City Planner Alan Garrett.

Press: Sun and Islander.

General Public Comment regarding non-agenda items and Items not scheduled for future agendas will be taken at the beginning of the meeting with a limitation of three minutes. The Commission's intent is that General Public comment is to be used for the public to inform the Commission of new issues within the City. Public Comment regarding agenda items will be taken with each agenda item with a limitation of three minutes.

1. General Public Comment

Penny Naylor, 204 Elm Avenue, thanked the Mayor and Commission for all they are doing to address the vacation rental issues.

Ms. Naylor informed a home across the street from her had been sold over one year ago to Shawn Kaleta. There has been recent work on the home and approximately six weeks ago a mother and her two children moved into the home. The construction continued to occur on the property and during that time there were issues with the transformer behind that home that affected her refrigerator. After looking at the transformer, she found there was an unsafe power hookup being attached to the pole which she reported to the Code Enforcement Officer.

Code Enforcement Officer Rathvon confirmed the power hookup was illegal and it has since been addressed. Ms. Naylor suggested when the City decides to adopt Ordinances regulating vacation rentals, they should be made as hard as possible since there is no assumption of goodwill on the part of everyone.

2. Public Hearing and Second Reading – Ordinance 15-789 – 4-Way Stop at Gulf Drive & Magnolia Avenue – Attorney Perry

Attorney Perry read the Ordinance title.

Chair Webb opened the Public Hearing.

Hearing no public comment, the Public Hearing was closed.

Motion: Move that Ordinance 15-789 be approved for Second Reading and Adoption.

Action: Approved. Moved by Commissioner Doug Copeland, Seconded by Commissioner Dale Woodland.

Motion carried on Roll Call Vote – All Aye.

3. Formal Vote – Declaratory Judgment

Mayor Murphy explained he had brought up the issue due to the original vote being taken at a Commission Work Session. He pointed out there was no public input taken at the meeting relating to the action taken. After researching if a vote could be taken during a Worksession, he found that former Attorney Dye had indicated a

vote could be taken so long as there was a unanimous Commission consensus to do so. Also, other neighboring Cities indicated there are no votes or official action taken during their Worksessions. As a result, he suggested official action be considered during a Regular Commission meeting.

Chair Webb informed there was no statutory language that states whether or not taking a vote during a Worksession is illegal. Instead, most other Cities and Counties have a Resolution specifically stating votes must be taken during a Regular Meeting.

Public Comment

David McCormick, 426 Magnolia Avenue, said as a resident, he wanted to let the Commission know he felt they were doing a great work. He felt pursuing a Declaratory Judgment would allow the citizens to know what they could or could accept for the City of Anna Maria.

Commission Discussion

Commissioner Woodland discussed *Chair Webb's* previous comments relating to the vacation rentals. He noted only *Chair Webb* and *Attorney Levin* had the opinion that Anna Maria vacation rentals were illegal. As a result, he asked to see *Chair Webb's* legal opinion on the matter.

Chair Webb informed he had provided an opinion over three years prior and would be happy to provide it to anyone needing it. He said his opinion comes from a different angle than that of *Attorney Levin*.

Commissioner Woodland noted *Chair Webb* had stated no matter what decision is made by the Court, it would be appealed. He felt it was fair that the community be advised what the estimated monetary costs will be – and what the timeframe will be relating to the appeal process. *Commissioner Woodland* stated he wants to get Ordinances adopted by the City now - rather than being pre-empted by any action taken by the FL Legislature.

Chair Webb stated *Attorney Levin* had suggested utilizing a Code Enforcement process. However, *Chair Webb* felt pursuing a declaratory action would be a significantly faster approach, believing taking action through Code Enforcement would be at least nine months start to finish. Details followed. *Chair Webb* explained the declaratory action process would take approximately sixty days with any appeal to follow. He estimated pursuing a declaratory action would take two-thirds the time of any code enforcement action.

Costs when dealing with litigation are always hard to predict according to *Chair Webb*, but he estimated a total cost of \$5,000 to \$20,000 during the trial period, and \$10,000 for the appellant court stage. He felt costs involved with *Bert Harris* claims exceeds the costs involved with obtaining a declaratory action.

Chair Webb stated the issue of vacation rentals was the biggest issue ever being faced by Anna Maria and was an appropriate issue to spend money for – and a good, conservative approach for moving forward. He reminded the City recently paid \$12,000 to settle a case where the other side was not entitled to the money.

Commissioner Copeland asked for clarification on the following:

- Pointed out *Attorney Levin's* approach related to a verbal wording of the Ordinance – versus *Chair Webb* believing vacation rentals having more than three bedrooms would be a motel under the City's Ordinance. *Commissioner Copeland* questioned which approach would be pursued.
- *Attorney Levin* had estimated the declaratory action cost at \$100,000 to \$200,000. Also, when first discussing the issue, *Chair Webb* had originally estimated it taking over a year for the declaratory action to be addressed by the Court – versus the 90-day period of time presented that evening.
- *Commissioner Copeland* referred to the new City Attorney deciding on the approach that will be taken and questioned what if the new Attorney does not feel the City actually has a case.
- *Commissioner Copeland* pointed out City Planner *Garrett* has indicted the City cannot regulate something that's illegal. If proceeding with the Vacation Rental regulations while pursuing a declaratory judgment, he asked how any case could be affected.
- Questioned if the declaratory judgment is in the City's favor, would all rentals then be illegal.

Chair Webb responded as follows:

- Felt the approach to be taken should be determined by the new City Attorney. He responded to the time period, believing the type of case required for a declaratory action would take a shorter amount of time.
- Reminded citizens can sue the City and get a declaratory action request before the court. He said after speaking to other attorneys, they also felt it was a case they could take to court.
- *Commissioner Yetter* noted she served on the interview committee for the new City Attorney and had addressed *Commissioner Copeland's* question. The response received was that it was a good idea to both proceed with the regulations and also seek the declaratory judgment at the same time – that one would not prejudice the Judge over the other.
- *Chair Webb* presented the idea of adopting the Vacation Rental Certificate program – but the City not requiring the Certificates until after the declaratory action was completed.
- As far as if all rentals would be illegal if the City prevails, *Chair Webb* stated it would need to be clarified in the City's code. Also, a Special Exception process with restrictions could be enacted.

Commissioner Carter stated she was in favor of moving forward with both a Certificate program and seeking a declaratory judgment.

Action:

Chair Webb explained one of the prevailing voters on the Commission would need to ask for a revote in order for the vote to be reconsidered. He was not in favor of bringing it up for a vote again and asked if *Commissioners Carter or Yetter* wished to do so.

Neither Commissioner Carter nor Commissioner Yetter were in favor of bringing the issue back up for a vote again - feeling the issue had been resolved during the Work Session.

Chair Webb informed the City would need to pick a defendant for the case. He suggested he works with the Mayor to make that determination. An issue over the holidays resulted in a home on South Bay Blvd. having approximately 30 people staying in it. He believed someone operating a vacation rental in that manner would serve as an appropriate defendant.

Action: It was the majority consensus for Chair Webb to work with Mayor Murphy to move forward with picking a defendant with no requirement to bring it back before the Commission for final approval.

4. Interim City Attorney Perry Update –

McLean Bert Harris Claim

McLean Bert Harris claim has been dismissed with prejudice.

Kaleta Bert Harris Claims

Explanation was provided relating to the Bona Fide offer regarding the Kaleta Bert Harris Claim. Interim City Attorney Perry felt the Commission was in agreement if Mr. Kaleta and his attorney had filed the other claims in time, the City would have worked out the issues with them. As a result, they had the option of either accepting or rejecting the City's actions.

A request has since been received from Mr. Kaleta. Attorney Perry referred to the recitals and whereas clauses as part of the settlement agreement noting Attorney Kelly has presented an additional settlement for dispensing all claims. Explanation and details followed. Attorney Perry felt the agreement was fair and asked if the Commission was in agreement with the proposed change. She stated the settlement was similar to that originally offered by former City Attorney Dye. The changes were read into the record by Attorney Perry that included allowing development pre LAR and to include confirmation numbers as provided by Planner Garrett.

Action: There was Commission consensus for Attorney Perry to proceed.

Shade Meeting

Attorney Perry referred to the Shade Meeting scheduled for February 27 to discuss the 423 Spring Avenue litigation. She informed she was in a hearing earlier that day in an attempt to get additional time so the City's

new City Attorney could defend the case. As a result, the Court ordered the opposing counsel, Mr. Moore, to prepare the Order, and have it to the Judge to him this afternoon so Attorney Perry could have it for the meeting that evening. The decision is that the City's drop-dead date for responding is scheduled for Monday, March 2, 2015 at 5:00 p.m.

Attorney Perry apologized noting City Clerk Percycoe had worked really hard to get a Shade Meeting scheduled in such a short period of time.

5. First Reading – Ordinance 15-788 - Vacation Rental Ordinance – Planner Garrett

Chair Webb said he was unaware the Ordinance would be on First Reading that evening. After discussing the title block with Planner Garrett, they have changed it to make it as broad as possible in order to allow the Commission all options.

Planner Garrett read the new Ordinance title into the record.

A review of the Ordinance followed. Planner Garrett explained all changes discussed at the last meeting that had been included in the proposed Ordinance. Additional discussion included:

- Move the following language out of the Definition section - "A "transient public lodging establishment" shall be subject to the additional certification requirements if the transient public lodging establishment is additionally considered to operate as a short-term vacation rental unit."
- Discussed adding certain terms into the Definition sections. Chair Webb and Planner Garrett to review further.
- Chair Webb suggested waiver language to the Vacation rental unit Certification section.

***Note: Chair Webb asked that discussion be held at that point relating to the next item – Request Approval of Gift Receiving Policy. After discussion on the item, discussion continued on Ordinance 15-788 as follows:*

- Section 74-272. C. Vacation rental unit certificates, 2. Obtain a business tax receipt from Manatee County.
Chair Webb noted Manatee County does not have a Business Tax Receipt and suggested that language be removed. He noted the City should ask Attorney Perry to look into whether the City could re-establish its Business Tax Receipts.
- Section 74-272. D. 1. a. Swimming pool, spa and tub safety.
Commissioner Carter pointed out swimming pools for rentals need to be screened requiring vinyl acoustic materials.
- Section 74-272. D. 1.a. Swimming pool, spa and tub safety.
Chair Webb has heard people have been shocked by the pool lights/electrical system. He felt they therefore will need to be inspected. Also, the bottom pool filter needs inspected on an annual basis.
- Section 74-272. D. 1. b. Sleeping rooms.
Discussion followed relating to the definition of sleeping rooms versus bedroom. *Planner Garrett* felt the City's current definition was sufficient.
- Planner Garrett will look into the City adopting the Florida Fire Safety Code by reference.
Chair Webb questioned if sprinkling should be required, and if direct access from the bedrooms and fire escapes should be required. Also, questioned if vacation rentals should be required to comply with ADA standards.
- Was felt license plates for all rentals shall be supplied, along with the names of each tenant.
- Was noted a resident had inquired about adding some type of identification/pick up requirements on the Waste Management cans.
- *Chair Webb* will research to see if language should be added reflecting that any violation of the Ordinance would be declared as a public nuisance.
- Add language requiring rental agents to verify and prohibit sexual predators.
- Suggestion that language is added that vacation rentals may not unreasonably impact the use and enjoyment of neighboring properties. Examples, noise, parking, etc.
Chair Webb will research for the appropriate language.

- Section 272. E. Vacation Rental Certificate.
Remove language “to cover the costs of administration of the certificate and inspection program.”
Add “Failure to comply with any of the requirements of this section “*and the city code*”, shall be grounds for revocation...
- Section 272. F. 3.
Amend the first sentence to read - “When possible the inspections shall must be made by appointment with the rental agent.
- Discussed that the Rental Unit Certificate should be renewed annually – which would trigger an inspection.
- Add the following language to Sec. 272. F. 2.
“The City may inspect at any time, and at a greater frequency, upon reasonable notice to the Certificate Holder.
- Sec. 272. F. 4.
Change as follows: “If the inspector(s) is denied admittance by the rental agent or if the inspector(s) fails in at least ~~three~~ two attempts...
- Sec. 272. F. 4.
Add – “Failure to allow inspections shall result in the revocation of the Certificate.”
- A due process requirement and appeal process will need to be added.
- Sec. 74-272. G.
Add language requiring the current property owner information must be provided.

6. Request Approval of Gift Receiving Policy – Commissioner Carter

Interim City Attorney Perry suggested the following changes to the proposed Gift Receiving Policy:

- Replace “Council” to “Commission” throughout.
- Determine who can accept donations and define “City Official”.
- Section F. Specific Types of Donations - Identify issue of allowing a property to be reverted back to an owner in the event it has been donated and the City decides not to use said property as originally intended.
- Address the situation in the event of when the City may not have utilized a donation for what it was requested for and providing for the donation to be given back in order to clear the City’s books.
- Section E. Section 15 – Change to: “The City Commission shall make all determinations with respect to acceptance of Donations but may in its discretion delegate authority to the Mayor to accept restricted donations valued up to \$49,999,00.”

Commissioner Woodland suggested the name of the budget line item be added in the language also. If no line item has been established, the donation should then be presented to the Commission for their final consideration and acceptance.

Examples and different scenarios were presented.

Attorney Perry suggested all donation requests could be placed on the Consent Agenda.

Action: After discussion, it was agreed that Mayor Murphy and Interim City Attorney Perry will work together and bring back language based on the intent of the Commission. Includes language addressing reverts, addressing return of donations in event of their non-use, and adding a disclaimer on the agreement that the City has the discretion to use donated funds for its own specified purposes.

*(Discussion continued relating to Ordinance 15-788 – See Item # 6) ***

7. **Discussion: Paid Permit Parking – Chair Webb** - No discussion.
8. **Mayor’s Report** - No report
9. **City Commissioners Reports** – No reports.

10. CONSENT AGENDA: The following items are considered routine in nature and should be considered in a single motion. Items, which warrant individual discussion, should be removed from this list prior to the motion to adopt. Such items will be discussed separately.

- a. Approve Minutes: 1/13/15 Special Mtg; 1/15/15 Special Mtg; 1/22/15 Reg Mtg/WS; 1/28/15 Special Mtg; 2/12/15 Shade Mtg; 2/12/15 Special Mtg/WS; 2/19/15 WS
- b. Re-appoint Micheal Coleman to Planning and Zoning Board
- c. Special Event: Historical Society Heritage Day – 3/7/15 – 9am - 4pm – Waive Fee
- d. Special Event: “The Vintage Flea” – Ginny & Jane E’s – 4/5/15 – 8am-4pm
- e. Special Event: Bradenton Area Convention & Visitor’s Bureau – Film Permit 4/1 to 4/4/15– Waive Fee

Mayor Murphy informed Consent Agenda item b. has been withdrawn.

Commissioner Carter announced she attended the recent Chamber of Commerce meeting. Mr. Teitelbaum was in attendance and stated that as the TDC Vice-Chair, he wanted to assure the group that TDC has no more advertising of Anna Maria Island as a rental area being placed. As a result, she was surprised when seeing where the Bradenton Area Convention & Visitor’s Bureau Film Commission – that is funded by the TDC – is wanting to film Anna Maria Island for tourism. Consent Agenda item e. was pulled to be discussed separately.

- **Motion:** Move that the request from the Bradenton Area Convention & Visitor’s Bureau – Consent Agenda item e. for waiving the Film Permit 4/1/15 to 4/4/15 fee be denied.
Action: Moved by Commissioner Carol Carter, Seconded by Vice-Chair Nancy Yetter.
Motion for denial carried – All Aye.
- **Motion:** Move that Consent Agenda items a., c., and d. be approved.
Action: Moved by Commissioner Doug Copeland, Seconded by Vice-Chair Nancy Yetter.
Motion carried – All Aye.

11. REPORTS AND UPDATES:

- a. Sheriff’s Report (Written)
- b. Building Department Reports (Written)
- c. Public Works’ Department Report (Written)
- d. Code Enforcement/City Pier Report (Written)
- e. Ordinance Update (Written)
- f. Financial Report (Written)

Commission Comments

Ordinance 15-788

Discussion was held relating to the advertising of proposed Ordinance 15-788. *Chair Webb* announced the Ordinance would be placed on each meeting agenda until completed.

Number and Size of Bedrooms

Chair Webb informed he and Interim City Attorney Perry had discussed the zoning issue of limiting the number and size of bedrooms. He asked that the Commission consider whether they wished to add the item for discussion at the next Work Session.

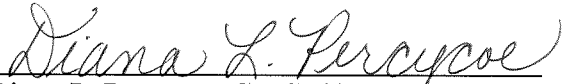
Update Regarding Selection of Full-time City Attorney

Mayor Murphy said when recommending the hiring of Interim City Attorney Perry, he had committed to having a selection made on a full-time City Attorney for the Commission’s approval by the end of February. He was in the process of finalizing the salary negotiations with a candidate – Attorney Becky Vose, from Winter Park, Florida. Assuming the salary negotiations go as planned, Mayor Murphy will be bringing the recommendation before the Commission for their approval.

Press Comment – None.

Adjournment

The meeting was adjourned at 8:33 p.m.



Diana L. Percycoc, CMC, City Clerk

Minutes approved: 3/26/15