



# CITY OF ANNA MARIA

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## MINUTES CITY COMMISSION SPECIAL MEETING/WORKSESSION FEBRUARY 12, 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 6:26 p.m.

### **PLEDGE TO THE FLAG**

### **ROLL CALL**

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

**Also present:** City Clerk/Finance Director/City Treasurer Diane Percycoe, Finance/Deputy Clerk II/Code Enforcement Diane Sacca, 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.

**Public Comment – None.**

### **SPECIAL MEETING**

- 1. First Reading - Ordinance 15-789 - Traffic Ordinance – 4-way stop on Magnolia and Gulf – Mayor Murphy/Interim City Attorney Perry**  
*Planner Garrett* read the Ordinance title.

*Commissioner Copeland* stated he was glad the Commission took the advice of Sgt. Davis and decided to change the 4-way stop on Magnolia and Gulf Drive from seasonal to permanent.

*Mayor Murphy* agreed, informing Sgt. Davis had recommended making it a permanent stop versus seasonal because having it only up on a seasonal basis would cause a lot of confusion. If the stop signs result in a lot of congestion, they will be removed. It will be carefully monitored by the Sheriff's Department.

Mayor Murphy informed the Trolley stop will be moved from the corner of Magnolia and Gulf Drive to a location in front of Ginny and Jane's.

In response to Vice-Chair Yetter's question, Mayor Murphy clarified the additional signage involves a pedestrian crosswalk sign.

**Public Comment – None.**

**The Special Meeting was closed by Chair Webb at 6:29 p.m.**

**WORKSESSION**

Worksessions provide the Commission with an opportunity to informally discuss topics of common concern and interest and to exchange ideas with staff. In order to make efficient use of time, public comments and questions generally are not entertained during worksessions. Public Comment is taken at meetings such as Regular Meetings and Special Meetings where action items are officially voted on.

**Chair Webb called the Worksession to order at 6:29 p.m.**

**2. City/County Communications – *Ed Hunzeker, County Administrator***

*Manatee County Administrator Ed Hunzeker* addressed the Commission relating to communications between Manatee County and the City.

County Administrator Hunzeker informed there was recently a lack of communication when there was discussion made about the county charging for parking at the Manatee Beach. He stated the Board of County Commissioners have never had a discussion about charging for parking at the beach – nor any discussion about paid parking anywhere on the Island owned by the County. He stated the information was wrong information that had made its way into the media.

Mr. Hunzeker explained there had been discussions a few weeks back with the Police Chiefs on the Island about how, in the future, they would deal with the mullet fisherman and their overnight parking at the Boat Ramps. It was noted during that meeting that some communities charge for parking as a way to deal with the concern. That discussion was as close as it got to the discussions of any paid parking.

Mr. Hunzeker stated the County had no intent for now – or in the future – to implement paid parking at any of the county properties on the Island.

Mr. Hunzeker informed that as part of the open communications of issues of mutual concern between the County, Mayors, and Commissioners, county representatives are more than happy to meet about any concerns there may be. Convention and Tourism Director Elliott Falcone, Manatee County Commissioner John Chappie, and County Parks and Natural Resources Charlie Hunsicker were introduced by Administrator Hunzeker and were in attendance that evening.

*Commissioner Carter* questioned why the City must have matching funds in order to apply for funding through the Tourist Development Council (TDC).

*Mr. Hunzeker* stated traditionally, matching funds have been requested. He said his motto is “If it’s free, it has no value. If it has no value, you will be treating it that way.” The Manatee County Board has taken the approach of working with the communities, but will require an anticipated match. He informed the Board does not have a formal policy that it has to be an actual 50/50 match.

*Commissioner Woodland* pointed out there had been a big increase of building all over Manatee County which he felt greatly contributes to the large traffic increase on Anna Maria Island. He questioned if there were any short or long-term plans to expand the infrastructure.

*Mr. Hunzeker* responded the County currently has a study (required by law for review every five years) being conducted for an update on their Impact Fees. The report is expected later this year. Based on the way the State has eliminated the concurrency rules for developers, he felt the repair of the roads will fall to the Government - versus having the developers paying those impact costs. As a result, he anticipates the impact fees to become higher – and in order to build more roads, it will require more money. The County is also looking into expanding transit with the goal of getting more people out of their vehicles and utilizing the transit system.

Noting the County controls and repairs the water and sewer in Anna Maria, *Chair Webb* pointed out the City does not collect any impact fees. He asked if the County would like for the City to collect impact fees for the renovation and expansion of those utilities. He informed the water pressure for the Fire Department is very low and the Fire Chief has indicated there was not enough water pressure to fight two fires at the same time.

*Mr. Hunzeker* stated he would have it looked into. He noted the size of the pipes would need to be increased in order to address the water pressure issue.

*Commissioner Copeland* pointed out that along with the new construction, when there is an increase in renovation and expansion of current structures in Anna Maria, the result is more water and sewer usage.

*County Parks and Natural Resources Charlie Hunsicker* informed when a peaking situation is being faced as far as utilities, it is often due to the lack of storage - resulting in a daily average reduction in water pressure. Where larger lines are the solution, when addressing the instantaneous flow over a period of hours, usually towers or ground level storage would be needed.

**Public Comment** – None.

**3. Discussion: Stormwater Utility Rate Fee Increase – Mayor Murphy/Engineer Lynn Burnett**  
*Mayor Murphy* asked that the item be continued due to the absence of Engineer Burnett.

*Commissioner Woodland* stated Engineer Burnett will be proposing a stormwater utility rate fee increase which he does not object to. However, he wants to make sure it is discussed as to what the increased revenue will be utilized for.

*Mayor Murphy* noted he and Public Works Director McKay have reviewed a current plan based on the amount of revenue. The plan will be brought back for Commission review showing the priorities, as well as the anticipated date for the work to be completed.

*Commissioner Copeland* informed he spoke to the Mayor about the idea of trenching around the new properties that tie into the system going down the streets. He suggested there be an incentive to get the older homes to do the trenching - since the system will only work if everyone is part of it.

*Chair Webb* said citizens have informed their citrus are dying. He referred to the lens fresh water – an area of fresh water floating on top of the salt groundwater. He felt the more lot coverage, the less infiltration of rainwater there is on the lens – which is disappearing. Mayor Murphy has given approval for Chair Webb to discuss the issue with Engineer Burnett. A SWFWMD study was conducted relating to the same issue.

*Commissioner Copeland* agreed, stating as the groundwater gets pumped off, the saltwater intrudes underneath.

**4. Discussion: Attorney Susan Trevarthen's Legal Opinion on Vacation Rentals – Mayor Murphy/Chair Webb**

*Chair Webb* informed he had spent a day reviewing the legal opinion the City received from Attorney Susan Trevarthen relating to whether or not vacation rentals are legal in the City. It was Chair Webb's opinion the legal opinion was 'sloppy work and defective'. Chair Webb's review included:

- He said the opinion was based solely on the City using the term in Section 114-221 – Residential Zoning Classification – as 'single-family detached buildings' – and that specific term is not defined in the City's code. However, Chair Webb stated though 'single-family detached buildings' is not used at all in the City's code, there is a definition and what is referenced is 'single-family detached dwellings'.

- Also referenced in the Legal Opinion is legislative history in Section 114-221. However, what Attorney Trevarthen received was a series of old Anna Maria Ordinances. Explanation followed. Chair Webb informed what she was looking for was what the legislative intent is for helping interpret the code provision. He did not, however, see any changes that would link and also, Attorney Trevarthen did not receive any legislative records/minutes. As a result, Chair Webb stated the conclusion in the opinion was defective. Explanation followed.
- Cases cited in the opinion were reviewed by Chair Webb. However, the Ordinances referenced in the cited cases must match Anna Maria's – which he said do not.
- Circuit Court Pellet opinions were attached to the opinion. The Supreme Court opinions are strongest, with the second strongest being the Second District Court of Appeal located out of Lakeland. When that District Court makes a decision rendering an opinion on the same facts or law – that controls what the lawyers and judges must follow. As a result, Chair Webb felt the only case referenced in the opinion that would apply for Anna Maria ended up being the Venice case. However, the Venice laws and opinions are not the same and are different than Anna Marias - so would not apply.
- Chair Webb indicated the best way for defining terms is through Webster's dictionary. Attorney Trevarthen had addressed the City's definition of lodging unit and hotel. Chair Webb read Webster's definition of hotel and informed the City's definition of hotel is 'three lodging units or more in a building'. Chair Webb explained why he felt Attorney Trevarthen's interpretation was inconsistent.
- Attorney Trevarthen did not look at the City's Comprehensive Plan.
- Chair Webb did not feel Commercial Uses in a Residential Zone, and whether or not Anna Maria's code prohibits it, was addressed in any of the cases cited in the legal opinion.

Chair Webb recommended the City request a Circuit Court opinion.

*Commissioner Yetter* stated the City should go back and ask for its money back relating to the legal opinion that was received.

*Commissioner Woodland* explained how he felt all the opinions received by the City on this issue were very similar. He said both Attorney Levin and Attorney Trevarthen's opinion indicate if the City is not specific about prohibiting something, the burden then falls on the government – and not the property owner.

Commissioner Woodland referred to Attorney Levin's opinion that vacation rentals are illegal in Anna Maria and though they are illegal, he warned the City should expect to be sued. As a result, Commissioner Woodland felt hundreds of rental owners would have a Bert Harris Claim if it's found the vacations rentals are illegal.

Commissioner Woodland questioned if the Commission want to eliminate all the vacation rentals or do they want to regulate them.

*Chair Webb* responded that when he presented his initial analysis three years prior, he had used the standard provisional statutory construction. He informed what should be followed is the legislative intent. He did not believe the court cases referenced in Attorney's Trevarthen's opinion apply to Anna Maria.

Chair Webb indicated the court finds vacation rentals are illegal – it will apply to everyone.

If a vacation rental was legal since 1996, there's no Bert Harris claim for anyone that purchased property after that. For the individual properties, if the City knew they were being used as a vacation rental, they would have an estoppel argument which the City would consider on a case-by-case basis. Explanation followed. Properties prior to 1996, in Chair Webb's opinion, would be grandfathered.

Chair Webb reiterated and recommended the City should hire an attorney and obtain a declaratory judgment.

*Commissioner Copeland* stated Attorney Levin had made no distinction between ‘rentals’ and ‘vacation rentals’. He questioned if the opinion would mean ‘rentals’ are illegal – which Commissioner Copeland did not agree they are. He noted Chair Webb had indicated if the City were to get the ruling that vacation rentals are illegal, the City would not address those already in operation. As a result, he asked what the advantage would be for getting a declaratory judgment on the issue. It was Commissioner Copeland’s belief the Commission should move forward by adopting an Ordinance that will regulate the vacation rentals. He sees no advantage of proving if the vacation rentals are or are not legal. He pointed out that Attorney Levin had indicated it would take approximately one year to receive the declaratory judgment, and that it would be expensive.

Discussion continued relating to the definition of hotel.

*Chair Webb* felt once the City were to receive a court determination that the vacation rentals were illegal, the City would then adopt a Special Exception provision. Details followed.

*Commissioner Carter* voiced concern the City would have to stop the adopting of regulations - and that it would confirm the City was acknowledging vacation rentals by seeking a declaratory judgment through the court.

*Chair Webb* said while waiting for the declaratory judgment, the City would adopt regulations for controlling them - on the presumption they may be legal. If the City later finds they are illegal, the City would then allow them to operate only by a Special Exception.

Discussion followed. *Commissioner Copeland* reminded according to Attorney Trevarthen and comments during the webinar, the City can limit the number of people in a vacation rental.

**Motion: Move that the City seek a Declaratory Judgment on whether vacation rentals are legal or not, and at the same proceed with writing a Licensing Ordinance.**

**Action: Moved by Vice-Chair Nancy Yetter, Seconded by Commissioner Carol Carter.**

**Vote: Motion carried on a vote of 3 to 2 (Aye = 3, No = 2)**

**Aye: Commissioner Carol Carter, Chair Chuck Webb, and Vice-Chair Nancy Yetter.**

**No: Commissioner Doug Copeland and Commissioner Dale Woodland.**

**5. Discussion: Ordinance 15-788 – Vacation Rental Ordinance – Planner Garrett**

*Commissioner Woodland* said he was greatly concerned about the potential of SB 356 being appealed by the current Legislature. Based on that, Commissioner Woodland wants a plan agreed upon and that the Commission ask City Clerk Percycoe to advertise Ordinance 15-788 for a final Reading on February 26, 2015 with the intent of adopting prior to action taken by the Florida Legislature.

*Planner Garrett* advised that the Ordinance adds a use requiring two advertised hearings. Also, it may need to be reviewed by Planning & Zoning. He estimated a minimum of 21 days required for adoption of the Ordinance.

*Chair Webb* recommended Ordinance 15-788 is not adopted as a zoning Ordinance and instead have a special section in the code adopting a licensing provision. He did not feel the Ordinance should be advertised for adoption until a full-time attorney was hired to review it. He informed there is a current Bill for consideration removing DBPR’s licensing ability, authority, and inspections.

*Commissioner Woodland* felt the Marco Island Ordinance was well written and did not feel an attorney was required in order for the Commission to complete their work on an Ordinance.

*Chair Webb* responded as to why he felt the Ordinance should not be published for Public Hearing.

*Commissioner Copeland* agreed the Commission should proceed with the review and writing of a Licensing Ordinance. He noted in approximately two weeks, when an Attorney is selected, the Ordinance can be published for final reading at that time.

Discussion followed. *Commissioner Carter* suggested the Commission work on an Ordinance with a goal of adopting by April 15. An Attorney should be hired by that date.

*Chair Webb* asked that the Ordinance not be placed in the Zoning Ordinance section - and instead it be placed in a separate part of the code. Based on Planner Garrett's recommendation, Chair Webb agreed the regulations should be controlled by and referred to as a 'Certificate' versus a "License'.

Planner Garrett reviewed the proposed Certificate Ordinance details. Planner Garrett will research types of sound absorbing for fencing, and establishing the pool hours from 9:00 a.m. – 10:00 p.m.

*Commissioner Copeland* suggested Planner Garrett review the limiting of bedroom sizes for vacation rentals. He suggested a copy of the information being discussed in Holmes Beach relating to the proposed BBAR (Bed, Bath Area Ratio) be obtained.

Discussion continued relating to occupancy maximum for the vacation rentals. *Commissioner Woodland* proposed a maximum occupancy of six persons. He questioned how many homes actually have more than six people living in the home. He pointed out some of the rental agents already have an occupancy limit per home. They also require a list of all occupant names in the rental, number of vehicles, and the license plates of all the vehicles.

*Commissioner Copeland* suggested an eight-person maximum.

*Mayor Murphy* felt a headcount to ensure an occupancy compliance would be very difficult.

**Action:** Planner Garrett will prepare an Ordinance for the next meeting. There was consensus relating to the vacation rentals on the following:

- The current code requires one parking space per bedroom
- No longer allow stacked parking for vacation rentals
- Tandem parking will not be allowed
- For maximum of five bedrooms, a maximum occupancy of ten persons for the vacation rentals.
- The property manager must reside in Manatee County. Also, they must be able to respond at the vacation rental units within thirty minutes of notification.

*Chair Webb* recommended a local rental manager be required and they also must be licensed through the City.

**6. Discussion: Permit Parking – Chair Webb**

No action – Moved to the February 26, 2015 Regular Commission Meeting.

**Work Session Scheduled**

A Work Session to discuss a Certificate Program was scheduled for Thursday, February 19, 2015, 6:00 p.m.

Discussion relating to a Gift Receiving Procedure will be scheduled for an upcoming Work Session.

**Adjournment**

**The meeting was adjourned at 8:35 p.m.**

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

Minutes approved: 2/26/15