

**CITY OF ANNA MARIA
CITY COMMISSION SPECIAL MEETING
MEETING HELD AT ANNA MARIA COUNCIL CHAMBERS
10005 GULF DRIVE – ANNA MARIA, FL
THURSDAY, MARCH 11, 2010
6:00 P.M.**

CALL TO ORDER

Chair Quam called the Special Meeting to order at 6:00 p.m.

PLEDGE TO THE FLAG

ROLL CALL: Mayor Fran Barford, Commissioner Jo Ann Mattick, Commissioner Dale Woodland, Chair John Quam, and Commissioner Harry Stoltzfus.

Absent: Commissioner Chuck Webb.

Staff Present: City Clerk Alice Baird, City Attorney Jim Dye, Building Official Bob Welch, Planner Alan Garrett, and Minutes Clerk Stacey Johnston.

Press: Sun and Islander.

Also Present: Court Reporter not paid by the City.

Pledge of Conduct: Read by Chair Quam

- 1. Consider Temporary Moratorium on Development Permits for Commercial Development and Re-development, including Mixed-Use, in the ROR District; Providing for a Time Frame in Which to Review and Update Specific Language of Chapter 90.**

City Clerk Baird announced that Commissioner Webb was ill and had requested that the Commission delay action on the moratorium until he was available.

The consensus of the Commission was to not delay action and proceed with discussion.

Chair Quam stated that the agenda item that evening was to begin the process to adopt a moratorium Ordinance. The purpose is to amend the LDR's to be consistent with the Comp Plan and State Statutes and that safety is the issue at hand. There is a need to clarify the deficiency in Chapter 90 as it relates to backing out across sidewalks. He stated that for the past two months the Commission has proceeded ahead in good faith to address the safety issue and new concept under review.

City Attorney Dye informed that he needs additional direction from the Commission as to what would be the exact subject of the moratorium, how long it would last, etc. that need to be in the Ordinance. He pointed out that Chapter 90 was not a permitting process chapter that it was more of a technical chapter. He voiced concern that if the moratorium included everything involved with Chapter 90 – that it would affect all types of development, etc. in the City.

Commissioner Woodland suggested only the Commercial aspect of the ROR be addressed under the moratorium. He did not feel that someone building a residence in the ROR should be affected.

Commissioner Stoltzfus disagreed and said he would like to see all activity in the ROR stopped temporarily until the driveway and parking language was cleared up. It was his opinion that the Code language was being misapplied and that within the ROR all permitting, building, and any and all activity should be halted. He felt Chapters 90, 114, and 70 should all be addressed.

Commissioner Woodland informed that his purpose for the moratorium was not to change Chapter 90 – only to clarify the language that currently exists in that Chapter so that it meets the intent of the safety requirements in the Comp Plan. He did not feel that

even the City Commission and P&Z Boardmembers agreed on the intent of the Chapter 90 language as it exists.

Again *City Attorney Dye* asked that the Commission determine what activities would be subject to the moratorium while the Commission review and clarify the regulations.

Chair Quam stated his purpose for a moratorium was to review new concepts to determine the best approach for the parking in the ROR district – and to move that review forward for P&Z Board recommendation. The City Commission would then move forward to adopt. He felt only the mixed-use and commercial development /redevelopment in the ROR district would be affected.

Commissioner Woodland said the reason he was opposed to including the residential aspect in the ROR was that it would also then have to be carried over to the Residential district.

Commissioner Stoltzfus pointed out that if a residential Building Permit would be issued it would be difficult to advise the property owner where to place the sidewalk. The difference between the ROR and Residential districts was that only the ROR district requires sidewalks.

Commissioner Stoltzfus said he did not want the moratorium to end just after the review of the Code language but rather to end after the Ordinance revisions had been adopted. He agreed that all review should be completed within ninety days.

Commissioner Mattick did not feel that the review could be completed within ninety days. She estimated it would take six months to one year to get everything resolved.

Commissioner Woodland reiterated that he felt a moratorium should only be in place while the Commission reviews Chapter 90 for clarification. He did not feel a moratorium was needed for the purpose of looking at the parking concepts. He questioned why Chapter 90, as it currently reads, could not be implemented immediately. It was his opinion that the source of the disagreement was to determine if the City would have on-site parking or utilizing the right-of-ways for the use of parking.

Commissioner Stoltzfus responded by bringing attention to the Manatee County guidelines for driveways and off-street parking (Ref: 710.1.5.1.1). He referred to the “No maneuvering” language and stated that by Manatee County’s Code, what Anna Maria was accepting was improper.

City Attorney Dye advised that the Manatee County Code did not affect Anna Maria except to use the language as a model.

Commissioner Mattick suggested that whether or not curb cuts should be allowed in the City, and whether or not parking would be allowed on the right-of-way, etc. was what actually needed to be determined.

Commissioner Stoltzfus stated he would like to see a moratorium to include the mixed-use and commercial development in the ROR including all Site Plan submittal and review, and Building Permit submittal, review or issuance - until such time as the City Commission can clarify the language in Chapters 90, and Section 114-282. He noted he had not included the residential aspect of ROR in order to allow for a compromise. However, he was concerned that if permits were issued for residential development in the ROR that it would be impossible to tell the property owners where to place the sidewalks.

City Planner Garrett acknowledged that he and Commissioner Stoltzfus had discussed which specific section in Chapter 114 needed to be reviewed – 114-282 relating to the *Area and bulk regulations*.

City Attorney Dye suggested that the Commission may want to exempt maintenance type permits such as a roof replacement, etc. He suggested a list of specific exemptions be determined and agreed that he would formulate that list.

Discussion followed relating to pending Site Plan applications. *City Attorney Dye* advised that the Commission should take into account that a Court Reporter had been in attendance at all of the meetings for the past few months. To include projects in the pipeline in the moratorium would raise the likelihood of a lawsuit.

Commissioner Mattick asked for clarification of what grounds the City could use to stop Site Plan applications already submitted. She noted that there had been discussion of needing a dire emergency. However, there had been no proof there was any dire emergency – only discussions based on parking issues.

Commissioner Mattick did not feel that replacing an existing building would reach the level to put stress on anything involving the health, safety, or welfare. She noted there had been no documentation of a true safety issue and saw no grounds for it to apply in the City. Noting that the Comp Plan encourages mixed-use development in the ROR, Commissioner Mattick asked for clarification. She pointed out that until the November 2009 election no Commissioner or P&Z Boardmember had ever objected to the parking situation in the ROR.

City Attorney Dye explained that:

- A moratorium was typically put in place due to a significant threat or situation that requires an immediate action/stoppage of business as usual - in order to address and/or put into place regulations.
- The significance of the threat serves as a Commission policy issue to justify whether or not to put a moratorium in place.
- The courts have stated it must be rationally related to some kind of government interest. Examples were provided.
- Explanation as to how the courts handle a moratorium and the filing of a taking of property followed. He advised that the shorter the time a moratorium is in place, the less likely it can be alleged that a property has been taken.
- Pointed out that placing a hold on the commercial and the non-residential aspects of the ROR – and leaving open the residential aspects – would be impossible, in City Attorney Dye's opinion, to allow for a person to say the value of their property has been taken – because they still have the residential option to pursue. He informed that no person has a right to the full use of their property – they only have a reasonable use of their property.
- Whether they prefer mixed-use over residential is only a preference – not a legal right.
- There is no guarantee for a property owner to have mixed-use on their property – only a legal right to have a reasonable use of their property.
- Advised that any Commissioner not feeling there is a safety concern should not vote for the moratorium.

Mayor Barford said she was concerned about the possible threat of a lawsuit and that the City would not be able to manage it. She noted that Commissioner Stoltzfus had specifically targeted only the Pine Avenue Restoration projects. The Hunt project, on the hand, not been targeted.

Commissioner Stoltzfus responded that there had been four Site Plans since his election in November 2009 and that it was consequential that they were all submitted by PAR. He said he had not targeted PAR, only looked at Site Plans and rejected them based on the parking arrangements based on the LDR's. He said it was hard to not talk about a Site Plan without stating who had submitted it and that it was not about an organization, but about Site Plans, parking configurations, and the safety concerns that he has.

In answer to *Chair Quam's* question, *Planner Garrett* verified there were currently three pending Site Plan applications and that staff has finished the completeness review. All three are still undergoing staff compliance review. The staff analysis has not yet been completed. No public hearings have been set.

Commissioner Stoltzfus asked how staff was interpreting the maneuvering language now and questioned why it had been determined differently than other communities. He discussed the City's Code language and felt that clarification was needed as to maneuvering in the right-of-way.

City Attorney Dye said his view of the Code was that a person could not leave the street and enter onto private property without maneuvering in some way. He pointed out that the County's regulations have a lot more specific detail than Anna Maria's.

City Attorney Dye advised that if the point of friction was the Commission may want to look at changing the particular maneuvering language – they may want to do so rather than proceeding with a moratorium Ordinance.

Commissioner Woodland did feel there is a safety issue/safety concern. He said it would be irresponsible to not declare a moratorium for what he considers to be a safety problem.

Mayor Barford said she would like to get away from being in the courts. She recommended that *City Attorney Dye's* suggestion of addressing the maneuvering be pursued rather than proceeding with a moratorium. She agreed that the City did need clear definitions.

Planner Garrett referred to Manatee County's language (Ref: 710.1.5.1.2) stating that backing onto a right-of-way is prohibited, except from single family dwellings and duplexes. He advised that specific language was needed in the City for clarification.

Building Official Welch informed that within one week staff could provide changes to Chapter 90 exclusively for interior parking.

Discussion followed relating to the moratorium being fast-tracked. It was noted that two City Commission hearings are required – seven days apart. The notice must go out seven days prior to the first hearing and the second notice goes out five days before that hearing. One of the two meetings must be after 5:00 p.m. A ten-day notice is required prior to the P&Z Board hearing.

Commissioner Stoltzfus asked that all Site Plans in progress be included in the moratorium.

City Attorney Dye recommended leaving out the projects currently in the pipeline due to the risk of a lawsuit and how it would take a lot of public resources. He informed that many questions needed answered such as when the Site Plan applications were filed, if the City had begun taking positive steps in moving towards a moratorium as of that date,

and can the property owner make a claim that they have gained a vested right as to the way the regulations exist as of the day they filed their application. Extensive review of the record would be required.

Commissioner Stoltzfus responded that he had raised the parking issue concerns and it was on record that the issue was in flux just prior to Thanksgiving (2009).

Planner Garrett confirmed that the three pending Site Plan application were submitted in November 2009.

Commissioner Mattick asked for clarification in the event the City was to be involved in a lawsuit and the City was to become insolvent.

City Attorney Dye explained there was a Chapter in the Bankruptcy Code for municipalities, and that sovereign unity caps damages at \$100,000 with insurance coverage through the Florida League of Cities up to that amount.

Commissioner Mattick stated that one year ago last January she had raised the issue of backing out across Pine Ave. – especially the Pine Ave. Store and the Community Center. Not one person on the Commission, or any of the P&Z Board members had felt that was a problem. She said the issue could have been addressed over a year ago; however, no steps had been taken to address the safety.

Public Comment

Mark Alonzo, 406 N. Shore Dr. said in the past twenty-one years he had lived in Anna Maria there had never been a problem on Pine Ave. However, for less than \$200 one-way signs could be erected to require traffic to move one-way towards the City Pier.

Micheal Coleman informed that the Court Reporter was not in attendance for any intimidation, only to document the record. He stated that filing a lawsuit was the very last thing that PAR would want to do. Mr. Coleman pointed out that the Comp Plan states “shall encourage mixed-use development.” He suggested the vision for Pine Ave. be determined so that the Code language can be refined.

John Cagnino, 9807 Gulf Dr. read a prepared statement. He noted there had been no reference to Sarasota, Bradenton, Siesta Key, or Osprey where angled parking and parking on the roads occur and there had been no problems.

Mr. Cagnino suggested that easements be obtained from Pine Ave. property owners to relocate the sidewalks. He voiced concern about the possibility of the City having to pay approximately \$2,250,000 in the event the City was to lose a lawsuit. He questioned where that amount could be found in the City’s budget and what services would be cut in order to pay for the lawsuit.

Mr. Cagnino said he would like to see that the Commissioners who support the moratorium construct in an open forum the source of user funds so that each taxpayer will know in advance where the funds were coming from and how the taxpayers would be paying for it.

Mr. Cagnino requested that if the issue of a moratorium comes to a vote before the Commission that the Mayor exercises her Veto rights to protect the financial integrity of Anna Maria.

Tom Turner, 850 N. Shore Dr, said the parking issue had been discussed since November 2009 and no action had been taken. He volunteered to write amendments to

Chapters 70, 90, and 114 no later than the following Thursday. He stated that all three Chapter revisions could be combined into one Ordinance.

PAR Attorney Valerie Fernandez informed that the Court Reporter was not in attendance to intimidate – that sometimes people forget what they say and she wanted to have a record of all the proceedings.

Attorney Fernandez informed Commissioner Stoltzfus that he is targeting PAR. She warned that Chapter 1983 of the Civil Rights Act states that individual Commissioners could be held liable - for property owners to seek under that provision.

Sandy Mattick, 305 Pine Ave. suggested that prior to implementing a moratorium the Commission should consider:

- Basic critical needs.
- Consider the cost to the City, monetary or otherwise, whether the City was to win or lose.
- Clearly state their vision for parking.
- State the result they expect to achieve.
- Be a realist about how long it will take.

A history of addressing the parking issues in the business district over the past seven years followed by Ms. Mattick. She pointed out that during that time, both Chair Quam and Commissioner Woodland had served that entire time and had voted on every Ordinance affecting the parking in the business district.

Ms. Mattick felt that the Commission should spend their time working on the development of a walking district. Benefits for a walking district would include: losing weight while walking, spending less on a vehicle, supporting the local economy, talking to neighbors, reduction of traffic, and increasing volunteerism. She said all those benefits would add to the health, safety, and welfare of the City and its residents – and a moratorium would not.

It was Ms. Mattick's opinion that Mr. Aubry's plan was the only one presented that achieved the goal, had taken into account what currently exists, and could easily be implemented immediately on the existing and any future lots. She felt if the Commission were to choose a moratorium, that the City will be sued and that the City will lose.

Nicky Hunt, 302 Pine Ave, noted that a moratorium was put into effect during their project on Pine Ave. and they were advised by Attorneys that they were not entitled to anything and would have to wait it out.

Ms. Hunt felt that the Commission was very quick to be threatened by the Developer who may sue the City. She also pointed out that citizens may sue the City due to the Site Plans not complying with the Comp Plan.

Mary Selby, 812 N. Shore Dr, felt there should be some sort of compromise. She noted that seventy years ago there were not 184 parking places proposed on Pine Ave. There had been no parking problems in the past because they did not have the development.

Robin Wall, 112 Palmetto Ave, felt Chapter 90 needed amended. It was her opinion that a threat to the public safety had been created. She pointed out that the recent parking plans had not provided for any room for turning on-site and that the danger would compound as more Site Plans would be submitted for approval.

Ms. Wall said she was in favor of the Commission enacting a moratorium on the commercial ROR development for a minimum of ninety days. She said she had submitted a letter to the Commission earlier that afternoon with the former moratorium Ordinance attached. She supports a moratorium in order to give the City time to revise a safe plan for the public health, safety, and welfare – particularly pedestrian safety – while maintaining sufficient traffic circulation on the City's main commercial street.

Terry Schaefer, 311 Iris, said he applauded the Commissioners who were not intimidated by a possible lawsuit. He encouraged the Commission to take the time necessary to review the codes and make certain that at the end of the process – hopefully within ninety days – there would be clear interpretation that everyone will understand and comply consistently from this point forward.

Mr. Schaefer then addressed Mr. Coleman's earlier comment relating to the possibility of PAR no longer building the same type buildings on Pine Ave. if certain action was taken by the Commission.

Commission Discussion

Discussion followed to finalize the motion presented by Commissioner Stoltzfus. As a result, the following motion was made:

MOTION: Commissioner Stoltzfus moved to direct staff to prepare an Ordinance authorizing a moratorium on the acceptance, review, and approval of projects governed by Site Plans within the ROR Zoning District. The moratorium shall remain in place until the Commission has considered and enacted changes to Chapter 90, Section 114-282, and any other affected sections of the LDR in the City of Anna Maria - or until September 23, 2010, whichever occurs first. Exceptions will include building and maintenance and other projects which do not require acceptance, review, and approval of Site Plans. Commissioner Woodland seconded the motion. On Roll Call Vote the motion carried on a vote of 3 to 1 with Commissioner Mattick voting No.

Commissioner Woodland asked Tom Turner to draft his proposed changes to Chapter 70, 90, and 114.

It was noted that the P&Z Board would be discussing Chapter 90 at their March 16, 2010 meeting. The Commission agreed to schedule a City Commission/P&Z Board Work Session for Thursday, March 18, 2010 at 6:00 p.m. Noting that City Attorney Dye had a conflict on March 16, 2010 Chair Quam agreed to proceed with the meeting and asked that the City Planner and Building Official are in attendance.

Public and Press Comment on Agenda Items – None.

Adjournment

On motion made by Chair Quam and seconded by Commissioner Woodland, the meeting was adjourned at 8:00 p.m.

Alice Baird, CMC, City Clerk

MINUTES APPROVED: _____